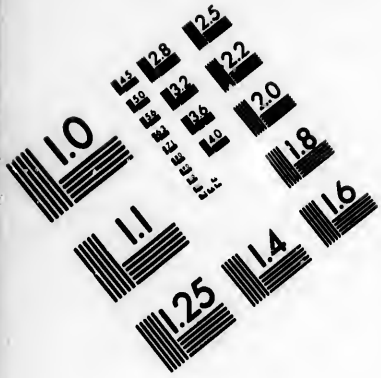

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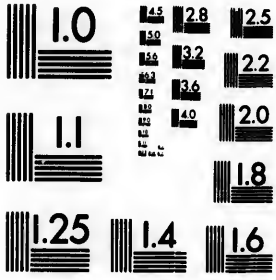

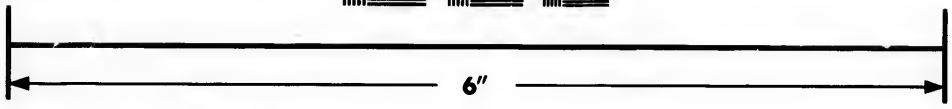

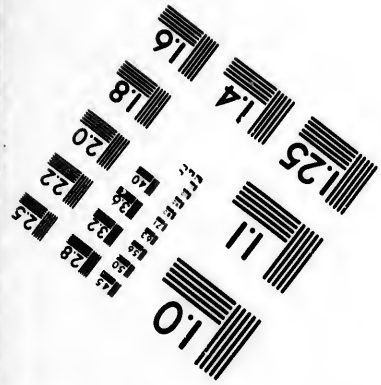

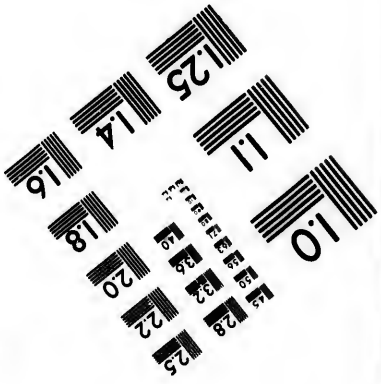

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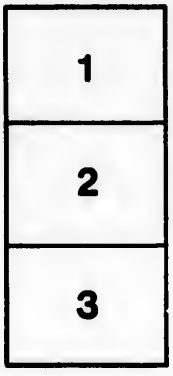

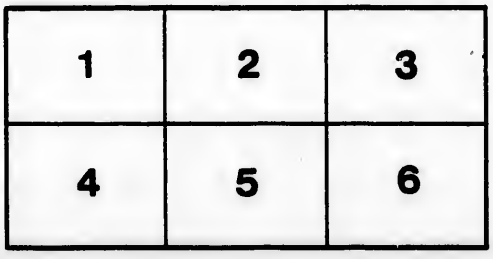

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BEING

ANNOTATIONS OF THE VARIOUS ACTS RELATING TO THE RIGHTS, POWERS, AND DUTIES OF JUSTICES OF THE PEACE;

WITH A

SUMMARY OF THE CRIMINAL LAW.

(*Second Edition.*)

BY

S. R. CLARKE,

OF OSGOODE HALL, BARRISTER-AT-LAW;

AUTHOR OF "THE CRIMINAL LAW OF CANADA," "THE INSOLVENT ACT OF 1875 AND AMENDING ACTS," ETC.

Labour omnia vincit.

TORONTO:
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PREFACE.

THE first edition of this work, published in 1878, has been for several years out of print. In the interval, the statute law has been revised and consolidated, and numerous judicial decisions throw light on the various provisions of the Acts. Under these circumstances the necessity for the present edition becomes apparent. The former edition met with very general acceptance, and had a large sale. With the additional material available, and the experience gained in the meantime, I have endeavoured to improve upon my former effort, keeping the same general principles in view. Whether I have succeeded or not, must be decided by my readers.

TORONTO, *12th May, 1888.*

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Appeal
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Draper
Hanna
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Kerr. . .
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L.C.L.J
L.C.R .
Manitol
Montre
Oldrigh
O.S. . . .
Pugsley
Pugsley
Quebec
R. & J.
Russell
Russell
S.C.R .
Stephen
Stuart .
Stuart's
Sup. Ct.
Taylor. .
Thomso
la

TABLE OF ABBREVIATIONS.

Allen	Allen's Reports, New Brunswick.
Appeal (Ont.)	Appeal Reports, Ontario.
British Columbia L.R.	British Columbia Law Reports.
Cochran	Cochran's Reports, Nova Scotia.
D.R.	Decisions' Reports, Quebec.
Draper	Draper's Reports, Ontario.
Hannay	Hannay's Reports, New Brunswick.
James	James' Reports, Nova Scotia.
Kerr	Kerr's Reports, New Brunswick.
L.C.G	Local Courts Gazette, Ontario.
L.C.J.	Lower Canada Jurist.
L.C.L.J.	Lower Canada Law Journal.
L.C.R	Lower Canada Reports.
Manitoba L.R.	Manitoba Law Reports.
Montreal L.R	Montreal Law Reports.
Oldright	Oldright's Reports, Nova Scotia.
O.S.	Upper Canada Queen's Bench Reports, old series.
Pugsley	Pugsley's Reports, New Brunswick.
Pugsley & Burbidge	Pugsley & Burbidge Reports, New Brunswick.
Quebec L.R.	Quebec Law Reports.
R. & J. Dig.	Robinson & Joseph's Digest Reports, Ontario.
Russell & Chesley	Russell & Chesley's Reports, Nova Scotia.
Russell & Geldert	Russell & Geldert's Reports, Nova Scotia.
S.C.R	Supreme Court Reports, Canada.
Stephen's Dig.	Stephen's Digest, New Brunswick Reports.
Stuart	Stuart's Reports, Quebec.
Stuart's V.A. Reps.	Stuart's Vice-Admiralty Reports, Quebec.
Sup. Ct., N.B.	Supreme Court Reports, New Brunswick
Taylor	Taylor's Reports, Ontario.
Thomson	Thomson's Reports, Nova Scotia.

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1 On
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INTRODUCTORY CHAPTER.

It seems settled that the appointment of Justices of the Peace is vested in the Crown. Of course they may be appointed by Act of Parliament; or persons holding certain offices may, on being appointed or elected to such offices, become Justices of the Peace.

In general they are divided into two classes, namely, those appointed by commission, and those who are such for the time being merely by virtue of holding some other office. Thus every Judge of the Supreme Court of Canada, the Exchequer Court of Canada, and of the Supreme Court of Judicature for Ontario, is *ex-officio* a Justice of the Peace. Rev. Stat. (Ont.), chap. 71, s. 1. See also *R.* v. *Mosier*, 4 P.R. (Ont.), 64. And every Police Magistrate is *ex-officio* a Justice of the Peace for the whole county for which he has been appointed. Rev. Stat. (Ont.), chap. 72, s. 18.

In Ontario, the Revised Statutes, chap. 71, provide for the appointment and qualification of Justices of the Peace, and the Legislature of that Province had power under the British North America Act, section 92, No. 14, to pass this statute. *R.* v. *Bennett*, 1 Ont. P. 445; *R.* v. *Bush*, 24 C.L.J., 188.

The appointment of Police Magistrates is expressly provided for by the Rev. Stat. (Ont.), chap. 72, and the office is one which was created many years before that Act, and the right of appointment is vested in the Provincial Government. *Richardson* v. *Ransom*, 10 Ont. R., 387.

Where a Police Magistrate has a patent from the Ontario Government and it does not appear that no commission has been issued by the Dominion Government, nor that search and enquiry has been made at the proper offices to ascertain whether a commission has been issued by such Government, but there is only an affidavit shewing that the magistrate has no authority from the Dominion Government as the deponent knows from "common

and notorious report," the court will not hear discussed the constitutional question as to which Government should make the appointment, or that the appointment by the Ontario Government is invalid. *R.* v. *Richardson*, 8 Ont. R., 651.

The local Government of the Province of New Brunswick has power to appoint Justices of the Peace, notwithstanding the provisions of the British North America Act. *Ex parte Williamson* 24 Sup. Ct. N.B. 64; *ex parte Perkins*, *Ib.*, 66.

The Lieutenant-Governor of the North-West Territories may appoint Justices of the Peace for the territories, who shall have jurisdiction as such throughout the same. Rev. Stat. Can., chap. 50, s. 34.

In the District of Keewatin the Lieutenant-Governor may appoint Justices of the Peace and such other officers as are necessary for administering the laws in force in the District. Rev. Stat. Can., chap. 53, s. 23.

The appointment of Stipendiary Magistrates is vested in the Governor-in-Council (*Ib.* s. 24), and such magistrates have the powers appertaining to any Justice of the Peace, or to any two Justices of the Peace under any laws or ordinances which are from time to time in force in the District. (*Ib.* s. 25.)

Any Judge of a Court, Judge of Sessions of the Peace, Recorder, Police Magistrate, or Stipendiary Magistrate has full power to do alone whatever is by the Indian Act authorized to be done by a Justice of the Peace, or by two Justices of the Peace. Rev. Stat. Can., chap. 43, s. 115. And every Indian Agent is *ex-officio* a Justice of the Peace for the purposes of the Act, and has the power and authority of two Justices of the Peace with jurisdiction wheresoever any violation of the Act occurs or wheresoever it is considered by him most conducive to the ends of justice that any violation of the Act should be tried. (*Ib.* 117). See *R.* v. *M'Cauley*, 14 Ont. R., 643.

The expression "Magistrate," when used in any Act of the Parliament of Canada, means a Justice of the Peace.

The expression "two Justices," means two or more Justices of the Peace assembled or acting together.

If anything is directed to be done by or before a Magistrate or Justice of the Peace, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done; and whenever power is given to any person, officer, or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer or functionary to do or enforce the doing of such act or thing. The Interpretation Act. Rev. Stat. Can., chap. 1, section 7, (34, 35, 36, 37).

When a statute enables two Justices to do an act, the Justices sitting in Quarter Sessions may do the same act, for they are not the less Justices of the Peace because they are sitting in court in that capacity. *Fraser* v. *Dickson*, 5 Q.B. (Ont.), 233.

The mere appointment as Justice will not ordinarily authorize the person to act until he has duly qualified. There are, however, certain persons who are not required to qualify specially. See Rev. Stat (Ont.), chap. 71, s. 2. But in Ontario, when not otherwise provided, if a person act as Justice of the Peace without being qualified, he is liable to a penalty of one hundred dollars. Rev. Stat. (Ont.), chap. 71, s. 15. But in such case his acts are not invalid, his name being in the Commission, and he being therefore a Justice of the Peace. *Margate* v. *Hannon*, 3 B. & A., 266.

This principle was recognized in a case under the Canada Temperance Act where objection was raised that one of the convicting magistrates had not the necessary property qualification; but it appeared that the defendant had not negatived that the Justice was a person who is within the terms of the exception, or proviso in the 9th section of the Rev. Stat. (Ont.), chap. 71. Consequently, he might be a Mayor, Reeve, or Deputy-Reeve of some municipality, and as such under the protection of section 2 of the Act. The defendant therefore failed in shewing the Justice to be a person who might not lawfully act as such although he had not the required property qualification. *R.* v. *Hodgins*, 12 Ont., R. 367.

Under the Con. Stat. (Can.), chap. 100, s. 3, Rev. Stat. (Ont.), chap. 71, s. 9, a Justice of the Peace must have an interest in land

in his actual possession to the value of $1,200. But this statute does not require him to have a legal estate in the property. It is sufficient if the land, though mortgaged in fee exceeds by $1,200, the amount of the mortgage money. *Fraser* q.t. v. *McKenzie*, 28 Q.B. (Ont.), 255.

The object of the statute, as to the qualification of Justices of the Peace, was twofold: first, that the Justices should be of the most sufficient persons; secondly, that they should be worth in unencumbered real estate to the value of $1,200, at least, to satisfy any one who should be wronged by their proceedings. In an action against defendant for acting as a Justice of the Peace without sufficient property qualification, it appeared that the evidence offered by the plaintiff as to the value of the land and premises on which defendant qualified, was vague, speculative, and inconclusive, one of the witnesses, in fact, having afterwards recalled his testimony as to the value of a portion of the premises, and placed a higher estimate upon it; while the evidence tendered by the defendant was positive, and based upon tangible data, it was held that the jury were rightly directed, "that they ought to be fully satisfied as to the value of the defendant's property before finding for the plaintiff, that they should not weigh the matter in scales too nicely balanced, and that any reasonable doubt should be in favour of the defendant." *Squier* q.t. v. *Wilson*, 15 C.P. (Ont.), 284; 1 U.C.L.J., N.S., 152.

It seems that the ownership of an equitable estate in land is sufficient to enable the owner to qualify thereon under the statute. Where, however, a husband caused certain land to be conveyed to his wife, by deed, absolute as between them, and without any declaration of trust in his favour, the Court held that, although the conveyance might be void as against his creditors, yet, that the husband could not qualify as a Justice of the Peace on this land, for so far as he was concerned, the absolute property therein was by his own act vested in his wife. *Crandell* q.t. v. *Nott*, 30 C.P. (Ont.), 63.

And, where in an action against a Justice of the Peace for the penalty, the defendant was called as a witness on his own behalf,

and gave evidence as to the value of the property on which he qualified, and the Judge in charging the jury, told them that generally speaking, the owner of property had the best opinion of its value, the direction was held right because the jury were not told that they were to be guided by such opinion, or that it was most likely to be correct. (*Ib.*)

In Ontario the Rev. Stat. chap. 71, sections 10 and 11, give the oath of qualification and the oath of office, and section 12 provides that such oath be sent to and filed with the Clerk of the Peace. But it is not necessary for any Justice of the Peace named in any Commission who, after his appointment as such Justice by a former Commission, took the oath of allegiance and the oath of office as a Justice of the Peace, to again take such oaths, or either of them, before acting under the new Commission. (*Ib.*, s. 14.)

A certificate purporting to be under the hand and seal of the Clerk of the Peace, that he did not find in his office any qualification filed by the Magistrate, is not sufficient evidence that the Magistrate is not properly qualified to take a recognizance. *R.* v. *White*, 21 C.P. (Ont.), 354.

A person assuming to act as a Justice of the Peace, not under any commission as a Justice, but as an Alderman of a city, is not as such Alderman legally qualified to act as a Justice until he has taken the oath of qualification required by the Municipal Acts. *R.* v. *Boyle*, 4 C.L.J., N.S. 256 ; 4 P.R. (Ont.), 256.

But having taken such oath he is not required to have any additional property qualification or to take any further oath to enable him to act as a Justice of the Peace. Rev. Stat. (Ont.), chap. 71, s. 2.

Except when otherwise provided by law, no solicitor in any Court whatever, is eligible as a Justice of the Peace during the time he continues to practice as a solicitor. (*Ib.*, s. 7.)

But as section 18 of the Rev. Stat. (Ont.), chap. 72, provides that every Police Magistrate shall, *ex-officio*, be a Justice of the Peace for the place in which he holds office, such Police Magistrate is not disqualified from acting as such Justice of the Peace by reason of his being a practising solicitor. *Richardson* v. *Ran-*

som, 10 Ont. R., 387. But he cannot act as solicitor in any criminal matters. (*Ib.*, s. 27.)

No person having using, or exercising the office of sheriff or coroner, shall be competent or qualified to be a Justice of the Peace. Rev. Stat. (Ont.), chap. 71, s. 8. But a stipendiary Magistrate for any temporary judicial district, may be a Coroner for the district. (*Ib.*)

The statute 1st Mary, sess. 2, chap. 8, s. 2, also disqualifies a sheriff from acting as a Justice of the Peace. *ex-parte Colville*, L.R., 1 Q.B.D., 133. Independently of legislation to that effect, a Justice of the Peace does not become disqualified from acting as such, by reason of his being elected coroner for the county or division for which he so acts as Justice. *Davis* v. *Justices*, Pembrokeshire, L.R., 7 Q.B.D., 513.

The acts of a Justice of the Peace are either *ministerial* or *judicial*. He acts ministerially in preserving the peace, receiving complaints against persons charged with indictable offences, issuing summonses or warrants thereon, examining the informant and his witnesses, binding over the parties to prosecute and give evidence, bailing the supposed offender, or committing him for trial. He acts judicially in all cases of summary jurisdiction. His conviction, drawn up in due form and unappealed against, is conclusive, and cannot be disputed by action, though if he act illegally, maliciously or corruptly, he is punishable by information or indictment as we shall hereafter see.

All offences cognizable by a Justice of the Peace, are divided into two general classes, namely, firstly, those which the law ordains shall be sent to a *higher tribunal* for trial, wherein he acts *ministerially*, and secondly, those over which the Justice has summary jurisdiction, wherein he acts *judicially*.

It is necessary that the number of Justices required by the act or law on which the information or complaint is framed should hear and decide the case, but in the absence of any provision in the act or law on which the proceedings are founded requiring two or more Justices, then one Justice may hear, try, and determine the case. Rev. Stat. Can., chap. 178, s.s. 4 and 5.

The Act respecting the safety of ships and the prevention of accidents on board thereof (Rev. Stat. Can., chap. 77, s. 20), provides that every penalty imposed by the Act may be recovered before any two Justices of the Peace or any magistrate having the powers of two Justices of the Peace. So penalties under The Steam Boat Inspection Act (Rev. Stat. Can., chap. 78, s. 61), are recoverable before two Justices of the Peace; so are penalties under the Act respecting the Navigation of Canadian Waters (Rev. Stat. Can., chap. 79, s. 8), and the Act respecting Pilotage (Rev. Stat. Can., chap. 80, s. 101), and the Wrecks and Salvage Act (Rev. Stat. Can., chap. 81, sections 37 & 39), and the General Inspection Act (Rev. Stat. Can., chap. 99, s. 25). Two Justices of the Peace are required under The Juvenile Offenders Act (Rev. Stat. of Can., chap. 177). Under the Act respecting Military and Naval Stores (Rev. Stat. Can., chap. 170, sections 8 and 12), two Justices of the Peace may in certain specified cases summarily convict offenders. Under the Act respecting Threats, Intimidation and other offences (Rev. Stat. Can., chap. 173, s. 10), certain acts of violence and intimidation may be tried before two Justices of the Peace in the absence of any objection by the accused to such trial.

Two Justices of the Peace have power to convict for criminal breaches of contract under the Rev. Stat. Can., chap. 173, s. 15 Penalties imposed under The Animal Contagious Diseases Act (Rev. Stat. Can., chap. 69, s. 46), are recoverable before two Justices of the Peace; so two Justices of the Peace may try and determine in a summary way all offences punishable under The Seamen's Act (Rev. Stat. Can., chap. 74, s. 114), or The Inland Waters Seamen's Act (Rev. Stat. Can., chap. 75, s.s. 30 & 37). Under The Immigration Act, (Rev. Stat. Can., chap. 65, s. 42), certain penalties not exceeding eighty dollars in amount are recoverable in a summary manner, before two Justices of the Peace. Under The Trade Marks Offences Act (Rev. Stat. Can., chap. 166, s. 15), penalties may be recovered by a summary proceeding before two Justices of the Peace having jurisdiction in the county or place where the offender resides, or has any place of business, or in the county in which the offence has been committed, and under the provisions

of the Summary Convictions Act (Rev. Stat. Can., chap. 178), proceedings for uttering defaced coin must be before two Justices of the Peace (Rev. Stat. Can., chap. 167, s. 18). Two or more Justices of the Peace may seize any copper or brass coin which has been unlawfully manufactured or imported (*Ib.*, s. 29); offences relating to the army and navy may be prosecuted before two Justices of the Peace. Rev. Stat. Can., chap. 169, s. 4.

Under The Gas Inspection Act (Rev. Stat. Can., chap. 101, s. 47), the proceedings must be before two Justices, if the penalty exceeds twenty dollars. This must mean not the penalty actually imposed by the Justices but the penalty prescribed by the Act.

Under the Petroleum Inspection Act (Rev. Stat. Can., chap. 102, s. 29), the penalties imposed by the Act are recoverable before a Police or Stipendiary Magistrate, or two Justices of the Peace before whom it is preferred, and no other Justice of the Peace shall take part in such hearing and determination.

Under The Weights and Measures Act (Rev. Stat. Can., chap. 104, s. 63), if the penalty exceed fifty dollars the proceedings must be before two Justices of the Peace.

Under The Railway Act (Rev. Stat. Can., chap. 109, s. 26), prosecutions for wilful neglect to notify the expected arrival of overdue trains must be before two Justices of the Peace or a Police or Stipendiary Magistrate.

Proceedings under the Trade Unions Act (Rev. Stat. Can., chap. 131, s. 20), must be before two Justices of the Peace or a Police or Stipendiary Magistrate.

Under the Act respecting the improper use of firearms and other weapons (Rev. Stat. Can., chap. 148, s. 3), the conviction must be made by two Justices of the Peace.

The penalty for using another person's registered mark under the Act respecting the Marking of Timber can only be recovered before two Justices of the Peace. Rev. Stat. Can., chap. 64, s. 7.

So with penalties imposed for Smuggling. Rev. Stat. Can., chap. 32, s. 192.

As also penalties imposed under the Act respecting Cruelty to Animals. Rev. Stat. Can., chap. 172, s. 2.

It is to be observed, however, in reference to these cases that when an Act uses the phrase "two Justices" without any other restrictive words two or more assembled or acting together have jurisdiction. See The Interpretation Act, Rev. Stat. Can., chap. 1, s. 7 (35). And every Police Magistrate, District Magistrate or Stipendiary Magistrate, and every magistrate authorized by the law of the Province in which he acts to perform acts usually required to be done by two or more Justices of the Peace may do alone whatever is authorized by the Criminal Procedure Act to be done by any two or more Justices of the Peace. Rev. Stat. Can., chap. 174, s. 7.

An authority given by statute to two cannot be executed by one Justice, but if given to one Justice it may be executed by any greater number. *Hatton's* case, 2 Salk, 477.

If the complaint be directed to be made to any Justice, though the statute should require the final determination to be by two, the complaint is well lodged before one, *Ware* v. *Stanstead*, 2 Salk, 488; and see Rev. Stat. Can., chap. 178, s. 6.

All the Justices of each district are equal in authority, but the jurisdiction in any particular case attaches in the first set of magistrates duly authorized, who have possession and cognizance of the fact to the exclusion of the separate jurisdiction of all others, and the acts of any others except in conjunction with the first are not only void but such a breach of the law as subjects them to an indictment. *R.* v. *Sainsbury*, 4 T.R., 456; see Rev. Stat. (Ont.), chap. 72, s. 13.

But in certain cases other magistrates are authorized to act in the absence of those first seized of the case.

Under the Commission of the Peace, Justices have a general power for conservation of the peace and the apprehension and commitment of felons. The commission gives them jurisdiction in all indictable offences to discharge, admit to bail, or commit for trial. *Connors* v. *Darling*, 23 Q.B. (Ont.), 543.

The maxim *omnia præsumuntur rite esse actu* does not apply to give jurisdiction to Justices or other inferior tribunals. *R.* v. *Atkinson*, 17 C.P. (Ont.), 302. On this principle in a prosecution

for a penalty under a by-law of a corporation, the by-law must be proved, for it must appear on the face of the proceedings that there is jurisdiction. *R.* v. *Wartman*, 4 Allen, 73; *R.* v. *All Saints*, 7 B. & C., 785.

Before proceeding in any matter the Justice should consider 1st, whether he has jurisdiction—this is given by his commission, or by the particular statute under which the proceedings are taken, 2nd, If more than one, or any particular description of Justice is required. In indictable cases one Justice may do everything required to be done out of sessions, except admit to bail. See section 81 of the Rev. Stat. Can., chap. 174. In summary proceedings one Justice may receive the information and issue the summons, or warrant and process for enforcing judgment, even when the statute requires the case to be heard by more than one Justice. Rev. Stat. Can., chap. 178, s. 6. 3rd, Whether a time is limited for any of the proceedings. In indictable cases, with very few exceptions, there is none. In summary cases the information must be laid within three months. (*Ib.*, s. 11).

It is not the result, but the nature of the application made before the magistrate which founds his jurisdiction; and whenever an application is made to a magistrate as to a matter over which supposing the facts to bear out the statements he has jurisdiction, he then has jurisdiction to ascertain whether the facts make out a case for the exercise of that jurisdiction, which, if the facts make out the case undoubtedly he has. See *Usill* v. *Hales*, L.R. 3 C.P.D., 319.

In general the authority of Justices is limited to the district for which they are appointed, and they can only exercise their powers while they are themselves within that district, for their authority is local rather than personal, but it seems that acts purely ministerial, such as receiving informations, taking recognizances, etc., may be done elsewhere, though anything founding proceedings of a penal nature, and any coercive or judicial act is utterly void unless done within the district. Dalton, c. 25; see *Newhold* v. *Coltman*, 6 Exch., 189.

Some acts are judicial and others are ministerial. The former

must be done within the territorial limits of the jurisdiction. The latter may be done beyond them. *Langwith* v. *Dawson*, 30 C.P. (Ont.), 375.

The test of an act being judicial or ministerial, is whether the Justices are entitled to withhold their assent if they think fit or whether they can be compelled by *mandamus* or rule to do the act in question. *Staverton* v. *Ashburton*, 24 L.J.M.C., 53.

A Justice's jurisdiction is limited to the county or place for which he is appointed, except in certain cases where it is otherwise specially provided by statute (see *post* Criminal Procedure). Where an objection was raised that there was no evidence to show that the offence was committed within the jurisdiction of the magistrate, and it appeared that the conviction alleged that the defendant at the Town of Simcoe, did unlawfully keep intoxicating liquors for sale, and the depositions recited the information as above and the evidence showed the liquor was found upon the premises of the defendant, the Court held that the local jurisdiction sufficiently appeared. *R.* v. *Doyle*, 12 Ont. R., 347.

A conviction made outside of the territorial limits of the magistrate's jurisdiction is bad. *R.* v. *Hughes*, 5 Russell & Geldert, 194.

The Imperial Act, 9 Geo. 1, chap 7, s. 3, provides that if any such Justice of the Peace shall happen to dwell in any city, or other precinct that is a county of itself, situate in the county at large for which he shall be appointed a Justice although not within the same county it shall be lawful for any such Justice to grant warrants, take examinations, and make orders for any matters which one or more Justices of the Peace may act in at his own dwelling-house, although such dwelling-house be out of the county where he is authorised to act as a Justice, and in some city or other precinct adjoining, that is a county of itself.

It is to be observed that under The Interpretation Act, Rev. Stat. Can., chap. 1, s. 7, (36) if anything is directed to be done by or before a Magistrate or Justice of the Peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done.

In Ontario, the Rev. Stat., chap. 72, s. 6, provides that where there is a Police Magistrate for any town or city, no other Justice of the Peace shall, with certain exceptions, admit to bail or discharge a prisoner, or adjudicate upon or otherwise act in any case, and the statutes further provide that certain cities form for judicial purposes part of the respective counties in which they are situate.

These enactments mean that the County Justices are and shall be Justices over the whole area of the county including the city, but that they shall not, where there is a Police Magistrate for the city, do any of the acts above specified.

Where a conviction was signed by two justices of the County of Frontenac and the case was heard in the county, and the conviction stated that it was signed there, but it appeared as a matter of fact that one of the Justices signed in the city, it was held (the conviction remaining in full force) that the Justice did not act *for the city* as the conviction was conclusive and it stated that the signature was in the county. *Langwith* v. *Dawson*, 30 C.P. (Ont.), 375.

Section 6 of the Rev. Stat. (Ont.), chap. 72, does not limit the territorial jurisdiction of County Magistrates, but prohibits them from acting "in any case for a town or city." The limitation is as to the cases not as to place, and is only partial, *i.e.*—for a city where there is a Police Magistrate, and then only when not requested by such Police Magistrate to act, or when he is not absent through illness or otherwise, and therefore, in any case arising in a county outside of a city, a County Justice having jurisdiction to adjudicate while sitting in the county may adjudicate while sitting in the city. *R.* v. *Riley*, 12 P.R. (Ont.), 98. *R.* v. *Row*, 14 C.P. (Ont.), 307, and *Hunt* v. *McArthur*, 24 Q.B. (Ont.), 254, no longer applicable.

As the words "dealt with, inquired of, tried, determined and punished," frequently occur in the statutes, it may be observed that the words "dealt with," apply to Justices of the Peace, "inquired of," to the Grand Jury, "tried," to the Petit Jury, and "determined and punished," to the Court. *R.* v. *Ruck*, 1 Russell, 757, note Y.

It must be remembered that this work does not define the nature of every description of offence on which a Justice may be called to adjudicate. The offence may be one against a local or provincial statute or against a by-law having application in a particular locality only. In such cases the general procedure is pointed out, but in determining the nature of the offence the particular statute or by-law must be looked to. In reference to all indictable offences where the Justice commits for trial, a *prima facie* case is all that need be made out. The Justice is not trying the case and should if there is any doubt send the accused for trial.

In all cases the first official step to be taken by the Justice is to receive an information or complaint in writing and upon oath generally, from a credible person, that an offence has been committed within his jurisdiction, such information or complaint stating as near as may be, the *name of the offender* (if known), the *nature of the offence*, the *person against whom*, and the *time when*, and the *place where* the said offence was perpetrated.

It is recommended that the Justice should on all occasions, when taking informations, carefully read over and explain them to the informants, so as to satisfy himself that they are perfectly understood; because it not unfrequently happens that ignorant persons undesignedly mis-state and confuse the facts, so as to mis-lead the Justice, and cause the information to be incorrectly prepared.

If it appear to the Justice, that the offence was committed within his jurisdiction, or that the person charged is within such jurisdiction, and that the application is made in due time, he should at once issue his summons or warrant to bring the accused before him, describing the offence in such summons or warrant, from the information or complaint sworn to. If a summons be issued, reasonable time should be given the defendant to appear; if a warrant be issued, it must be executed forthwith. A summons should be issued in all cases over which the law gives a Justice summary jurisdiction, in the first place, unless some good and sufficient reason should exist for issuing a warrant. In all cases of felony and in most indictable misdemeanors, a warrant, and not a summons, should be granted in the first instance. Warrants for

felony, or breach of the peace, and search warrants, may be granted and executed on Sunday, or any other day or night. Rev. Stat. Can. chap. 174, s. 37.

Upon receiving the information the Justice should refer to the statute, or by-law creating the offence, and if it is one over which he has summary jurisdiction, whether the complaint is made within the time prescribed by such statute or by-law. If no time is limited he must be guided by the Rev. Stat. Can., chap. 178, s. 11, which directs that the prosecution of offences shall be within three months after the commission of the offence.

The period is fixed by different statutes, either with reference to the time of commencing the prosecution, or to the time of conviction, and the following rules apply according as these different terms are made use of. Where the proviso as to time runs "*that the offence be prosecuted,*" or that "*the party be prosecuted for the offence*" within a stated time, it is sufficient that the information be laid though the conviction do not take place within that time, the information being for that purpose the commencement of the prosecution. *R.* v. *Barrett*, 1 Salk, 383. But where a statute authorizes a conviction "provided such conviction be made within —— months after the offence committed," it is not enough to lay the information within that period, but the conviction itself is void if not made within the limited time, and it makes no difference that it was prevented from being so by an adjournment at the request of the defendant himself, for after the time has expired for making the conviction there is no authority existing for that purpose. *R.* v. *Mainwaring*, E.B. & E., 474.

A civil proceeding for the same cause may in some cases render it inexpedient to proceed before the magistrate. Thus when an action is pending, judgment will not be given on an information for the same assault. *R.* v. *Mahon*, 4 A. & E., 575. Technically speaking, there is in such case no estoppel on the justices from proceeding, but the safe practical rule would seem to be, when it appears that civil proceedings are pending in respect of the same matter to dismiss the complaint, or pass a nominal sentence unless there has been an outrage on public order, or unless by

statutory provision the civil and criminal proceedings are not to interfere with each other. Should the second proceeding be merely to indemnify the complainant from an alleged wrong a previous civil decision as to the same matter will be conclusive. Thus a judgment against a servant in a civil court for wrongful dismissal is an answer to an application to justices to enforce payment of wages. *Routledge* v. *Hislop*, 29 L.J.M.C., 90.

We will now suppose the complainant and defendant to be in attendance with their witnesses on the day when, and at the place where, it was appointed to hold the Court. If the offence complained of be one over which the Justice or Justices has or have summary jurisdiction, the Court is an open one, to which the public have the right of access. Rev. Stat. Can., chap. 178, s. 33.

The Court having been opened by the constable announcing such opening, and calling for order, the names of the parties should then be called, and the information or complaint read to the accused by the Justice, and in cases of summary jurisdiction, the question asked, if he admit the truth of the complaint, or, if he have any cause to show why he should not be convicted, or why an order should not be made against him, *as the case may be.* Rev. Stat. Can., chap. 178, s.s. 43 44.

If he voluntarily admit it, and offer no defence, the Court has only to consider the amount of punishment to be inflicted. (*Ib.*, s. 44.)

It is always desirable to take the defendant's admission in writing, and signed by him if he will. If the offence be not admitted, the Justice must proceed to take the evidence of the complainant and his witnesses, and afterwards that of the witnesses for the defendant. In cases of indictable offences there is no right to examine witnesses for the accused, though the statement of the accused is taken. Rev. Stat. Can., chap. 174, s. 70. In the case of summary convictions the defendant has a right to give evidence both of himself and witnesses. Rev. Stat. Can., chap. 178, s. 45.

It would seem that this evidence must be given under oath, and be taken down in writing (see *R.* v. *Flannigan*, 32 Q.B. (Ont.),

593, 599), as near as may be in the words of the witnesses; the evidence of each to be signed by him, as also by the Justice or presiding Justice. Before the witness signs the evidence he has given, it should be read over to him, to ascertain whether it has been correctly taken down, or that his right meaning has been expressed: any mistake should be corrected before he signs it. If the Justice should see any good cause for so doing, he may adjourn the hearing of the case to some future day, and in the meantime commit the defendant to the common gaol, or may discharge him, upon his entering into a recognizance, with or without sureties, for his appearance at the time appointed. Rev. Stat. Can., chap. 178, s. 48. Persons charged with indictable offences may be remanded by warrant from time to time for any period not exceeding eight clear days at any one time, or may be verbally remanded for any time not exceeding three clear days. Rev. Stat. Can., chap. 174, s.s. 64, 65.

In many cases, particularly in indictable offences, it is desirable for the Justice to order the witnesses on both sides to leave the Court; but it is important to observe, that if any witness should remain in Court, notwithstanding any such order, his evidence cannot be safely refused. *Black* v. *Besse*, 12 Ont. R., 522.

In the case of indictable offences after the first examination of witnesses, they may be cross-examined by the prisoner; and when their evidence is completed, their depositions are to be read by the Justice to the accused; and then any statement he may make, after being duly cautioned, as directed in the Rev. Stat. Can., chap. 174, s. 70, is to be taken down in writing as nearly as possible in his own words, signed by him, if he will, as well as by the acting Justice or Justices.

The Justice or Justices having heard the evidence on both sides, the first question to determine is, whether the charge is sustained by the evidence; or, in indictable offences, although the offence may not be clearly proved, whether there is sufficient doubt to send the case to another tribunal; or the case may be adjourned for further hearing. If the case can be disposed of summarily, the Justice or Justices will adjudge the amount of the

penalty to be imposed, under the limitations of the statutes creating the offence, together with the costs, which should be recorded on the proceedings, together with the period of imprisonment, with or without hard labour, to be awarded in case of non-payment of fine and costs; a minute of which should be served on the defendant, if he have to pay money, for which no fee should be paid; before which service no warrant of distress or commitment shall be issued. Rev. Stat. Can., chap. 178, s. 57.

If more than one Justice be acting, the judgment should be according to the opinion of the majority, and when two or more Justices are required they must be present and acting together during the whole of the hearing and determination of the case. Rev. Stat. Can., chap. 178, s. 9.

Though all Justices who choose to attend at petty sessions may act and take part in the business, if one comes into Court in the middle of a case and takes part, the proceedings should be commenced *de novo* unless the parties choose to waive the objection. *Re Jeffreys*, 34 J.P., 727. The chairman or presiding Justice may vote, but he is not entitled to a double or casting vote. If the Justices are equally divided in opinion, there should be no adjudication, but the Justices should adjourn the case to a future day, and then entirely rehear the case, when other magistrates may be present, or further evidence adduced. If no adjudication be made, or the case postponed, the information may be laid again, if the time for doing so has not expired, and the proceedings be wholly recommenced. If the judgment be given, it may be altered during the same sitting, but not afterwards. Two or more Justices may lawfully do whatever any one Justice may do alone.

With respect to indictable offences, where the Justice or Justices intend to commit the prisoner for trial, *he should not be specially committed for trial to any particular court, but to the next court of competent criminal jurisdiction.* This is important, as where a statute directs a prisoner to be tried at the Sessions, a commitment to the Assizes would be bad, and the prisoner would be entitled to his discharge. *R.* v. *Ward*, 15 Cox C.C., 321.

In every case, where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing shall deliver, or cause to be delivered, the informations, depositions, examinations, recognizances and papers connected with the charge, to the proper officer of the Court in which the trial is to be had, before or at the opening of the Court, on the first day of the sitting thereof, or at such other time as may be directed. Rev. Stat. Can., chap. 174, s. 77.

When a Justice commits a prisoner to gaol, or holds him to bail to take his trial, the Justice should at once, and before the parties leave his presence, or the proceedings be considered as concluded, bind over the prosecutor and the witnesses to prosecute and give evidence at the next court of competent criminal jurisdiction at which the accused is to be tried; in which case the Justice must at the same time give a notice of such binding, signed by him, to the several persons bound. Rev. Stat. Can., chap. 174, s.s. 75. 76.

It is not unusual for persons, on conviction, to request the Justice to allow time for payment of the fine, at the same time offering to pay down part immediately. Such applications cannot be safely granted, as it is conceived that after part payment the right of commitment would be gone, the Justice having no power to apportion the period of imprisonment. The law does not intend or provide for a man to suffer two modes of punishment, *i.e.*, by purse and person, for the same offence; and on this principle, when the goods of an offender are not sufficient to satisfy a distress, they ought not to be taken, *but the ulterior punishment resorted to.*

Justices are sometimes requested to rehear a case after the decision has been pronounced, on the ground of the parties having been taken by surprise by the evidence, or of having, subsequently to the hearing, discovered testimony which might have affected the judgment. Justices have, however, no power to re-open the investigation after they have once given judgment, and after the Court is closed. The only way, then, of impeaching their judgment is by appeal or *certiorari.*

Justices are not obliged to fix the fine or imprisonment at the

time of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or of taking advice as to the law applicable to the case.

The parties are not entitled to copies of the depositions in cases of summary conviction, and their only mode of compelling the production of the original is by *certiorari*. Neither is a person committed for default of sureties, and discharged at the sessions, entitled to a copy of the depositions on which his commitment proceeded; but they should be furnished by the Justice if paid therefor.

In indictable cases, however, at any time after the examinations have been completed, and before the first sitting of the Court at which any person is to be tried, such person may require, and shall be entitled to have, copies of the depositions on paying a reasonable sum for the same, not exceeding five cents for one hundred words. Rev. Stat. Can., chap. 174, s. 74.

But this section only gives the right to such copies after all the examinations have been completed, and only in the event of the prisoner being committed for trial, or released on bail to appear for trial. *R.* v. *Fletcher*, 13 L.J., N.S., M.C., 67.

Justices of the Peace should refrain from taking part in any matters in which they individually have a personal interest however small. If any one of the Justices be interested it will invalidate the decision of all even though there have been a majority for the decision, without counting the vote of the interested party. Where such Justice took part in the discussion, but retired from the bench before the other Justices came to the vote, the Court held that it invalidated the decision. *R.* v. *Hertfordshire*, 6 Q.B., 753. But where the Magistrate did not know, and from the nature of the proceedings could not know that he was interested in the matter, this rule has been holden not to apply. *R.* v. *Surrey*, 21 L.J.M.C., 195.

If there is a disqualifying interest, the Justice should not sit in the case, and the Court will not enter into the question as to whether his interest affected his decision. A disqualifying interest is not confined to pecuniary interest, but the interest if not

pecuniary must be substantial. Pecuniary interest, however small, disqualifies the Justice, so does real bias in favour of one of the parties; but the mere possibility of bias does not *ipso facto* avoid the Justice's decision. *R.* v. *Meyer*, L.R., 1 Q.B.D., 173; *R.* v. *Rand*, L.R., 1 Q.B., 230-3.

If the Justice be a member of a Division of the Sons of Temperance, by which a prosecution for selling liquor is carried on, he is incompetent to try the case, and a conviction before him is bad. *R.* v. *Simmons*, 1 Pugsley, 159.

So where the complainant was the daughter of the convicting Justice, a conviction for an assault was quashed. *R.* v. *Langford*, 15 Ont. R., 52.

A conviction for cruelty to animals was quashed where one of the Justice's was the father of the complainant, and the proceedings were taken against the father of the children who had committed the acts complained of. *Re Holman*, 3 Russell & Chesley, 375.

On appeal in several cases of assault arising out of the same matter from convictions by four Justices of the Peace, it appeared that one of the Justices was married to a first cousin of the principal respondent, and the other respondents at the time of the alleged assault, though not of affinity to any of the justices of the Peace, were servants of the principal respondent, it was held that the convictions must be set aside, and that no distinction could be made between the case of the principal respondent and the cases of his servants, but all must be set aside. *Campbell* v. *McDonald*, 1 Prince Edward Island, 423.

To disqualify a Justice from acting in a prosecution before him he must have either a pecuniary or such other substantial interest in the result as to make it likely that he would be biassed in favour of one of the parties.

It is not a ground of disqualification that the Justice and the Counsel who conducted the prosecution are partners in business as attorneys, provided that they have no joint interest in the fees earned by the Counsel in the prosecution or in any fees payable to the Justice on the trial of the information, and provided that

the Justice be not an Ontario Police Magistrate. Rev. Stat. (Ont.) chap. 72, s. 27. Neither is it any disqualification that the Justice was appointed and paid by the Town Council, at whose instance the complaint was made, and the prosecution carried on; his salary being a fixed sum, not dependent on the amount of fines collected. *R.* v. *Grimmer*, 25 Sup. Ct., N.B., 424.

Any pecuniary interest in the subject matter of the litigation however slight, will disqualify a Magistrate from taking part in the decision of a case.

If a Magistrate has such a substantial interest other than pecuniary in the result of the hearing as to make it likely that he will have a bias, he is disqualified.

The fact that a Magistrate has been subpœnaed, and that it is intended to call him as a witness at the hearing, is not a legal disqualification, and the Court will not on that ground prohibit the Magistrate from sitting. *R.* v. *Farrant*, 20 Q.B.D., 58.

And the calling of a Magistrate sitting on a case as a witness does not of itself disqualify him from further acting in the case. *R.* v. *Sproule*, 14 (Ont.), R., 375. See also *R.* v. *Handsley*, 8 Q.B D., 383. Nor does the mere fact of a subpœna having been served on a Magistrate to give evidence. *R.* v. *Tooke*, 31 W.R., 753.

It was alleged that the prosecutions for offences against the Canada Temperance Act were taken before the Magistrates in this case because it "was notorious they were thorough-going Scott Act men," and that they had said that in no case of conviction would they inflict a less fine than $50. It was also alleged that one of the Justices was a member of a Local Committee for prosecuting offences against the Act, but it appeared he had resigned from the Committee before the Act came into force in the county. The Court held that there was no disqualifying interest in the Magistrates, nor any real or substantial bias attributable to them, nor any reason why they should not lawfully adjudicate in the case. *R.* v. *Klemp*, 10 Ont. R., 143.

To disqualify the interest need not be a direct pecuniary one if the justice is indirectly interested in the result of the decision. Thus where the defendant having sold land by auction, under a

decree of the Court, was convicted of a breach of a Municipal By-law, providing that it should not be lawful for any person to sell by public auction any wares, goods or merchandise of any kind without a license. Two of the four convicting Justices were licensed auctioneers for the county, and presisted in sitting after objection taken on account of interest, though one Justice was competent to try the case. It was held that they were disqualified, and on quashing the conviction on that ground, the Court ordered them to pay the costs. *R.* v. *Chapman*, 1 Ont. R., 582. See further as to interest *Tupper* v. *Murphy*, 3 *Russell & Geldert*, 173.

Where three Justices who were members of the Town Council of a borough, and as such had taken an active part in the making of an order under the Dogs Act, sat to hear a complaint of non-observance of the order, the Court held that they had no such interest in the subject matter as to oust their jurisdiction. *R.* v. *Justices of Huntingdon*, L.R. 4, Q.B.D., 522. But where a complaint was made to the Local Government Board of a nusiance on the premises belonging to B. in the borough of W., and the Board communicated with the Town Council of W., who were the urban sanitary authority under the Public Health Act, 1875, and required them to abate the nuisance. The Council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two Justices who were present were members of the Town Council when the resolution was passed. The Court held that the Councillors who were Justices had such an interest as might give them a bias in the matter, and that they ought not to have sat as Justices upon the hearing of the summons. *R.* v. *Milledge*, L.R. 4, Q.B.D., 332. The same rule applies if the summons is issued by a Justice who is a member of a corporation, though it came on for hearing before other Justices, none of whom are members of the Corporation. *R.* v. *Gibbon*, L.R. 6, Q.B.D., 168.

Under The Railway Act, Rev. Stat. Can., chap. 109, sec. 2, s.s. (J), the expression "Justice," means a Justice of the Peace, acting

for the place where the matter arises, and who is not interested therein.

The Trade Unions Act, Rev. Stat. Can., chap. 131, sec. 21, disqualifies the master, or the father, son or brother of a master in the particular trade or business in, or in connection with which any offence under this Act is charged to have been committed from acting as a Justice of the Peace, or being a member of any Court hearing any appeal under the Act. There is a similar provision in the Act respecting threats, intimidation and other offences. Rev. Stat. Can., chap. 173, sec. [illegible] s.s. 5.

The Clerk to the Justices should not act as Solicitor for one of the parties on a prosecution before his own Bench of Justices, but such an interest in the Clerk does not affect the jurisdiction of the Bench. *R.* v. *Brakenridge*, 48 J.P., 293 D. See Rev. Stat. (Ont.), chap. 72, s. 27.

If the Justice is interested it is immaterial that he takes no part in the matter. *R.* v. *Meyer*, L.R. 1, Q.B.D., 173. *R.* v. *Rand*, L.R. 1, Q.B., 230-3.

At the hearing of a summons for an offence under the Fishery Acts, one of the Magistrates was interested in the decision and sat on the Bench. He stated openly in the Court that he should take no part in the hearing of the case, but made an observation in the course of the case that he could prove a material fact in the controversy. He also remained and was present at the consultation of the Magistrates. He stated that he took no part in the matter except as above, and that he did not vote upon the decision of the case. Notwithstanding this disclaimer the Court held that he took such a part in the hearing as invalidated the conviction. *R.* v. *O'Grady*, 7 Cox C.C., 247. But from the mere fact of a Justice who is interested sitting on the Bench during the hearing of the case, but taking no part therein, and making an audible and distinct declaration that he did not intend to take any part in the proceedings, they will not be invalidated. *R.* v. *Justices*, Tyrone, 2 L.T. Rep., N.S., 639; 12 Jr. Com. Law Rep., 91. But where it appeared on an appeal from a refusal to grant a license that one of the Justices who refused a license was present

on the Bench, and during the hearing conversed with some of the Magistrates, but not on any matter relating to the appeal, nor did he act in the hearing or determination thereof; it was held nevertheless that being present he formed part of the Court, and the order of sessions was invalid. *R.* v. *Justices*, Surrey, 1 Jur. N.S., 1138.

A Magistrate having on the hearing of a complaint for trespass to a fishery, remained on the Bench during its progress, admitting that he was interested in the subject matter of the complaint, and stating from the Bench that he could prove that other persons than the one complained against had been fined for fishing in the *locus in quo*, and after the Court was cleared of the public, remaining with his brother Magistrates until a decision was arrived at, acts mistakingly and improperly, and a decision come to by the Bench of Magistrates under such circumstances is censurable, and will be reviewed by the Court. *R.* v. *Massey*, 7 Ir. Law R., 211.

The objection that a Justice who sits to adjudicate upon a summary conviction is interested, is one which may be waived by the parties, and if waived the proceedings are not void on the ground of such interest. If the parties do not take the objection of interest, but go on taking the chance of a decision in their favour, the objection will be waived. *Wakefield* v. *West Midland*, 10 Cox C.C., 162; L.R. 1, Q.B., 84.

If any person assault a Justice, the latter might, at the time of the assault, order him into custody, but when the act is over, and time intervenes, so that there is no present disturbance, it becomes, like any other offence, a matter to be dealt with upon proper complaint upon oath to some other Justice, who might issue his warrant, for a magistrate is not allowed to act officially in his own case, except *flagrante delictu*, while there is otherwise danger of escape, or to suppress an actual disturbance, and enforce the law while it is in the act of being resisted. *Powell* v. *Williamson*, 1 Q.B (Ont.), 156.

Where a Justice acts in his office with a partial, malicious, or corrupt motive, he is guilty of a misdemeanor, and may be proceeded against by indictment or information.

The Court will in general grant a criminal information against Justices for any gross act of oppression committed by them in the exercise or pretended exercise of their duties as Justices, and whenever there can be shown any vindictive or corrupt motive. (See *R.* v. *Cozens*, 2 Doug., 426; *R.* v. *Somersetshire*, 1 D. & R., 442. The misconduct must have arisen in connection with his public duties. *R.* v. *Arrowsmith*, 2 Dowl., N.S., 704. And where a criminal information is applied for against a magistrate for improperly convicting a person of an offence the Court will not entertain the motion, however bad the conduct of the magistrate may appear, unless the party applying make oath that he is not really guilty of the offence of which he was convicted. *R.* v. *Webster*, 3 T.R., 388. And indeed in all cases of an application for a criminal information against a magistrate for anything done by him in the exercise of the duties of his office, the question has always been not whether the act done might, upon a full and mature investigation, be found strictly right, but from what motive it had proceeded, whether from a dishonest, oppressive or corrupt motive, or from mistake or error, in the former case alone they have become the objects of punishment. *R.* v. *Brown*, 3 B. & Ald., 432-4.

It is to be observed that the Rev. Stat. Can., chap. 178, s. 105, does not prevent the prosecution by indictment of a Justice of the Peace for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act.

No application can be made against a Justice for anything done in the execution of his office without previous notice. *R.* v. *Heming*, 5 B. & A., 666. The Justice is entitled to six days' notice of motion for a criminal information. *R.* v. *Heustis*, 1 James 101; *Re Bustard* v. *Schofield*, 4 O.S., 11. The affidavit in support of the motion should not be entitled in a suit pending (*Ib.*).

Where the notice is to answer the application within four days after the service of the notice, it will not suffice, though the motion is not actually made until the six days have expired. The application must not (when the misconduct occurs before the term) be made so late in the term that the magistrate cannot answer it the same term, because the pendency of such a motion might affect

his influence as magistrate in the meantime. *R.* v. *Heustis*, 1 James, 101.

Justices of the Peace acting judicially, in a proceeding in which they have power to fine and imprison, are Judges of Record, and have power to commit to prison orally without warrant for contempt committed in the face of the Court. *Armstrong* v. *McCaffrey*, 1 Hannay, 517; *Ovens* v. *Taylor*, 19 C.P. (Ont.), 53. Thus if the Justice be called "a rascal and a dirty mean dog," "a damned lousy scoundrel," "a confounded dog," etc., the Justice has a right to imprison as often as the offence is committed. *R.* v. *Scott*, 2 U.C.L.J., N.S., 323. The Justice while discharging his duty, has power to protect himself from insult and to repress disorder, by committing for contempt any person who shall violently or indirectly interrupt his proceedings, and the Justice may, upon view and without any formal proceedings, order at once into custody any person obstructing the course of justice, or he may commit him until he find sureties for the peace. But the Justice has no power at the time of the misconduct, much less on the next day, to make out a warrant to a constable, and to commit the party to gaol for any certain time by way of punishment without adjudging him formally after a summons to appear for hearing to such punishment on account of his contempt, and a hearing of his defence and making a minute of the sentence. *Re Clarke*, 7 Q.B. (Ont.), 223; See also, *Jones* v. *Glasford*, R. & J. Dig., 1974.

It has been doubted whether a Justice of the Peace executing his duty in his own house, and not presiding in any court, can legally punish for a contempt committed there. *McKenzie* v. *Mewburn*, 6 O.S., 486. But the Rev. Stat. Can., chap. 78, s. 109, expressly gives to any Judge of Sessions of the Peace, Police District or Stipendiary Magistrate, such and the like powers and authority to preserve order in said courts, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court of law in Canada; or by the Judges thereof respectively during the sittings thereof, and by section 110 in all cases where any resistance is offered to the execution of any summons, warrant of execution, or other

process, the due execution thereof may be enforced by the means provided by the law for enforcing the execution of the process of other courts in like cases.

Justices should be careful not to abuse their position; and by either knowing their powers or in ignorance of them inflict a wrong upon a party or witness, or maliciously punish him by the use of insulting and improper language. Where language of this character is used without any legal justification, exemplary damages will be given against the Justice. *Clissold* v. *Machell*, 25 Q.B. (Ont.), 80; affirmed in appeal, 26 Q.B. (Ont.), 422.

A magistrate charged with the preservation of the peace in a city, who causes the military to fire upon a person, whereby the latter is wounded, is not liable in an action of damages at the suit of the injured party, if it be made to appear that though there was no necessity for the firing, yet the circumstances were such that a person might have been reasonably mistaken in his judgment as to the necessity for such firing. *Stevenson* v. *Wilson*, 2 L.C.J., 254. In this case the Riot Act was read before the firing.

An action for damages will lie against any person who in the presence of the magistrate, and while the Court is sitting, assaults any of the parties concerned, or accuses such party of crime in the face of the Court. See *Belanger* v. *Gravel*, 1 L.C.L.J., 98; *Gravel* v. *Belanger*, 3 L.C.L.J., 69.

An action will not lie against a Judge for anything done by him in his judicial capacity, and within his jurisdiction, although there may be an improper exercise of jurisdiction. (See *Dickerson* v. *Fletcher*, Stuart, 276; *Gugy* v. *Kerr*, Stuart, 292; *Garner* v. *Coleman*, 19 C.P. (Ont.), 106; *Agnew* v. *Stewart*, 21 Q.B. (Ont.), 306. And from the opinion of the Court in *Garner* v. *Coleman*, supra, and *Scott* v. *Stansfield*, L.R. 3 *Ex.*, 320; 18 L.T.N.S., 572; it would seem that no action at law can be maintained against a Judge of a Court of Record for anything done in his judicial capacity, though there is malice and a want of reasonable and probable cause. The Court do not say that the Judge is not amenable to punishment by impeachment in Parliament, but seem disposed to protect him from an action before a Jury. The general rule is

that a Justice like other Judges is not liable for any mistake or error of judgment, or for anything he does judicially when acting within his jurisdiction, though he may be wrong. *Garnett* v. *Farrand*, 6 B. & C., 611; *Mills* v. *Collett*, 6 Bing., 85; *Roy* v. *Page*, 27 L.C.J., 11.

Where a Justice of the Peace acts judicially in a matter in which by law he has jurisdiction, and his proceedings appear to be good upon the face of them, no action will lie against him or if an action be brought, the proceedings themselves will be a sufficient justification. See *Brittain* v. *Kinnaird*, 1 Brod. & B., 432; *Fawcett* v. *Fowles*, 7 B. & C., 394. If, therefore, an action of trespass be brought against magistrates for convicting a person and causing him to be imprisoned in a case where the magistrate had jurisdiction, the plaintiff must be non-suited if a valid and subsisting conviction be adduced and proved. *Stamp* v. *Sweetland*, 14 L.J. M.C., 184; *Mould* v. *Williams*, 5 Q.B., 469; or, if the conviction has been quashed, then case, not trespass, is the form of action that ought to be adopted. *Baylis* v. *Strickland*, 1 Man & Gr., 59. All this is now fully declared in Ontario, by the Rev. Stat., chap. 73.

What we have hitherto been considering have been actions against Justices for something done by them in their judicial character. For what they do in their ministerial character without reference to their judicial authority, their power of justifying will depend in a great measure upon the legality of the proceedings upon which these acts are founded. See *Weaver* v. *Price*, 3 B. & Ad., 409. Thus, if the Justice exceeds the authority the law gives him in his ministerial acts, he thereby subjects himself to an action as if he commit a prisoner for re-examination for an unreasonable time, although he do so from no improper motive, he is liable to an action for false imprisonment. *Davis* v. *Capper*, 10 B. & C., 28. So if he commit a man for a supposed crime where there has in fact been no accusation against him, he is liable to an action of trespass for false imprisonment (*Morgan* v. *Hughes*, 2 T.R., 225); but if he commit him for a reasonable time, although the statute under which he is acting gives him no authority to do

so, he is not liable to an action, for authority so to commit is given to Justices. *Gelan* v. *Hall*, 27 L.J.M.C., 78; *Haylock* v. *Sparke*, 4 E. & B., 471; *Linford* v. *Fitzroy*, 13 Q.B., 240.

When property or title is in question, the jurisdiction of Justices of the Peace to hear and determine in a summary manner is ousted, and when a *bona fide* claim is made, the Justices have no jurisdiction and ought not to convict. *R.* v. *Cridland*, 7 E. & B., 853. It is not sufficient to take away their jurisdiction that the defendant *bona fide* believed that he had a right, it is for the Justices to decide, if the claim of right is fair and reasonable, and if they hold that it is not, they are bound to go on and decide the case (*R.* v. *Mussett*, 26 L.T., N.S., 429), but if the matter is doubtful, it will be enough to stop their proceedings, and they cannot give themselves jurisdiction by a false decision. *R.* v. *Nunnely*, E.B. & E., 852. Where in order to constitute an offence there must be a *mens rea* or criminal intention, an honest claim of right, however absurd, will frustrate a summary conviction; but where the absence of *mens rea* is not necessarily a defence, the person who sets up a claim of right must show some ground for its assertion, and if he fails to do so, is liable to be convicted of the offence charged against him. *Watkins* v. *Major*, L.R. 10, C.P., 662.

The jurisdiction of the Justice is not ousted by the mere *bona fide* belief of the person offending that his act was legal. *White* v. *Feast*, L.R. 7, Q.B., 351.

A *bona fide* claim of right which cannot exist in law will not oust the Justices jurisdiction. *Hargreaves* v. *Diddams*, L.R. 10, Q.B., 582.

The jurisdiction is not ousted where the Justices have power by statute to determine the right to which the claim is made. *R.* v. *Young*, 52 L.J., M.C., 55. (See also *Reece* v. *Miller*, 8 Q.B.D., 626).

If the Justices believe there is a *bona fide* question of title they have no jurisdiction. *Legg* v. *Pardoe*, 9 C.B., N.S., 289.

The mere assertion by the defendant of a general right, though he really believes it does not oust the jurisdiction, such a claim as would be a defence to an action of trespass, not being shewn.

Leatt v *Vine*, 8 L.T., Reps. N.S., 581. It seems that there must be some colour for the claim of title, and the title must be claimed to be in the party charged, and not in a third person. *Ex parte Cayen*, 17 L.C.J., 74. *Cornwell* v. *Sanders*, 3 B. & S., 206; *Rees* v. *Davies*, 8 C.B., N.S., 56.

If, in an action of trespass to land tried before a Justice of the Peace, the defendant sets up title and offers a deed in evidence, and the plaintiff also gives evidence of deeds and of a title arising by estoppel on which the Justice undertakes to decide the title is *bona fide* in question and the Justice has no jurisdiction. *R.* v. *Harshman*, 1 Pugsley, 346.

The Magistrate's jurisdiction is only to enquire into the good faith of the parties alleging title. The defendant was convicted under the Rev. Stat. (Can.), chap. 168, s. 59, which provides that nothing in the Act contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, and it appeared in the evidence before the Magistrate that there was a dispute between the parties as to the ownership. The Court held that the title to land came in question, and that the defendant had been improperly convicted, even though the Magistrate did not believe that the defendant had a title. *R.* v. *Davidson*, 45 Q.B. (Ont.), 91. In a prosecution under the Rev. Stat. (Can.), chap. 168, s. 24, for an injury to growing trees to the amount of twenty-five cents, the defendant set up and proved a *bona fide* claim of title, and the Court held that the jurisdiction of the Justice was ousted. *R.* v. *O'Brien*, 5 Quebec L.R., 161.

But where the defendants were summoned for trespass upon a fishery, and they gave evidence of long user and claimed a right to fish therein and offered security for costs in case the plaintiff would institute a civil action, it was held that this was such a *bona fide* claim of title as ousted the jurisdiction of the Magistrates. *R.* v. *Magistrate*, Bally Castle, 9 L.T. Reps., N.S., 88. And where the defendant shewed that he had fished for many years without interruption, and no prosecution had been instituted against anyone for so doing, it was held that there was reason-

able evidence to shew that the question of title raised by the defendant was *bona fide* and that therefore the Justice had no jurisdiction. *R.* v. *Simpson*, 4 B. & S., 301.

In Ontario, the Rev. Stat., chap. 73, s. 6, provides that in any case where a Justice of the Peace refuses to do any act relating to the duties of his office, an application may be made to a Judge for an order compelling him to do the act. The proper course where Justices refuse without good cause to act, according to the duties of their office is to proceed under this Act. *Re Delaney* v. *McNabb*, 21 C.P. (Ont.), 563.

The application of this section is not confined to cases where the Justice requires protection in respect to the act he is called upon to do. *R.* v. *Biron*, 14 Q.B.D., 474; *R.* v. *Percy*, L.R. 9 Q.B. 64, not followed.

Application was made to the court for a writ of *mandamus* to compel two Justices of the Peace for the County of Cumberland, to issue a warrant against defendant for a violation of the Canada Temperance Act. The Justices had declined to issue a warrant on the ground that the notice to the Secretary of State, referred to in sections 5 and 6 of the Act, and required to be filed "in the office of the Sheriff or Registrar of Deeds of or in the county," was not regularly filed, there being two Registrars of Deeds in the County of Cumberland, and the notice having been deposited only with one as a consequence of which the Justices considered that the subsequent proceedings were irregular and that the Act was not in force in the county. The proclamation having issued, and the election having taken place and resulted in the adoption of the Act, the Court held that the provisions of the Act as to filing notice were directory, and that the *mandamus* must issue. At all events, it was not open to the Justices to question the regularity of the preliminary proceedings. *R.* v. *Hicks*, 19 Nova Scotia R., 89.

A *mandamus* will not be granted to interfere with the discretion of a magistrate who has refused to issue a summons for perjury on an information setting forth facts on which no jury would convict. *Ex parte Reid*, 49 J.P., 600.

CHAPTER 174.

An Act respecting procedure in Criminal cases.

Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "*The Criminal Procedure Act.*"

INTERPRETATION.

2. In this and in any other Act of Parliament containing any provision relating to Criminal Law, unless the context otherwise requires,—

(*a.*) The expression "any Act," or, "any other Act," includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the Legislature of the late Province of Canada, or passed or to be passed by the Legislature of any Province of Canada, or passed by the Legislature of any Province included in Canada, before it was included therein;

(*b.*) The expression "justice" means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also any person having the power or authority of two or more justices of the peace, —and one justice may act, unless otherwise specially provided;

(*c.*) The expression "indictment" includes information, inquisition and presentment as well as indictment, and also any plea, replication or other pleading, and any record;

(*d.*) The expression "finding of the indictment" includes also the taking of an inquisition, the exhibiting an information and the making of a presentment;

(*e.*) The expression "property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed;

(*f.*) The expression "district, county or place" includes any division of any Province of Canada, for purposes relative to the administration of justice in criminal cases.

(*g.*) The expression "territorial division" means county, union of counties, township, city, town, parish or other judicial division or place to which the context applies;

(*h.*) The expression "the court for crown cases reserved" means and includes,—

(1.) In the Province of Ontario, any division of the High Court of Justice for Ontario;

(2.) In the Province of Quebec, the Court of Queen's Bench, on the appeal side thereof;

(3.) In the Provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in and for each of the said Provinces, respectively;

(4.) In the Province of Prince Edward Island, the supreme Court of Judicature for that Province;

(5.) In the Province of Manitoba, Her Majesty's Court of Queen's Bench for Manitoba; and—

(6.) In the North-West Territories, the Supreme Court of the North-West Territories.

JURISDICTION.

3. Every superior court of criminal jurisdiction shall have power to try any treason, felony or other indictable offence.

4. No Court of General or Quarter Sessions or Recorder's Court, nor any court but a superior court having criminal jurisdiction, shall have power to try any treason, or any felony punishable with death, or any libel.

5. Neither the Justices of the Peace acting in and for any district, county, division, city or place, nor any judge of the Sessions of the Peace, nor the recorder of any city, shall, at any Session of the Peace, or at any adjournment thereof, try any person for any offence under sections twenty-one, twenty-two and twenty-three of the "*Act respecting offences against the Person.*"

6. No Court of General or Quarter Sessions of the Peace shall have power to try any offence under any of the provisions of sections sixty to seventy-six, both inclusive, of "*The Larceny Act.*"

7. The judge of the Sessions of the Peace for the city of Quebec, the judge of the Sessions of the Peace for the City of Montreal, and every Police Magistrate, District Magistrate or Stipendiary Magistrate appointed for any territorial division, and every magistrate authorized by the law of the Province in which he acts, to perform acts usually required to be done by two or more Justices of the Peace, may do alone whatever is authorized by this Act to be done by any two or more Justices of the Peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case.

PLACE OF COMMISSION AND TRIAL OF OFFENCES.

8. When any offence punishable under the laws of Canada has been committed within the jurisdiction of the Admiralty of England, the same may be dealt with, inquired of and tried and determined in the same manner as any offence committed within the jurisdiction of any court before which the offender is brought for trial.

The Admiralty Jurisdiction of England extends over British vessels when in the rivers of a foreign territory where the tide ebbs and flows and where great ships go. All persons, whatever their nationality, while on board British vessels on the high seas, or in foreign rivers where the tide ebbs and flows and where great ships go, are amenable to the provisions of English law. *R.* v. *Carr*, 52 L.J.M.C., 12.

The great inland lakes of Canada are within the Admiralty Jurisdiction, and offences committed on them are as though committed on the high seas, and therefore any Magistrate has authority to enquire into offences committed on the lakes, though in American waters. *R.* v. *Sharp*, 5 P.R. (Ont.), 135.

9. When any person, being feloniously stricken, poisoned, or otherwise hurt, upon the sea, or at any place out of Canada, dies of such stroke, poisoning or hurt in Canada, or, being feloniously stricken, poisoned or otherwise hurt at any place in Canada, dies of such stroke, poisoning or hurt, upon the sea, or at any place out of Canada, every offence committed in respect of any such case, whether the same amounts to murder or manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined and punished in the district, county or place in Canada in which such death, stroke, poisoning or hurt happens, in the same manner, in all respects, as if such offence had been wholly committed in that district, county or place.

The prisoner was convicted at Quebec of manslaughter. He and the deceased were serving on board a British ship, and the latter died in the District of Kamouraska, where the ship was loading, from injuries inflicted by the prisoner on board the ship on the high seas. The Court held that as the prisoner had been hurt upon the sea, and the death happened in another district, he should have been tried there and not in the District of Quebec *R.* v. *Moore*, 8 Quebec L.R., 9.

10. When any felony or misdemeanor is committed on the boundary of two or more districts, counties or places, or within the distance of one mile of any such boundary, or in any place with respect to which it is uncertain within which of two or more districts, counties or places it is situate, or when any felony or misdemeanor is begun in one district, county or place, and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished, in any one of the said districts, counties or places, in the same manner as if it had been actually and wholly committed therein.

11. When any felony or misdemeanor is committed on any person, or on or in respect of any property, in or upon any coach, wagon, car or other carriage whatsoever, employed in any journey, or is committed on any person or on or in respect of any property on board any vessel, boat or raft whatsoever, employed in any voyage or journey upon any navigable river, canal or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished, in any district, county or place, through any part whereof such coach, wagon, cart, carriage or vessel, boat or raft, passed in the course of the journey or voyage during which such felony or misdemeanor was committed, in the same manner as if it had been actually committed in such district, county or place.

12. Whenever the side, centre, bank or other part of any highway or of any river, canal or navigation, constitutes the boundary of any two districts, counties or places, any felony or misdemeanor mentioned in the two sections next preceding may be dealt with, inquired of, tried, determined and punished in either of such districts, counties or places, through or adjoining to, or by the boundary of any part whereof such coach, wagon, cart, carriage or vessel, boat or raft, passed in the course of the journey or voyage during which such felony or misdemeanor was committed, in the same manner as if it had been actually committed in such district, county or place.

13. If, upon the dissolution of a union of counties, any information indictment or other criminal proceeding, in which the venue is laid in a county of the union is pending, the court in which such information, indictment or proceeding is pending, or any judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the venue to be changed to the new county, and all records and papers to be transmitted to the proper officers of such county,—and in the case of any such indictment found at any court of criminal jurisdiction, any judge of a superior court may make the order :

2. If no such change is directed, all such informations, indictments and other proceedings shall be carried on and tried in the senior county :

3. Any person charged with an indictable offence who, at the time of the disuniting of a junior from a senior county, is imprisoned on the charge in the gaol of the senior county, or is under bail or recognizance to appear for trial at any court in the senior county, and against whom no indictment has been found before the disunion takes place, shall be indicted, tried and sentenced in the senior county, unless a judge of a superior court orders the proceedings to be conducted in the junior county,—in which event the prisoner or recognizance, as the case may be, shall be removed to the latter county and the proceedings shall be had therein ; and when, in any such case, the offence is charged to have been committed in a county other than that in which such proceedings are had, the venue may be laid in the proper county describing it as "formerly one of the united counties of ."

14. All crimes and offences committed in any of the unorganized tracts of country in the Province of Ontario, including lakes, rivers and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of, tried and punished within any county of such Province ; and such crime or offence shall be within the jurisdiction of any court having jurisdiction over crimes or offences of the like nature committed within the limits of such county,—before which court such crime or offence may be prosecuted ; and such court shall proceed therein to trial, judgment and execution or other punishment for such crime or offence, in the same manner as if such crime or offence had been committed within the county where such trial is had :

2. When any provisional judicial district or new county is formed and established in any of such unorganized tracts, all crimes and offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same, in like manner as such crimes or offences would have been inquired of, tried and punished if this section had not been passed :

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the Province of Ontario ; and the constable or other officer having charge of such person and intrusted with his conveyance to any such common gaol, may pass through any county in such Province with such person in his custody ; and the keeper of the common gaol of any county in such Province in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely keep and detain him in such common gaol for such period as is reasonable or necessary ; and the keeper of any common gaol in such Province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such

common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken.

15. Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed, or may, in law, be deemed to have been committed, and if tried before the Court of Queen's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried.

16. Every person accused of perjury, bigamy or any offence under the provisions of sections fifty-three, fifty-four and fifty-five of "*The Larceny Act*," may be dealt with, indicted, tried and punished in the district, county or place in which the offence is committed, or in which he is apprehended or is in custody.

17. The offence of any person who is an accessory, either before or after the fact, to any felony, may be dealt with, inquired of, tried, determined and punished by any court which has jurisdiction to try the principal felony, or any felonies committed in any district, county or place in which the act, by reason whereof such person became such accessory, has been committed: Provided, that no person once duly tried, either as an accessory before or after the fact, or for a substantive felony, shall be liable to be afterwards prosecuted for the same offence.

18. Every one who commits any offence against the "*Act respecting Forgery*," or commits any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case is indictable at common law, or by virtue of any Act, may be dealt with, indicted, tried and punished in any district, county or place in which he is apprehended or is in custody, in the same manner in all respects as if the offence had been actually committed in that district, county or place; and every accessory before or after the fact to any such offence, if the same is a felony, and every person aiding, abetting or counselling the commission of any such offence, if the same is a misdemeanor, may be dealt with, indicted, tried and punished, in any district, county or place in which he is apprehended or is in custody, in the same manner in all respects as if his offence, and the offence of his principal, had been actually committed in such district, county or place.

19. Every one accused of any offence against the provisions of section forty-six of the "*Act respecting Offences against the Person*" may be tried

either in the district, county or place in which the same was committed, or in any district, county or place into or through which the person kidnapped or confined was carried or taken while under such confinement; but no person who has been once duly tried for any such offence shall be liable to be again indicted or tried for the same offence.

20. Every one who receives any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted or disposed of, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried and punished in any county, district or place in which he has or has had any such property in his possession, or in any county, district or place in which the person guilty of the principal felony or misdemeanor may, by law, be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county, district or place where he actually received such property.

21. Every one who brings into Canada, or has in his possession therein, any property stolen, embezzled, converted or obtained by fraud or false pretences in any other country, in such manner that the stealing, embezzling, converting or obtaining it in like manner in Canada, would, by the laws of Canada, be a felony or misdemeanor, may be tried and convicted in any district, county or place in Canada into or in which he brings such property, or has it in possession.

As to this section see *R.* v. *Hennessy*, 35 Q.B. (Ont.), 603.

22 If any person has in his possession in any one part of Canada, any chattel, money, valuable security or other property whatsoever, which he has stolen or otherwise feloniously or unlawfully taken or obtained, by any offence against "*The Larceny Act*," in any other part of Canada, he may be dealt with, indicted, tried and punished for larceny or theft in that part of Canada where he so has such property, in the same manner as if he had actually stolen, or taken or obtained it in that part; and if any person in any one part of Canada receives or has any chattel, money, valuable security or other property whatsoever, which has been stolen or otherwise feloniously or unlawfully taken or obtained in any other part of Canada, such person knowing such property to have been stolen or otherwise feloniously or unlawfully taken or obtained, may be dealt with, indicted, tried and punished for such offence in that part of Canada where he so receives or has such property, in the same manner as if it had been originally stolen or taken or obtained in that part.

23. If any person tenders, utters, or puts off any false or counterfeit coin in any one Province of Canada, or in any one district, county or jurisdiction

therein, and also tenders, utters or puts off any other false or counterfeit coin, in any other Province, district, county, or jurisdiction, either on the day of such first mentioned tendering, uttering or putting off, or within the space of ten days next ensuing, or if two or more persons, acting in concert in different Provinces, or in different districts, counties or jurisdictions therein, commit any offence against the "*Act representing Offences relating to the Coin*," every such offender may be dealt with, indicted, tried and punished, and the offence laid and charged to have been committed in any one of the said Provinces, or districts, counties or jurisdictions, in the same manner in all respects, as if the offence had been actually and wholly committed within one Province, district, county, or jurisdiction.

As to venue in British Columbia see *Mallot* v. *R.*, 2 British Columbia, R. 212; *Sproule* v. *R.*, *Ib.*, 219.

Under the Animal Contagious Diseases Act (Rev. Stat. Can., chap. 69, s. 45), every offence against the Act shall, for the purpose of proceedings thereunder, be deemed to have been committed either in the place in which the same actually was committed or in any place in which the person charged or complained against happens to be.

Under the Act respecting discipline on Canadian Government vessels (Rev. Stat. Can., chap. 71, s. 14), any Justice of the Peace for the county or district in which is situated the port where the vessel on board of which the offence has been committed touches next after the time of its commission shall have jurisdiction over the offence. Any person charged with any felony or misdemeanor under the Wrecks and Salvage Act may be indicted and prosecuted in any county or district. Rev. Stat. Can., chap. 81, s. 38.

Under "The Explosive Substances Act" (Rev. Stat. Can., chap. 150, s. 7), every person accused of any offence under the Act may be dealt with, indicted, tried and punished in the district, county, or place in which the offence is committed or in which he is apprehended or is in custody.

Any gambling practised in any public conveyance may be dealt with either at the place where it actually took place or in any place through or adjoining to or by the boundary of any part whereof the conveyance passed in the course of the journey dur-

ing which the offence was committed. Rev. Stat. Can., chap. 160, s. 2.

Any offence against the provisions of the Fisheries Act committed in upon or near any waters forming the boundary between different counties or districts or fishery districts may be prosecuted before any Justice of the Peace in either of such counties or districts. Rev. Stat. Can., chap. 95, s. 17, s.s. 3.

Under "The Post Office Act" (Rev. Stat. Can., chap. 35, s. 110), every indictable offence against the Act may be dealt with either in the place where the offence is committed or in that in which the offender is apprehended or is in custody.

Under the Imperial Act, 6 & 7 Vic., chap. 34, if any person charged with having committed any offence in any part of Her Majesty's dominions, whether or not within the United Kingdom, and against whom a warrant is issued by any person having lawful authority to issue the same, shall be in any other part of Her Majesty's dominions, not forming part of such United Kingdom, a Judge of the Superior Court of Law where the offender is may indorse his name on the warrant and authorise the arrest of the accused. After the arrest of the accused, any person authorized to examine and commit offenders for trial, may, upon the same evidence as if the offence was committed here, send the accused to prison to remain until he can be sent back. The prisoner was arrested in Toronto upon information contained in a telegram from England charging him with having committed a felony in that country and stating that a warrant had been issued there for his arrest, it was held that the prisoner could not, under the Act, legally be arrested or detained here for an offence committed out of Canada unless upon a warrant issued where the offence was committed and endorsed by a Judge of a Superior Court in this country, and the warrant must disclose a felony according to the law of this country. *R.* v. *McHolme*, 8 P.R., (Ont.), 452.

The 11 Geo. 2, chap. 19, against the fraudulent removal of goods by tenants empowers the landlord to exhibit a complaint before two Justices of the County, etc., "residing near the place whence such goods were removed or near the place where the

same are found." Under these words it has been held that if the goods be removed out of one county into another the complaint may be made to two Justices of the latter county. *R.* v. *Morgan*, Cald, 158.

It is to be observed, also, that under sections 50 and 86 of the Act, a Justice has power to hear the case and discharge, commit, or admit to bail in cases where the offence is not committed in his jurisdiction but the accused is within such jurisdiction. There is no doubt that a statute may empower a Justice to act beyond the limits of his jurisdiction as assigned by his commission. Thus under section 5 of the Rev. Stat. Can., chap. 149, respecting the seizure of arms kept for dangerous purposes, all Justices of the Peace for any district, county, or place in Canada, have concurrent jurisdiction as Justices of the Peace with the Justices of any other district, county, or place, in all cases as to carrying into execution the provisions of the Act as fully and effectually as if each of such Justices was in the Commission of the Peace for such other district, county, or place.

Where a Magistrate had a commission as a Police Magistrate for the County of Halton, and an independent and subsequent commission for the Town of Oakville, and he took the information and part of the evidence at Georgetown and then adjourned to Oakville, and subsequently from Oakville back to Georgetown where he adjudicated upon the evidence and made the conviction. The Court held that the Magistrate had jurisdiction to sit in Oakville under his commission as Police Magistrate for the County, and he consequently had jurisdiction to adjourn as he did. *R.* v. *Clark*, 15 Ont. R., 49.

APPREHENSION OF OFFENDERS.

24. Any person found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended without a warrant by any constable or peace officer, or by the owner of the property on or with respect to which the offence is being committed, or by his servant or any other person authorized by such owner, and shall be forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law.

25. Any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of "*The Larceny Act*" or the "*Act respecting the protection of the Property of Seamen in the Navy*," may be immediately apprehended without a warrant by any person, and forthwith taken, together with the property, if any, on or with respect to which the offence is committed, before some neighbouring Justice of the Peace to be dealt with according to law.

26. If any person, to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may, and, if in his power, he shall apprehend and forthwith carry before a Justice of the Peace, the person offering the same, together with such property, to be dealt with according to law.

27. Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some constable or other person, so that he may be taken, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to law.

28. Any constable or peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place, during the night, and whom he has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he can be brought before a Justice of the Peace, to be dealt with according to law :

2. No person who has been so apprehended shall be detained after noon of the following day without being brought before a Justice of the Peace.

29. Any person may apprehend any other person who is found committing any indictable offence, against the "*Act respecting Offences relating to the Coin*," and convey and deliver him to a peace officer, constable or officer of police, so that he may be conveyed, as soon as reasonably may be, before a Justice of the Peace, to be dealt with according to law.

When it is intended to arrest an offender on the ground of his being "found committing" an offence against these Acts, the offender must be taken either in the act of committing the offence or on fresh pursuit. *Hanway* v. *Boultbee*, 1 M. & R., 15, but not on his return after committing the offence. *R.* v. *Phelps*, C & M., 180. The words "found committing" mean either seeing the party actually committing the offence or pursuing him immediately and continuously after his committing it. *R.* v.

Curran, 3 C. & P., 397. Pursuit after an interval of three hours would not be a fresh pursuit. *Downing* v. *Capel*, L.R., 2 C.P., 461; *Leete* v. *Hart*, 37 L.J., C.P., 157. Immediately in the statute means after the commission of the offence, and not after its discovery. *Ib.*

Where a man is himself insulted by a person disturbing the peace in a public street, he may arrest the offender and take him to a peace officer to answer for a breach of the peace. *Forrester* v. *Clarke*, 3 Q.B. (Ont.), 151.

The fact that a party is violently assaulting the wife and child of another, is no legal justification for the latter, not being a peace officer, breaking into the house of the former in order to prevent the breach of the peace. *Rockwell* v. *Murray*, 6 Q.B. (Ont.), 412.

Where there has been no breach of the peace, actual or apprehended, a magistrate has no right to detain a known person to answer a charge of misdemeanor verbally intimated to him, without a regular information before him in his capacity of magistrate that he may be able to judge whether it charges any offence to which the party ought to answer. *Caudle* v. *Ferguson*, 1 Q.B., 889.

Where a magistrate allows a prisoner to depart without examining into the charge against him with a direction to appear the next morning at the police office, and in the meantime on the ground that he was insulted by the prisoner when in custody before him the previous evening, gives verbal instructions to a constable to apprehend him and take him to a station-house or gaol, such imprisonment is illegal, and the magistrate cannot justify the arrest. *Powell* v. *Williamson*, 1 Q.B. (Ont.), 154.

Under the Rev. Stat. Can., chap. 156, s. 2, persons disturbing any assemblage of persons met for religious worship, may be arrested on view by any peace officer present at such meeting or by any other person thereto verbally authorized by any Justice of the Peace present thereat. As to peace on public works, see

Rev. Stat. Can., chap. 151. As to riots, see Rev. Stat. Can., chap. 147.

Where any offence is committed against the Act respecting Cruelty to Animals, any constable or other peace officer, or the owner of the animal upon view thereof, may arrest the offender and convey him before a Justice of the Peace within whose jurisdiction the offence was committed to be dealt with according to law. Rev. Stat Can., chap. 172.

ENFORCING APPEARANCE OF ACCUSED.

30. Whenever a charge or complaint (A) is made before any Justice of the Peace for any territorial division in Canada, that any person has committed, or is suspected to have committed, any treason or felony, or any indictable misdemeanor or offence within the limits of the jurisdiction of such justice or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice, is or resides or is suspected to be or reside within the limits of the jurisdiction of such Justice, then, and in every such case, if the person so charged or complained against is not in custody, such justice may issue his warrant (B), to apprehend such person, and to cause him to be brought before him or any other justice for the same territorial division.

Without an information properly laid a justice has no jurisdiction to issue a warrant, and if he does so he is liable in trespass. *Appleton* v. *Lepper*, 20 C.P. (Ont.), 138; see *R.* v. *Hughes*, L.R., 4 Q.B.D., 614.

So if a justice, after an offender is brought before him on a warrant, commits him for trial where there is no prosecutor no examination of witness and no confession of guilt under the statute. he is liable in trespass. *Appleton* v. *Lepper*, supra; *Connors* v. *Darling*, 23 Q.B. (Ont.), 541.

To give the magistrate jurisdiction there must be either an information for a criminal offence or the information must be waived by the accused. *Crawford* v. *Beattie*, 39 Q.B. (Ont.), 26; *Caudle* v. *Seymour*, 1 Q.B., 889; *R.* v. *Fletcher*, L.R., 1 C.C.R., 320; or the accused must be in the presence of the magistrate and while there be charged with the offence and must then submit to answer it. See *R.* v. *Hughes*, supra.

Even where an information is properly laid, if the offence is not committed within the limits of the justice's jurisdiction the offender must reside or be within such limits (see sections 30 and 33).

Or it must appear that the property which he is alleged to have stolen or otherwise feloniously or unlawfully taken or obtained in some other jurisdiction is in the possession of the offender, in the county for which the magistrate acts when he issues his warrant. See *McGregor* v. *Scarlett*, 7 P.R. (Ont.), 20; Rev. Stat. Can., chap. 174, s. 22.

The commission of an offence within the Justice's jurisdiction gives him authority, on an information properly laid, to issue his summons or warrant, though the offender at the time the information is laid have departed from the county or place in which the Justice acts. In case of fresh pursuit the offender may be apprehended at any place in the next adjoining territorial division, and within seven miles of the border of the first-mentioned territorial division, (see section 47). In other cases the warrant may be backed so as to authorize the apprehension of the offender at any place in Canada, out of the jurisdiction of the Justice issuing the warrant (see section 49).

If the information discloses no offence in law, it will not authorize the issue of a warrant by a magistrate as there is nothing to found his jurisdiction. *Stephens* v. *Stephens*, 24 C.P. (Ont.), 424.

The form (A) of information given in the first schedule to this Act does not show how the particular offence is to be described, but the forms in the second schedule give the descriptions necessary in indictments and as "indictment" includes information (see section 2 (c)) the description of the offences required in indictments will be sufficient in informations. See *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537.

An information for false pretences is not objectionable for not setting out the false pretences with which the defendant is charged if it follows the form in which an indictment for the

same offence may be framed. *R.* v. *Richardson*, 8 Ont. R., 651. In any case, section 58 of this Act would cure the defect (*Ib*).

Informations before magistrates must be taken as nearly as possible in the language used by the party complaining. See *Cohen* v. *Morgan*, 6 D. & R, 8; *McNellis* v. *Garthshore*, 2 C.P. (Ont.), 464.

It is highly improper for a magistrate to place a legal construction on the words of the complainant which they do not bear out. For instance, if the statement of the complainant shows a trespass only the magistrate should not construe it as a felony or describe it as such in the information. *Rogers* v. *Hassard*, 2 Appeal R., 507.

If by reasonable intendment the information can be read as disclosing a criminal offence, the rule is so to read it. See *Lawrenson* v. *Hill*, 10 Ir. C.L.R., 177.

An information charging the plaintiff with having unlawfully taken away a pair of shutters belonging to the plaintiff, and having converted the same to his own use against the form of the statute, does not charge a felony. *Tempest* v. *Chambers*, 1 Stark, 67.

An information charging that the plaintiff did "abstract from the table in the house of John Evans, a paper being a valuable security for money," does not charge a felony. *Smith* v. *Evans*, 13 C.P. (Ont.), 60.

An information that "the said Ellen K[illegible] has the key of a house in her possession, the property of [illegible] plainant, and would not give it up" to the complainant's age[illegible] contains nothing which by reasonable intendment can be construed as charging criminality. *Lawrenson* v. *Hill*, 10 Ir. C.L.R., 177.

An information which stated that A.B. had neglected to return a gun which had been lent to him, and for which he had been repeatedly asked, was not construed as charging criminality. *McDonald* v. *Bulwer*, 11 L.T., N.S., 27.

The warrant of a magistrate is only *prima facie*, not conclusive, evidence of its contents, and though a warrant recites the laying of an information, and though in an action against the

magistrate it is put in on behalf of the plaintiff, still the recital of the information is not conclusive, and evidence may be given to show that such information was not in fact laid. *Friel* v. *Ferguson*, 15 C.P. (Ont.), 584.

31. The justice to whom the charge or complaint is preferred, instead of issuing, in the first instance, his warrant to apprehend the person charged or complained against, may, if he thinks fit, issue his summons (C) directed to such person, requiring him to appear before him at the time and place therein mentioned, or before such other justice of the same territorial division as shall then be there, and if, after being served with the summons in manner hereinafter mentioned, he fails to appear at such time and place, in obedience to such summons, the justice or any other justice for the same territorial division may issue his warrant (D), to apprehend the person so charged or complained against, and cause such person to be brought before him, or before some other justice for the same territorial division, to answer to the charge or complaint, and to be further dealt with according to law; but any justice may, if he sees fit, issue the warrant hereinbefore first mentioned, at any time before or after the time mentioned in the summons for the appearance of the accused person.

Under this section it would appear that the power to finally dispose of the case does not belong exclusively to the Justice who issues the summons, though in this Act there is no provision similar to that contained in sections 6, 7 and 8 of The Summary Convictions Act. See *R.* v. *Milne*, 25 C.P. (Ont.), 94.

32. Whenever any indictable offence is committed on the high seas, or in any creek, harbor, haven or other place, in which the Admiralty of England have or claim to have jurisdiction, and whenever any offence is committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with having committed, or suspected of having committed any such offence, is or is suspected to be, may issue his warrant (D 2), to apprehend such person, to be dealt with as therein and hereby directed.

33. If an indictment is found by the grand jury in any court of criminal jurisdiction, against any person then at large, and whether such person has been bound by any recognizance to appear to answer to any such charge or not, and if such person has not appeared and pleaded to the indictment, the person who acts as clerk of the Crown or chief clerk of such court shall, at any time, at the end of the term or sittings of the court at which the indict-

ment has been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant to such prosecutor or person a certificate (E) of such indictment having been found; and upon production of such certificate to any justice for the territorial division in which the offense is alleged in the indictment to have been committed, or in which the person indicted resides, or is supposed or suspected to reside or to be, such justice shall issue his warrant (F), to apprehend the person so indicted, and to cause him to be brought before him or any other justice for the same territorial division, to be dealt with according to law.

This certificate can only be obtained after the assizes or sessions, for during the assizes or sessions the prosecutor may obtain a Bench warrant. But it is not only in cases where the prosecutor has omitted to apply for a Bench warrant during the assizes or sessions, but also where he has applied and got it, that this mode of obtaining a Justice's warrant to apprehend a party indicted may be useful—for it may often happen that whilst the Bench warrant is in the possession of a constable in another county, or in a distant part of the same county, there may be an opportunity of apprehending the defendant in another part of the county or in another county.

An indictment may be preferred for any offence, at the Court having jurisdiction to try it, without any preliminary inquiry before Justices, except in cases provided by the 140th section of this Act.

If the Justices before whom any person is charged with any of the offences referred to in the latter section refuse to commit, the prosecutor, if he desire it, may enter into a recognizance to prefer an indictment for the offence; and such recognizance, with the information and despoitions, if any, shall be returned to the Court in which the indictment is to be preferred. See section 80.

The finding of an indictment in the cases mentioned in the 33rd section of this Act, gives the Justices jurisdiction to issue his warrant to apprehend the person against whom such indictment is found.

34. If any person is thereupon apprehended and brought before any such justice, such justice upon its being proved upon oath or affirmation before him that the person so apprehended is the person charged and named in the indictment, shall, without further inquiry or examination, commit (G) him for trial or admit him to bail as hereinafter mentioned.

35. If the person so indicted is confined in any gaol or prison for any other offence than that charged in the indictment at the time of such application and production of such certificate to the justice, such justice, upon its being proved before him, upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his warrant (H) directed to the gaoler or keeper of the gaol or prison in which the person so indicted is then confined, commanding him to detain such person in his custody until he is removed therefrom by writ of *habeas corpus*, or by order of the proper court, for the purpose of being tried upon the said indictment, or until he is otherwise removed or discharged out of his custody by due course of law.

36. Nothing hereinbefore contained shall prevent the issuing or execution of bench warrants, whenever any court of competent jurisdiction thinks proper to order the issuing of any such warrant.

37. Any justice may grant or issue any warrant as aforesaid, or any search warrant, on a Sunday or other statutory holiday, as well as on any other day.

This section does not authorize the issue of a summons on a Sunday; but all persons guilty of indictable offences may be arrested on Sunday. *Rawlins* v. *Ellis*, 16 M. & W., 172; 29 Car. 2, chap. 7, s. 6.

38. Whenever a charge or complaint for any indictable offence is made before any justice, if it is intended to issue a warrant in the first instance against the person charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such justice.

39. When it is intended to issue a summons instead of a warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid, except whenever, by some Act or law, it is specially provided that the information and complaint may be by parol merely, and without any oath or affirmation to support or substantiate the same.

40. The justice receiving any information and complaint as aforesaid, if he thinks fit, may issue his summons or warrant as hereinbefore directed, to

cause the person charged to be and appear as thereby directed; and every summons (C) shall be directed to the person so charged by the information, and shall state shortly the matter of such information, and shall require the person to whom it is directed to be and appear at a certain time and place therein mentioned, before the justice who issues the summons, or before such other justice for the same territorial division as shall then be there, to answer to the charge and to be further dealt with according to law.

The words in this section, "if he thinks fit," give the justices a discretion in the issuing of the summons or warrant, but they are bound to exercise this discretion on the evidence of a criminal offence which the information discloses, and if on a consideration of something extraneous or extra judicial they refuse the summons or warrant, the court will order them to issue it. *R.* v. *Adamson*, L.R. 1, Q.B.D., 201.

41. Every such summons shall be served by a constable or other peace officer, upon the person to whom it is directed, by delivering the same to such person, or if he cannot conveniently be so served, then by leaving the same for him with some person at his last or usual place of abode.

It is important that the constable serving the summons should attend to prove the service, for it would seem, that if the person served does not appear, the Magistrate would have no right either to issue a warrant or to proceed otherwise in the absence of the defendant without proof that he was duly served. See *re McEachern*, 1 *Russell & Geldert*, N.S., 321. As to what is sufficient service, see *R.* v. *McAuley*, 14 (Ont.) R., 643.

42. The constable or other peace officer who serves the same, shall attend at the time and place, and before the justice in the summons mentioned, to depose, if necessary, to the service of the summons.

43. If the person served does not appear before the Justice at the time and place mentioned in the summons, in obedience to the same, the Justice may issue his warrant (D) for apprehending the person so summoned, and bringing him before such Justice, or before some other Justice of the same territorial division, to answer the charge in the information and complaint mentioned, and to be further dealt with according to law.

44. Every warrant (B) issued by any Justice to apprehend any person charged with any indictable offence shall be under the hand and seal of the

Justice issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to any such constable and all other constables or peace officers in the territorial division within which the Justice issuing the same has jurisdiction, or generally to all the constables or peace officers within such last mentioned territorial division; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender: and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the Justice issuing the warrant, or before some other Justice for the same territorial division, to answer the charge contained in the information, and to be further dealt with according to law.

If the warrant is directed to any person, not a constable, he is not bound to execute it, and is not punishable if he does not execute it, but a constable is bound to execute it if directed to him.

Under this section the warrant may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed. This would meet the case of the offence having been committed within the Justices' jurisdiction and of the offender having fled therefrom, and where the intention is to have the warrant backed under the 49th section. The warrant may also be directed to any such constable (as above mentioned) and all other constables in the territorial division within which the Justice has jurisdiction. The latter direction of the warrant is recommended. It enables the constable to execute the warrant within the jurisdiction of the Justice granting it, though it is not directed specially to such constable by name, and though the place within which such warrant is executed be not within the place for which he is constable or peace officer. See section 48. It also authorizes the execution of the warrant (in case of its being backed under the 49th section), in any place in Canada where the offender may be found. The 49th section authorizes the execution of the warrant by the person bringing it, and all others to whom the same was originally directed, and all constables of the territorial division in which the warrant has been endorsed.

Where a warrant was directed to the constable of Thorold, in

the Niagara District, authorizing him to search the plaintiff's house, at the Township of Louth, in the same district, it not appearing that there was more than one person appointed to the office of Constable of Thorold, it was held that the direction to the Constable of Thorold, not naming him, to execute the warrant in the Township of Louth was good, for although a warrant to a peace officer, by his name of office, gives him no authority out of the precincts of his jurisdiction, yet such authority may be expressly given on the face of the warrant, as in this case. *Jones* v. *Ross*, 3 Q.B. (Ont.), 328.

This section of the Act also provides that the warrant shall state shortly the offence on which it is founded, and it must shew the facts constituting the offence. Thus a warrant to arrest for embezzlement should show that the defendant was or had been a clerk or servant, or was or had been employed in that capacity, and that he had received property said to have been embezzled by him, or that it had been delivered to him or taken into his possession for or in the name or on account of his master or employer. See *McGregor* v. *Scarlet*, 7 P.R. (Ont.), 20.

A warrant issued by a Justice founded on an information which discloses no criminal offence cannot be sustained by proof that there was in fact parol evidence on oath given which conveyed a criminal charge. *Lawrenson* v. *Hill*, 10 Ir. Com. Law R., 177.

45. If, in any warrant or other instrument or document issued in any Province of Canada, at any time, by any Justice, it is stated that the same is given under the hand and seal of any justice signing it, such seal shall be presumed to have been affixed by him, and its absence shall not invalidate the instrument, or such Justice may, at any time thereafter, affix such seal, with the same effect as if it had been affixed when such instrument was signed.

46. It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in force until executed.

47. Such warrant may be executed by apprehending the offender at any place in the territorial division within which the Justice issuing the same has jurisdiction, or in case of fresh pursuit, at any place in the next adjoining territorial division, and within seven miles of the border of the first mentioned territorial division, without having the warrant backed as hereinafter mentioned.

The seven miles are measured not by the nearest practicable road, but by a straight line from point to point on the horizontal plane, "as the crow flies." *Lake* v. *Butler*, 24 L.J., N.S., Q.B., 273. *R.* v. *Walden*, 9 Q.B., 76.

48. If any warrant is directed to all constables or other peace officers in the territorial division within which the justice has jurisdiction, any constable or other peace officer for any place within such territorial division may execute the warrant at any place within the jurisdiction for which the justice acted when he granted such warrant, in like manner as if the warrant had been directed specially to such constable by name, and notwithstanding the place within which such warrant is executed is not within the place for which he is constable or peace officer.

Where an offence was committed in the County of G., and warrants were issued for the arrest of the guilty parties, persons from another county who came to assist the constables of the County of G. in making arrests were held entitled to the same protection as the constables. *R.* v. *Chassen*, 3 Pugsley, 546.

49. If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, or if he escapes into, or is supposed or is suspected to be, in any place within Canada, out of the jurisdiction of the justice issuing the warrant, any justice within the jurisdiction of whom the person so escapes, or in which he is or is suspected to be, upon proof alone being made on oath or affirmation of the handwriting of the justice who issued the same, without any security being given, shall make an indorsement (I) on the warrant, signed with his name, authorizing the execution of the warrant within the jurisdiction of the justice making the indorsement; and such indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the territorial division where the warrant has been so indorsed, to execute the same in such other territorial division, and to carry the person against whom the warrant issued, when apprehended, before the justice who first issued the warrant, or before some other justice for the same territorial division, or before some justice of the territorial division in which the offence mentioned in the warrant appears therein to have been committed.

If the person against whom the warrant is issued cannot be found in the county in which it has been backed it may be again

backed in the same manner in any other county, and so from county to county until the offender is apprehended, and notwithstanding such backings of the warrant the offender may be afterwards apprehended therein in the county in which it originally issued.

C. was convicted of an assault on two police constables of the county police of Worcestershire in the execution of their duty, who were apprehending him in the city of Worcester under a warrant issued by two justices of and for the County of Worcestershire for his commitment to prison for default in payment of a fine, but not backed by any justice of and for the city of Worcester. Worcester is a borough having a separate commission of the peace with exclusive jurisdiction and a separate police force. C. was not pursued from the county but found in the city. The court held that the conviction was wrong, for the constables were not acting in the execution of their duty in so executing the warrant. *R.* v. *Cumpton*, L. R. 5, Q.B.D., 341.

50. If the prosecutor or any of the witnesses for the prosecution are then in the territorial division where such person has been apprehended, the constable or other person or persons who have apprehended him may, if so directed by the justice backing the warrant, take him before the justice who backed the warrant, or before some other justice for the same territorial division or place; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in the manner hereinafter directed, with respect to persons charged before a justice with an offence alleged to have been committed in another territorial division than that in which such persons have been apprehended.

SEARCH WARRANTS AND SEARCHES.

51. If a credible witness proves, upon oath (K) before a justice, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling-house, out-house, garden, yard, croft or other place or places, the justice may grant a warrant (K 2), to search such dwelling-house, garden, yard, croft or other place or places for such property, and if the same, or any part thereof, is then found, to bring the same and the person or persons in whose possession such house or other place then is, before the justice granting the warrant, or some other justice for the same territorial division.

52. If any credible witness proves, upon oath before any justice, a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary conviction, by virtue of "*The Larceny Act*" or the "*Act respecting the protection of the Property of Seamen in the Navy,*" has been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods.

53. On complaint in writing made to any justice of the county, district or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint; and if, upon such search, any such gold or gold-bearing quartz, or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right:

2. The decision of such justice shall be subject to appeal, as in ordinary cases on summary conviction; but before such appeal shall be allowed, the appellant shall enter into a recognizance in the manner provided by law in cases of appeal from summary convictions, to the value of the gold or other property in question, that he will prosecute his appeal at the next sittings of any court having jurisdiction in that behalf, and will pay the costs of the appeal in case of a decision against him,—and, if the defendant appeals, that he will pay such fine as the court may impose, with costs.

54. If any constable or peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or peace officer may enter into or upon the same, and search or examine, for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge and consent.

55. If it is made to appear, by information on oath or affirmation before a justice, that there is reasonable cause to believe that any person has in his custody or possession, without lawful authority or excuse, any Dominion or Provincial note, or any note or bill of any bank or body corporate, company or person carrying on the business of bankers, or any frame, mould, or implement for making paper in imitation of the paper used for such notes or bills, or any such paper, or any plate, wood, stone or other material, having thereon any words, forms, devices or characters capable of producing or intended to

produce the impression of any such note or bill or any part thereof, or any tool, implement or material used or employed, or intended to be used or employed, in or about any of the operations aforesaid, or any forged security, document or instrument whatsoever, or any machinery, frame, mould, plate, die, seal, paper or other matter or thing used or employed, or intended to be used or employed, in the forgery of any security, document or instrument whatsoever, such justice may, if he thinks fit, grant a warrant to search for the same; and if the same is found upon such search, it shall be lawful to seize and carry the same before some justice of the district, county or place, to be by him disposed of according to law; and all such matters and things so seized as aforesaid shall, by order of the court by which any such offender is tried, or if there is no such trial, then by order of some Justice of the Peace, be defaced and destroyed, or otherwise disposed of as such court or justice directs.

56. If any person finds or discovers, in any place whatsoever, or in the custody or possession of any person having the same without lawful authority or excuse, any false or counterfeit coin resembling or apparently intended to resemble or pass for any current gold, silver or copper coin, or any coin of any foreign prince, state or country, or any instrument, tool or engine whatsoever, adapted and intended for the counterfeiting of any such coin, or any filings or clippings, or any gold or silver bullion, or any gold or silver, in dust, solution or otherwise, which has been produced or obtained by diminishing or lightening any current gold or silver coin, the person so finding or discovering shall seize and carry the same forthwith before a justice:

2. If it is proved, on the oath of a credible witness, before any justice, that there is reasonable cause to suspect that any person has beeu concerned in counterfeiting current gold, silver or copper coin, or any foreign or other coin mentioned in the "*Act respecting Offences relating to the Coin*," or has in his custody or possession any such false or counterfeit coin, or any instrument, tool or engine whatsoever, adapted and intended for the making or counterfeiting of any such coin, or any other machine used or intended to be used for making or counterfeiting any such coin, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise, as aforesaid, any justice may, by warrant under his hand, cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or in the night, and if any such false or counterfeit coin, or any such instrument, tool or engine, or any such machine, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise, as aforesaid, is found in any place so searched, to cause the same to be seized and carried forthwith before a justice:

3. Whenever any such false or counterfeit coin, or any such instrument, tool or engine, or any such machine, or any such filings, clippings or bullion,

or any such gold or silver, in dust, solution or otherwise, as aforesaid, is in any case seized and carried before a justice, he shall, if necessary, cause the same to be secured, for the purpose of being produced in evidence against any person prosecuted for an offence against such Act; and all such false and counterfeit coin, and all instruments, tools and engines adapted and intended for the making or counterfeiting of coin, and all such machines, and all such filings, clippings and bullion, and all such gold and silver, in dust, solution or otherwise, as aforesaid, after they have been produced in evidence, or when they have been seized and are not required to be produced in evidence, shall forthwith be defaced, by the order of the court, or otherwise disposed of as the court directs.

Under the Fugitive Offenders Act (Rev. Stat. Can., chap. 143, s. 12), whenever a warrant for the apprehension of a person accused of an offence has been indorsed in pursuance of this Act any Magistrate has the same power of issuing a search warrant as if the offence had been wholly committed within his jurisdiction.

Under the Act respecting the preservation of peace in the vicinity of public works (Rev. Stat. Can., chap. 151, s. 8), any Justice of the Peace having authority within the place in which the Act is at the time in force, upon the oath of a credible witness, that he believes that any weapon is in the possession of any person, may issue a warrant to search for and seize the same. Section 16 gives a similar power to search for and seize intoxicating liquor.

Under "The Explosive Substances Act" (Rev. Stat. Can., chap. 150, s. 10), any Justice of the Peace for any place in which any explosive substance is suspected to be made, kept or carried for any unlawful object may, upon reasonable cause assigned upon oath by any person, issue a warrant to search any place where such substance is suspected to be.

In the North-West Territories any Judge of the Supreme Court or Justice of the Peace, on complaint made before him on the evidence of one credible witness, that any intoxicating liquor is being manufactured, sold or bartered, may issue a search warrant as in cases of stolen goods (Rev. Stat. Can., chap. 50, s. 94).

The same law applies in the District of Keewatin. Rev. Stat. Can, chap. 53, s. 37.

Under the Wrecks and Salvage Act (Rev. Stat. Can., chap. 81, s. 41), the receiver of any wreck may obtain a search warrant from any Justice of the Peace to search for concealed wreck. So a search warrant may be granted to search for fish where there is reason to believe that they are taken in violation of the Fisheries Act. Rev. Stat. Can., chap. 95, s. 17, s.s. 2.

It is not merely in reference to goods that such warrants may now be granted. Under the Act respecting offences against Public Morals and Public Conveniences (Rev. Stat. Can. chap. 157, s. 7, s.s. 2), whenever there is reason to believe that any woman or girl under the age of twenty-one years has been inveigled into a house of ill-fame for the purpose of illicit intercourse or prostitution, a Justice of the Peace may, upon complaint thereof being made under oath, issue a warrant to enter by day or night such house and to search for such woman or girl and to bring her and the person keeping her before the Justice. So under the Seaman's Act (Rev. Stat Can., chap. 74, s. 119), a Justice of the Peace may grant a warrant to search for seamen unlawfully harbored or detained, or for apprehending deserters supposed to be concealed in taverns or houses of ill-fame, Ib. s. 120. A similar provision is inserted in the Inland Waters Seamen's Act. Rev. Stat. Can., chap. 75, s. 42.

The party requiring a search warrant must go before a Justice of the Peace of the county or other jurisdiction where the premises intended to be searched are situate, and make oath of circumstances, showing a reasonable ground for suspecting that the goods are upon these premises. He must also show, upon oath, either that the goods were stolen or that he has reason to suspect that they have been stolen, for a positive oath that a felony was committed, of goods, is not necessary to justify a magistrate in granting a search warrant for them. *Elsee* v. *Smith*, 1 Dowl. & Ry. 97. The warrant may be issued on a Sunday. See section 37.

PROCEEDINGS ON APPEARANCE.

57. The room or building in which the justice takes the examination and statement shall not be deemed an open court ; and the justice, in his discretion, may order that no person shall have access to or be or remain in such room or building without his consent or permission, if it appears to him that the ends of justice will be best answered by so doing.

Where Justices are exercising a *judicial* authority, as in hearing and determining a case on summary conviction, their proceedings ought not to be private, and they are not therefore warranted in removing a person from the place where they are exercising such authority unless he interrupts their proceedings. *Daubney* v. *Cooper* 10 B. & C. 237. See Rev. Stat. Can., chap. 178, s. 33 But where a Magistrate is acting merely in a *ministerial* capacity, as enquiring into a charge of felony previous to a committal of the party for trial, the Magistrate has a discretion as to who shall or shall not be present at the examination, for it may be essential to the ends of public justice, and more especially to prevent any accomplices from escaping that the examination should be private and not interrupted by the interference of any person on the part of the prisoner. *Cox* v. *Coleridge*, 1 B. & C. 37.

And under this section the Justice may, in his discretion. order that no person shall have access to the room or building in which the examination is being taken, or shall be or remain in it without his consent or permission, if it appear to him that the ends of justice will be best answered by doing so. The Justices may exclude an attorney or counsel if they please (*R.* v. *Coleridge*, 1 B. & C., 37 ; *Collier* v. *Hicks*, 2 B. & Ad., 663 ; see also *Re Judge*, C.C. York, 31 Q.B., (Ont.), 267 ; but in no circumstances the accused or his counsel. *R.* v. *Commins*, 4 D. & R., 94 ; *R.* v. *Griffiths*, 16 ; Cox C.C., 46.

58. No objection shall be taken or allowed to any information, complaint, summons or warrant, for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice who takes the examination of the witnesses in that behalf.

A man accused of crime before a magistrate, who raises no objection to the form of the information, and is tried and convicted, is by the operation of this section much in the same position as a man indicted for crime who omits to demur to or quash the indictment, pleads not guilty, is tried and convicted. All defects apparent on the face of the information are waived. *Crawford* v. *Beattie* 39, Q.B. (Ont.), 28; *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537. In *R.* v. *Cavanagh*, *supra*, it was held that an information for an offence punishable on summary conviction, might be amended; and in *Crawford* v. *Beattie*, *supra*, it seemed to be assumed that the same course might be pursued in the case of an information for an indictable offence. On objection, therefore, taken to an information, the magistrate may allow it to be amended in the same manner as an indictment under Section 143 of this Act; see also *Re Conklin*, 31 Q.B. (Ont.), 160.

This section was framed not only to meet the case of a variance between the information and the evidence (see *Whittle* v. *Frankland*, 5 L.T., N.S., 639); but to cure defects in the information either in "substance or in form," where the evidence discloses an offence. But it does not enable the Justice to summon a person for one offence requiring a particular punishment, and without a fresh information, convict him of a different offence requiring a different punishment. *Martin* v. *Pridgeon*, 1 E. & E., 778; *R.* v. *Brickhall*, 10 L.T., N.S., 385. The plaintiff was brought before defendant and another magistrate on the 2nd of January, 1875, under a summons issued by defendant, on an information that he did on, etc. "obtain, by false pretences, from complainant, the sum of five dollars contrary to law," omitting the words "with intent to defraud," which, by the Rev. Stat. Can., chap. 164, s. 77, is made part of the offence. The plaintiff did not, when before the magistrate, pretend ignorance of the charge, or take any objection to the information, and it was held that the defendant had jurisdiction, for the information might, by intendment, be read, as charging the statutable offence, and if not, the plaintiff should have taken his objection before the magistrate, when the information might have been amended and

resworn, and that he was precluded from raising it in this action. *Crawford* v. *Beattie*, 39 Q.B. (Ont.), 13.

59. If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, such justice, at the request of the person charged, may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail, as hereinafter mentioned.

60. If it is made to appear to any justice, by the oath or affirmation of any credible person, that any person within Canada is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice shall issue his summons (L) to such person, requiring him to be and appear before him at a time and place therein mentioned, or before such other justice for the same territorial division as shall then be there, to testify what he knows concerning the charge made against the accused person.

It will be observed that under this section only the witnesses for the prosecution can be subpœnaed. The witness must be within the Dominion; it must appear that he is likely to give material evidence for the prosecution, and will not voluntarily appear to do so.

The provisions of the section cannot be invoked until an information is laid against the accused, and a summons or warrant is issued against him.

The subpœna or summons to a witness should be addressed to him by his name and description. The day on which he is thereby ordered to appear should be stated as well as the place, giving such a designation or description thereof as that he can easily find it, if in a city, town, village or parish. It should also be dated, signed, and sealed by the Justice. In the event of the person served with a subpœna neglecting or refusing to appear, the Justice can issue a warrant for his apprehension. The formalities to be observed before such warrant can be issued are the same as prescribed by section 31, to precede the issue of the warrant where the person has failed after service to appear on an ordinary summons, and such warrants can be backed as provided by section 49. See s. 61, Kerr's Acts, 74-5.

A witness cannot refuse to attend on being served with a summons or subpœna, until his expenses are paid. *R.* v. *James*, 1 C. & P., 322.

61. If any person so summoned neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal (after proof upon oath or affirmation of the summons having been served upon such person, personally or by being left with some person for him at his last or usual place of abode), the justice before whom such person should have appeared may issue a warrant (L 2), to bring such person, at a time and place therein mentioned, before the justice who issued the summons, or before such other justice for the same territorial division as shall then be there to testify as aforesaid, and, if necessary, the said warrant may be backed as hereinbefore mentioned, so that it may be executed out of the jurisdiction of the justice who issued the same.

A Justice of the Peace may commit a *feme covert*, who is a material witness on a charge of felony brought before him, and who refuses to appear at the sessions to give evidence or find sureties for her appearance. *Bennet* v. *Watson*, 3 M. & S. 1.

62. If the justice is satisfied, by evidence upon oath or affirmation, that it is probable that the person will not attend to give evidence unless compelled so to do, then, instead of issuing such summons, the justice may issue his warrant (L 3) in the first instance, and the warrant, if necessary, may be backed as aforesaid.

63. If, on the appearance of the person so summoned, either in obedience to the summons or by virtue of the warrant, he refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the questions then put to him concerning the premises, without giving any just excuse for such refusal, any justice then present and there having jurisdiction may, by warrant (L 4) commit the person so refusing to the common gaol or other place of confinement, for the territorial division where the person so refusing then is, there to remain and be imprisoned for any term not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

64. If, from the absence of witnesses or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the justice before whom the accused appears or has been brought may, by his warrant (M), from time to time,

remand the person accused to the common gaol in the territorial division, for which such justice is then acting, for such time as he deems reasonable, not exceeding eight clear days at any one time.

There is no power at one time to remand for a period exceeding eight clear days, but at the expiration of such time there may be a further remand for eight days, and so on. A remand for an unreasonable time would be void. *Connors* v. *Darling*, 23, Q.B. (Ont.), 547-51.

When a person is given into custody without warrant on a charge of felony and is afterwards brought before a magistrate the latter may remand him without taking any evidence upon oath. *R.* v. *Waters*, 12, Cox, C.C., 390.

Where the commitment is in court to a proper officer there present there is no warrant of commitment, and where a prisoner is committed until discharged by due course of law the warrant continues in force until the prisoner is discharged or sent to the penitentiary, and it is sufficient if at the court the Judge remands the prisoner into the custody of the proper officer in court: no written order or commitment is necessary. *R.* v. *Mulholland*, 4 Pugsley & Burbidge, 478.

Committing Magistrates are not responsible for the condition of the lock-ups, and a Justice who remands a prisoner under this section, without any express direction to take him to the lock-up, is not responsible for the prisoner's sufferings in the lock-up, if the constable takes him there instead of to the common gaol of the county. *Crawford* v. *Beattie*, 39 Q.B. (Ont.), 13.

65. If the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused person then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody, and to bring him before the same or such other justice as shall be there acting, at the time appointed for continuing the examination.

66. Any such justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order.

67. Instead of detaining the accused person in custody during the period for which he has been so remanded, any one justice, before whom such person has appeared or been brought, may discharge him, upon his entering into a recognizance (M 2, 3), with or without sureties, in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination.

68. If the accused person does not afterwards appear at the time and place mentioned in the recognizance, the said justice, or any other justice who is then and there present, having certified (M 4) upon the back of the recognizance the non-appearance of such accused person, may transmit the recognizance to the clerk of the court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other recognizances ; and such certificate shall be *primâ facie* evidence of the non-appearance of the accused person.

69. Whenever any person appears or is brought before any justice charged with any indictable offence—whether committed in Canada or upon the high seas, or on land beyond the sea,—and whether such person appears voluntarily upon summons or has been apprehended, with or without warrant, or is in custody for the same or any other offence,—such justice, before he commits such accused person to prison for trial or before he admits him to bail, shall, in the presence of the accused person (who shall be at liberty to put questions to any witness produced against him) take the statements (N) on oath or affirmation of those who know the facts and circumstances of the case, and shall reduce the same to writing ; and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the justice taking the same : and the justice shall before any witness is examined, administer to such witness the usual oath or affirmation.

According to the most recent authority in England, prisoners at the preliminary inquiry into an indictable offence have a right to be represented by counsel or solicitor, and such counsel or solicitor has an absolute right to cross-examine the witnesses for the prosecution. It would be most unfortunate if magistrates possessed a discretion to prohibit cross-examination, since the exercise of that discretion would prevent the depositions of a witness from being used at the trial under any circumstances, and would tend to impair that appearance of perfect fairness which is the first essential of proceedings in a criminal court. *R.* v. *Griffiths*, 16 Cox C.C., 46. See section 222 of this Act.

The depositions must be taken in the presence of the accused person and there is, therefore no power to proceed *ex parte*.

The duty and province of the Magistrate before whom a person is brought with a view to his being committed for trial, or held to bail, is to determine on hearing the evidence for the prosecution and that for the defence, if there be any, whether the case is one on which the accused ought to be put upon his trial. It is no part of the Magistrate's duty to try the case, and unless there be some further statutory duty imposed on the Magistrate, the evidence before him must be confined to the question whether the case is such as ought to be sent for trial. If the Magistrate exceeds the limits of that enquiry he transcends the bounds of his jurisdiction. Thus, upon an information for maliciously publishing a defamatory libel under the 5th section of the Imperial Statute 6 & 7 Vic., c. 96, the Magistrate has no jurisdiction to receive evidence of the truth of the libel. *R.* v. *Carden*, L.R. 5, Q.B.D., 1.

In England, the manner of taking depositions varies; in some places it is usual, in all indictable cases, to take down the evidence in the form of a deposition at once; in others, abbreviated notes are taken of the examination before the Magistrate, copied verbatim, and afterwards read over to the witnesses in the presence of the Magistrate and the accused; the accused having every opportunity of cross-examining the witnesses, and of objecting as well as the witnesses if the evidence is taken down incorrectly. The former mode is the more correct, but the latter has been approved, and depositions so taken have been held admissible. *R.* v. *Bates*, 2 F. & F., 317. If the latter plan is adopted, the deposition should be merely a plain copy of the notes, and the Clerk should not in the absence of the Magistrate ask the witnesses any questions to complete the depositions (*R.* v. *Christopher*, 1 Den. C.C., 536), though the accused be present at the time (*R.* v. *Watts*, 9 L.T., N.S., 453); for that will make the depositions inadmissible, even if they are subsequently read over to the witnesses in the presence both of the Magistrate and the accused.

The evidence should be taken down as nearly as possible in the witness's own words, and the depositions should contain the full evidence, cross-examination as well as examination-in-chief.

Any interruption by the accused should be taken down, and may be evidence against him. *R.* v. *Stripp*, Dears, 648.

At the close of the witness's examination, it would be well for the Justice to put any questions—answers to which would in his opinion tend to throw light on the facts and circumstances of the case. The accused person should then be asked by the Justice if he has any questions in cross-examination to put to the witness; if he declares that he does not wish to cross-examine, that fact should be noted in the deposition, but if he declares that he desires to cross-examine, his questions, when pertinent to the matter in issue, must be answered by the witness, and must be reduced to writing by the Justice together with the answers of the witness thereto. Care must be taken to distinguish between the examination and cross-examination of the witness; if necessary, the witness can be re-examined, the deposition must then be read over to and signed by the witness and by the Justice taking the same, all in the presence of the accused. *R.* v. *Watts*, 9 L.T., N.S., 453; Kerr's Acts, 78-9.

The Justice is bound to examine all the parties who know the facts and circumstances of the case. The deposition of the witness should be taken carefully; as far as possible, the very words made use of should be preserved. It is not, however, necessary to take down all that a witness may state, since that which is clearly irrelevant or not admissible as evidence, ought not to be admitted. If, however, any doubt should arise as to admissibility, the better plan is to take it and leave it to another tribunal to decide whether it shall be used or not (*ib.*).

Under this section, it is not necessary that *each* deposition should be signed by the Justice taking it. Therefore, where a number of depositions taken at the same hearing on several sheets of paper, were fastened together, and signed by the Justices taking them, once only, at the end of all the depositions, in the form given in the Schedule N, it was held that one of these depositions was admissible in evidence under section 222 of the Act, after the death of the witness making it, although no part of it was on

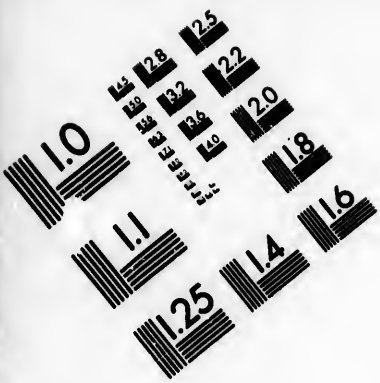
the sheet signed by the Justice. *R.* v. *Parker*, L.R. 1, C.C.R., 225; *R.* v. *Richards*, 4 F. & F., 860, overruled.

Although the prisoner be cautioned, as provided by the 70th section, before he makes his statement, yet if his statement amount to a confession, and he was induced to make it by any previous promise of favour or threat, it cannot be read in evidence against him; unless, indeed, before he made the statement he had been undeceived as to the threat or promise, and told that he had nothing to fear from the one or hope from the other. The 71st section of the statute was intended to remove this difficulty, and compliance with its provisions is only necessary in cases where such a threat or promise has been holden out; and in order to undeceive the prisoner in respect to it, and make his confession evidence against him notwithstanding. In all other cases it is sufficient to give the caution required by the 70th section, after which any confession not induced by threat or promise may be given in evidence against the prisoner. *R.* v. *Sansone*, 1 Den. C.C., 545; *R.* v. *Bond*, *ib.* 517.

The Justice must proceed in the manner pointed out by this 69th section. A defendant, arrested on a warrant, was brought before a Justice who examined him, but took no evidence either of the prosecutor or witnesses, and committed defendant to gaol, saying he could not bail. The defendant did not ask to have any hearing or investigation, or produce or offer to produce any evidence, or to give bail. It was held that the commitment, without the appearance of the prosecutor, or examination of any witnesses, or of the defendant, according to this section, or any legal confession, was an act wholly in excess of the jurisdiction of the Magistrate and illegal. *Connors* v. *Darling*, 23 Q.B. (Ont.), 541.

Justices of the Peace are liable in damages for illegal and malicious commitment, made without previous examination of witnesses before them, in the presence of the accused, as required by this section. *Lacombe* v. *Ste Marie*, 15 L.C.J., 276.

70. After the examinations of all the witnesses for the prosecution have been completed, the justice or one of the justices, by or before whom the examina-



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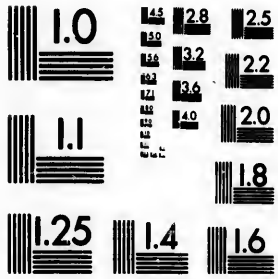

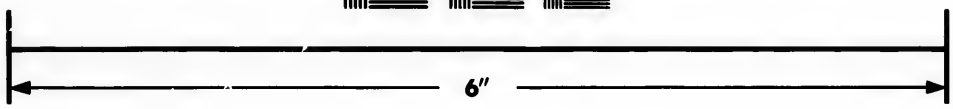

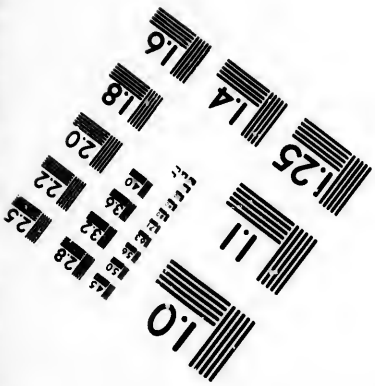

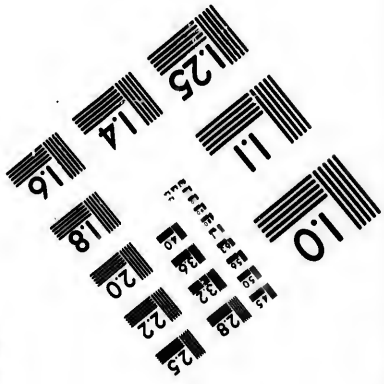

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tions have been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the "charge? You are not obliged to say anything unless you desire to do so, "but whatever you say will be taken down in writing, and may be given in "evidence against you at your trial;" and whatever the prisoner then says in answer thereto shall be taken down in writing (O) and read over to him, and shall be signed by the justice, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned.

When a prisoner is willing to make a statement it is the magistrate's duty to receive it, but he ought before doing so entirely to get rid of an impression that may have been on the prisoner's mind that the statement may be used for his own benefit, and he ought also to be told that what he thinks fit to say will be taken down, and may be used against him on the trial. The mode of doing this is prescribed in terms by the sections of the statute now under consideration. The caution contained in s. 71 is not necessary, unless it appears that some inducement or threat had previously been held out to the accused. *R.* v. *Sansome*, 1 Den., 545.

The 278th section of the statute declares that the several forms given in the schedule, or forms to the like effect shall be good, valid, and sufficient in law. The form (O) of the statement of the accused before the magistrate contains the cautions specified in s. 70, and not that in s. 71. Therefore a statement returned, purporting to be signed by the magistrate and bearing on the face of it the caution provided for by s. 70, is admissible by s. 223, without further proof. *R.* v. *Bond*, 1 Den., 517.

The object of taking depositions under the statute, is not to afford information to the prisoner, but to preserve the evidence, if any of the witnesses is unable to attend the trial, or dies. This being the ground on which they are taken, until recently the prisoner had no right to see them. *R.* v. *Hamilton*, 16 C.P. (Ont.), 364.

Now he is entitled to inspect the depositions, that he may know why he is committed. See section 74, and 180.

The caution required to be given by this section is, by its terms, applicable to accused persons only, and has no application whatever to witnesses. Therefore, the depositions of a witness, regularly taken, but without any caution, may be used against him if he afterwards becomes the accused. *R.* v. *Coote*, 18 L.C.J., 103; L.R. 4, P.C. App., 599.

This caution does not apply to questions which criminate *(Ib.)*.

71. The justice shall, before the accused makes any statement, state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

This section is directory only, and a statement made by a prisoner as provided for by the Act, may be used in evidence against him, although the Justice has not complied with the provisions of the section, if it appears that the prisoner was not induced to make the statement by any promise or threat. *R.* v. *Soucie*, 1 Pugsley & Burbidge, 611.

The effect of this section, is to enable the prosecutor to give in evidence upon the trial any confession of the prisoner made after it, notwithstanding any promise or threat previously made. Neglect to comply with the Act does not prevent the prosecutor from giving in evidence a confession made before the Justice in the prisoner's statement above mentioned, after the usual cautions (*R.* v. *Sansome*, 19 L.J.,M.C., 143), or a confession made at any other time which was not induced by any promise or threat.

If the form prescribed by the statute has not been followed, then the caution, the prisoner's statement, and the magistrate's signature must be proved as at common law (*R.* v. *Boyd*, 19 L.J., 141), namely by the magistrate or his clerk, or by some person who was present at the examination. *R.* v. *Hearn*, C. & M., 109.

The practice of questioning prisoners by policemen and thus extracting confessions from them though it does not render the evidence so obtained inadmissible, is one that the judges strongly

reprobate and which ought not be permitted. *R.* v. *Mick*, 3 F. & F., 822., and it is not the duty of constables to interrogate prisoners in their custody even though they have first cautioned them not to criminate themselves. *R.* v. *Hassett*, 8 Cox C.C., 511.

72. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him.

73. When all the evidence offered upon the part of the prosecution against the accused has been heard, if the justice is of opinion that it is not sufficient to put the accused upon his trial for any indictable offence, such justice shall forthwith order the accused, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such justice the evidence is sufficient to put the accused upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce him to commit the accused for trial without bail, or if the offence with which the person is accused is a misdemeanor, then the justice shall admit the accused to bail, as hereinafter provided; but if the offence is a felony, and the evidence given is such as to raise a strong presumption of guilt, then the justice shall, by his warrant (P), commit the accused to the common gaol for the territorial division to which, by law, he may be committed,—or in the case of an indictable offence committed on the high seas or on land beyond the sea, to the common jail of the territorial division within which such justice has jurisdiction, to be there safely kept until delivered in due course of law: Provided, that in cases of misdemeanor the justice who has committed the accused for trial may, at any time before the first day of the sitting of the court at which the accused is to be tried, admit him to bail in manner aforesaid, or may certify on the back of the warrant of committal the amount of bail to be required, in which case any justice for the same territorial division may admit such person to bail in such amount, at any time before such first day of the sitting of the court aforesaid.

The word "shall" in this section is imperative. *Ex parte Blossom.* 10 L.C.J. 35, 67-8-73.

The discharge here referred to is made verbally, no writing of any kind being required.

A dismissal by a magistrate is not tantamount to an acquittal upon an indictment. It merely amounts to this, that the justices do not think it advisable to proceed with the charge, but it is

still open to them to hear a fresh charge against the prisoner. *R.* v. *Waters*, 12 Cox C.C., 390.

And a discharge under this section does not operate as a bar to the same person being again brought up before another Justice and committed upon the same charge upon the same or different evidence. *R.* v. *Morton*, 19 C.P. (Ont.), 26.

Justices ought not to balance the evidence and decide according as it preponderates, for this would, in fact, be taking upon themselves the functions of the petty jury and be trying the case. They should consider whether or not the evidence makes out a strong, or probable, or conflicting case of guilt. In the first case they should commit, in the second and third they should admit to bail. If, however, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced on the part of the accused, by way of confession and avoidance, they feel that the case is not sustained, and that if they send it for trial he must be acquitted, they should discharge the accused. Kerr's Acts, 100, 1.

If the evidence goes to prove an offence which the Justices cannot decide summarily, they ought to dismiss the complaint or commit the person charged for trial. *Re Thompson*, 30 L.J.M.C., 19. If the warrant be defective or bad a new warrant may be made out and lodged with the gaoler to cure the defect, and this even in a case where the warrant is in the nature of a conviction as well as commitment as under the Vagrant Act. *Ex parte Cross*, 26 L.J.M.C., 201.

One Justice may sign a warrant of commitment for felony under this section, and such warrant may be partly written and partly printed; for under the Interpretation Act (Rev. Stat. Can., chap. 1, s. 7 (23)), the expression "writing" "written" or any term of like import includes words printed, painted, engraved, lithographed or otherwise traced or copied. *R.* v. *Holden*, 1 Manitoba L.R., 579.

Prisoner had been committed for larceny under a warrant which disclosed no offence. Subsequently to the service on the gaoler of a writ of *Habeas Corpus* he received, another warrant of com-

mitment which was regular, and the court held that the second warrant of commitment was valid and sufficient to detain the prisoner in custody. *R.* v. *House*, 2 Manitoba L.R., 58.

74. At any time after all the examinations have been completed, and before the first sitting of the court at which any person so committed to prison or admitted to bail is to be tried such person may require and shall be entitled to have from the officer or person having the custody of the same, copies of the depositions on which he has been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of five cents for each folio of one hundred words.

RECOGNIZANCES TO PROSECUTE OR GIVE EVIDENCE.

75. Any justice before whom any witness is examined, may bind by recognizance (Q), the prosecutor and every such witness (except married women and infants, who shall find security for their appearance, if the justice sees fit) to appear at the next court of competent criminal jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence, as the case may be, against the person accused, which recognizance shall particularly specify the place of residence and the addition or occupation of each person entering into the same.

In reference to the provisions of section 140, it is important that the prosecutor be bound by recognizance, as in this section provided, to prosecute and give evidence against the accused.

76. The recognizance, being duly acknowledged by the person entering into the same, shall be subscribed by the Justice before whom the same is acknowledged, and a notice (Q 2) thereof, signed by the said Justice, shall, at the same time, be given to the person bound thereby.

A recognizance is an obligation of record whereby a man acknowledges that he is indebted to our Lady the Queen in a certain sum of money, which obligation is to be at an end upon the party performing whatever is required of him by a certain condition written either at the foot or on the back of the recognizance.

And in all cases where a Justice of the Peace is authorized or required to bind a person or make him give security to do anything, he may do so by recognizance, and it is the ordinary and proper form of doing it. Thus binding a man over to prosecute

or a witness to give evidence, is by recognizance. Sureties to keep the peace or be of good behaviour, are by recognizance.

A Justice cannot be ordered by *mandamus* to go a distance to take a recognizance of a party committed by him to prison. *Ex parte Hays*, 26 J.P., 309.

The recognizance is taken by stating to the party the substance of it, but in the second person, "You A. B. acknowledge yourself to owe to our Sovereign Lady the Queen," etc. The Justices must then give to each of the parties, sureties, etc., the notice (Q. 2) required by this section.

The party need not sign the recognizance, and the verbal acknowledgment is the date of it. *R.* v. *St. Albans*, 8 A. & E., 933.

The practical mode of taking the recognizance is as follows: The justice, or his clerk in the Justice's presence, states to the party bound (and to his sureties if there are any), the substance of the recognizance. The parties bound assent to, but do not sign the recognizance, the Justice alone appending his signature thereto, and the notice is then given in the form (Q. 2), to the prosecutor or witnesses. Care must be taken to suit the recognizance to the situation of the party bound, according to the variations of the form. Kerr's Acts, 87. See as to returning depositions, *Burgoyne* v. *Moffatt*, 5 Allen, 13. A coroner is required to comply with this section in cases of examinations before him. See s. 92.

77. The several recognizances so taken, together with the written information, if any, the depositions, the statement of the accused, and the recognizance of bail, if any, shall be delivered by the Justice, or he shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the court on the first day of the sitting thereof, or at such other time as the judge, justice or person who is to preside at such court, or at the trial, orders and appoints.

Where a charge of an offence committed in another jurisdiction is heard by a Justice within whose jurisdiction an offender has been apprehended under a warrant backed under the 49th section of the Act, the recognizances, depositions, etc., when returned to the Justice having jurisdiction where the offence was committed,

must be transmitted to the proper officer of the court where the case is to be tried, pursuant to the provisions of this section. See s. 87.

A recognizance of bail put in on behalf of a prisoner recited that he had been indicted at the Court of General Sessions of the Peace for two separate offences, and the condition was that he should appear at the next sitting of said court and plead to such indictment as might be found against him by the Grand Jury. At the next sitting the accused did not appear and no new indictment was found against him. It was held that the recitals sufficiently showed the intention to be that the accused should appear and answer the indictments already found and that an order estreating the recognizance was properly made. *Re Gauthreaux*, 9 P.R. (Ont.), 31.

78. If any witness refuses to enter into recognizance, the Justice, by his warrant (R), may commit him to the common gaol for the territorial division in which the person accused is to be tried, there to be imprisoned and safely kept until after the trial of such accused person, unless in the meantime such witness duly enters into a recognizance before a Justice for the territorial division in which such goal is situate.

79. If afterwards, for want of sufficient evidence in that behalf, or other cause, the justice before whom the accused person has been brought does not commit him or hold him to bail for the offence charged, such Justice, or any other Justice for the same territorial division, by his order (R 2) in that behalf, may order and direct the keeper of the gaol where the witness is in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

80. If any charge or complaint is made before any Justice that any person has committed, within the jurisdiction of such Justice, any of the offences following, that is to say: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, forcible entry or detainer, nuisance, keeping a gambling house, keeping a disorderly house, or any indecent assault, and such justice refuses to commit or to bail the person charged with such offence, to be tried for the same, then, if the prosecutor desires to prefer an indictment respecting the said offence, the said Justice shall take the recognizance of such prosecutor, to prosecute the said charge or complaint and transmit the recognizance, information and depositions, if any, to the proper officer, in the same manner as such Justice would have done in case he had committed the person charged to be tried for such offence.

Where a prosecutor *bona fide* prefers before a Justice and within his jurisdiction a charge or complaint in respect of an offence within the 140th section of this Act, and the Justice dismisses it for want of evidence, such dismissal is equivalent to a refusal to commit, and the prosecutor is entitled to require the Justice to take his recognizance to prosecute the charges or complaint by way of indictment. *Ex parte Gostling*, 16 Cox C.C., 77.

81. When any person appears before any Justice charged with a felony, or suspicion of felony, other than treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority*," and the evidence adduced is, in the opinion of such Justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the Justice, jointly, with some other Justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two Justices, will be sufficient to insure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two Justices shall take the recognizances (S and S 2) of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave; and when the offence committed or suspected to have been committed, is a misdemeanor, any one Justice before whom the accused appears may admit to bail in manner aforesaid,—and such Justice may, in his discretion, require such bail to justify upon oath as to their sufficiency, which oath the said Justice may administer; and in default of such person procuring sufficient bail, such Justice may commit him to prison, there to be kept until delivered according to law.

82. In all cases of felony or suspicion of felony, other than treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority*," and in all cases of misdemeanor, where the accused has been finally committed as herein provided, any judge of any superior or county court, having jurisdiction in the district or county within the limits of which the accused is confined, may in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into recognizance with sufficient sureties before two Justices, in such amount as the Judge directs, and thereupon the Justices shall issue a warrant of deliverance (S 3) as hereinafter provided, and shall attach thereto the order of the Judge directing the admitting of the accused to bail.

83. No Judge of a county court or Justices shall admit any person to bail

accused of treason or felony punishable with death, or felony under the "*Act respecting Treason and other Offences against the Queen's authority,*" nor shall any such person be admitted to bail, except by order of a superior court of criminal jurisdiction for the Province in which the accused stands committed, or of one of the Judges thereof, or in the Province of Quebec, by order of a Judge of the Court of Queen's Bench or Superior Court; and nothing herein contained shall prevent such courts or judges admitting any person accused of felony or misdemeanor to bail when they think it right so to do.

84. Whenever any Justice or Justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such Justice or Justices shall send to or caused to be lodged with the keeper of such prison, a warrant of deliverance (S 3) under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.

A prisoner in custody for larceny may be admitted to bail, when the evidence discloses very slight grounds for suspicion. *R.* v. *Jones*, 4 O.S., 18.

The Con. Stats. L.C., chap. 95, excepts persons committed for treason or felony, as well as persons convicted or in execution by legal process, who are not entitled to bail in term or vacation. *Ex parte Blossom*, 10 L.C.J., 43.

The Court may order bail in a case of perjury. *R.* v. *Johnson*, 8 L.C.J., 285. By the words of the Con. Stats. L.C., chap. 95, it is obligatory upon the Judge in a case of misdemeanor to admit to bail. *Ex parte Blossom*, 10 L.C.J., 31.

All misdemeanors whether common or otherwise are bailable. Under this section it is obligatory upon Justices of the Peace to admit to bail in all cases of misdemeanor. The statute is equally binding upon the Judges of the Superior Courts.

Several persons were accused of a misdemeanor, and in the opinion of the Judge presiding, the evidence adduced was positive against them. Two juries had been discharged because they could not agree upon a verdict. The Court ordered them to be committed to gaol without bail or mainprize, to be tried again at the next term and not to be discharged without further order from the Court. *R.* v. *Blossom*, 10 L.C.J., 29.

A prisoner was charged with conspiracy to kidnap one G.N.S. and steal and carry him away into the United States. The Grand Jury found a true bill against him for misdemeanor. He was twice tried for the offence, on the first occasion the jury after three days' deliberation, being unable to agree, were discharged; and on the second occasion, the jury did not agree after three days' deliberation, and were also discharged. It was held that under these circumstances the prisoner was entitled to bail by virtue of the Con. Stats. L.C., chap. 95, the circumstances raising a presumption of his innocence. *Ex parte Blossom*, 10 L.C.J. 30.

The word "may" in tl 81st section must be considered as conferring a power, and not as giving a discretion. The object of the Act is to declare that one Justice cannot bail in felony, but may in misdemeanor. *Ex parte Blossom*, 10 L.C.J., 67.

If an offence is bailable, and the party, at the time of his apprehension, is unable to obtain immediate sureties, he may at any time on producing proper persons as sureties be liberated from confinement. (*Ib.*), 68.

The reason why parties are committed to prison by Justices before trial, is for the purpose of ensuring or making certain their appearance to take their trial, and the same principle is to be adopted on an application for bail. It is not a question as to the guilt or innocence of the prisoner. On this account it is necessary to see whether the offence is serious and severely punishable, and whether the evidence is clear and conclusive. *R.* v. *Brynes*, 8 U.C.L.J., 76; *R.* v. *Scaife*, 9 Dowl. P.C., 553.

When the charge against the prisoner is that he procured a person to set fire to his house, with intent to defraud an insurance company, and it is shown that the prisoner attempted to bribe the constable to allow him to escape, the probability of his appearing to stand his trial is too slight for the Judge to order bail. *R.* v. *Brynes, supra.* The principle upon which a party committed to take his trial for an offence may be bailed, is founded chiefly upon the legal probability of his appearing to take his trial. Such probability does not exist in contemplation of law when a crime is of the highest magnitude, the evidence in support of the charge

strong, and the punishment the severest known to the law. *Ex parte Maguire*, 7 L.C.R., 59; *Ex parte Huot*, 8 Quebec L.R., 28.

On an application by prisoners in custody on a charge of murder under a coroner's warrant, it is proper to consider the probability of their forfeiting their bail if they know themselves to be guilty; and where in such a case there is such a presumption of the guilt of the prisoner as would warrant a Grand Jury in finding a true bill, they should not be admitted to bail. *R.* v. *Mullady*, 4 P.R. (Ont.), 314.

It has been held that although a statute may require the presence of three Justices to convict of an offence, yet one has power to bail the offender; and a second arrest for the same charge by the same complainant before the time appointed for the hearing is illegal. *King* v. *Orr*, 5 O.S., 724. But under the 81st section one Justice cannot bail except in the case of a misdemeanor.

It is a misdemeanor for Justices or Judges to exact excessive bail; and the party may also bring an action or apply for a criminal information.

It was held before the passing of the 16 Vic., chap. 179, that Magistrates were not liable for refusing to admit to bail on a charge of misdemeanor, in the absence of any proof of malice *Conroy* v. *McKenny*, 11 Q.B. (Ont.), 439; see *McKinley* v. *Munsie*, 15 C.P. (Ont.)., 230; see *R.* v. *Mosier*, 4 P.R. (Ont.), 64, as to bail.

A Justice of the Peace might perhaps in a matter in which he could properly act, and in which he was bound to admit a person charged with an offence to bail, be prosecuted for maliciously refusing to take bail. *McKinley* v. *Munsie*, 15 C.P. (Ont.), 236.

Where plaintiff was arrested and imprisoned by a Magistrate on an information laid by defendant himself, a Magistrate who was present when the Magistrate refused to grant bail, it was held in the absence of any evidence, that the defendant had directed the officer to take the plaintiff to prison, or had influenced the other Magistrate in sending him there, or that the officer was present when the defendant and the other Magistrate declined to take bail, and said they would send the plaintiff to prison, or that he

even knew that defendant had said anything about it, that the mere refusal of the defendant to admit the plaintiff to bail was not evidence to go to the jury, that the defendant authorized the illegal arrest and imprisonment of the plaintiff. (*Ib.*), 230.

A recognizance of bail only obliges the prisoner to appear to plead to such indictment as may be found against him. If, therefore, no indictment is found, his non-appearance will not forfeit the recognizance. *R.* v. *Ritchie*, 1 U.C.L.J., N.S., 272.

After the accused has appeared and pleaded not guilty to the indictment, no default can be recorded againt him without notice, unless it be on a day appointed for his appearance. *R.* v. *Croteau*, 9 L.C.R., 67.

By the terms of the 67th section it is entirely in the Justice's discretion, in every case, whether he will allow the accused to go on bail during an adjournment of the hearing. It is otherwise when the Justice has completed the examination and committed for trial, for then (as will be seen by sections 81 and 82) the accused is, in cases of misdemeanor, entitled to bail, but in felonies he is not so entitled. As a general rule it may be said that in practice it is not usual on a remand (especially where the precise nature or extent of the charge is undeveloped), for Magistrates to admit to bail in those cases in which an accused is not entitled to be bailed after committal, unless the amount of property involved is very small. Kerr's Acts, 90.

Under the 7th section of the Act, certain functionaries, such as any Police Magistrate, District Magistrate, or Stipendiary Magistrate, have the power of two Justices of the Peace, and may admit to bail.

The amount of the bail is fixed by the Justice, the character of the charge and evidence, position of the accused being considered. Sureties are usually householders, but it is in the discretion of the Justice to accept whom he will; he may examine proposed sureties on oath, but the examination should tend to the sufficiency of the surety, and not to character. *R.* v. *Badger*, 4 Q.B., 468.

The qualification of property rather than of character is the main consideration. *R.* v. *Saunders*, 2 Cox, 249. The Justices

may if they think fit, require twenty-four or forty-eight hours notice of the bail proposed to be given to the other side.

The number of bail is usually two men of ability, but the Court of Queen's Bench, on a commitment for treason or felony, often requires four. *R.* v. *Shaw*, 6 D. & R., 154.

In determining as to the propriety of taking bail, the nature of the crime and punishment, and the weight of evidence are to be considered. *Re Robinson*, 23 L.J.M.C., 25; *R.* v. *Barronet*, 1 E. & B. 1. In the case of murder, Justices never admit to bail if the evidence be strong against the accused, and the same in the case of stabbing or wounding where death is likely to ensue.

Prisoners charged with murder cannot be admitted to bail, unless it be under very extreme circumstances, as where facts are brought before the Court to show that the bill cannot be sustained. The fact that prisoners indicted for wilful murder cannot be tried until the next term, is no ground for admitting them to bail. *R.* v. *Murphy*, 1 James, 158. But accessories after the fact, who have merely harboured prisoners guilty of murder, may be admitted to bail (*Ib*).

A prisoner charged with murder may in some cases in the exercise of a sound discretion be admitted to bail. On an application for bail, the Court may look into the information, and, if they find good ground for a charge of felony, may remedy a defect in the commitment, by charging a felony in it so that the prisoner would not be entitled to bail on the ground of the defective commitment. *R.* v. *Higgins*, 4 O.S., 83. A person charged with having murdered his wife in Ireland will not be admitted to bail, until a year has elapsed from the time of the first imprisonment, although no proceedings have in the meantime been taken by the Crown, and no answer has been received to a communication from the Provincial to the Home Government on the subject. *R.* v. *Fitzgerald*, 3 O. S., 300.

When a person charged with murder applies for bail, the Judge will look to the gravity of the offence, the weight of the evidence and the severity of the punishment, and may refuse bail. *Ex parte Corriveau*, 6 L.C.R., 249.

A prisoner charged with felony may be released on bail, if it is satisfactorily established, that, unless liberated, he will in all probability not live until the time fixed for his trial. *Ex parte Blossom*, 10 L.C.J., 71.

A prisoner confined upon a charge of arson, may be admitted to bail after a bill found by a Grand Jury, if the depositions against him are found to create but a very slight suspicion of his guilt. *Ex parte Maguire*, 7 L.C.R., 57.

Bail was granted after commitment on a charge of arson, where it was not proved by the depositions produced that the prisoner was guilty, though the depositions also failed to show that he was innocent. *Ex parte Onasakeurat*, 21 L.C.J., 219.

DELIVERY OF ACCUSED TO PRISON.

85. The constable or any of the constables, or other person to whom any warrant of commitment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt (T) for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

PROCEEDINGS WHERE OFFENDER IS APPREHENDED IN A DISTRICT IN WHICH THE OFFENCE WAS NOT COMMITTED.

86. Whenever a person appears or is brought before a justice in the territorial division, wherein such justice has jurisdiction, charged with an offence alleged to have been committed within any territorial division in Canada wherein such justice has not jurisdiction, such justice shall examine such witnesses and receive such evidence in proof of the charge as may be produced before him within his jurisdiction ; and if in his opinion, such testimony and evidence are sufficient proof of the charge made against the accused, the justice shall thereupon commit him to the common gaol for the territorial division where the offence is alleged to have been committed, or shall admit him to bail as hereinbefore mentioned, and shall bind over the prosecutor (if he has appeared before him) and the witnesses, by recognizance as hereinbefore mentioned.

87. If the testimony and evidence are not, in the opinion of the justice, sufficient to put the accused upon his trial for the offence with which he is

charged, the justice shall, by recognizance, bind over the witness or witnesses whom he has examined to give evidence as hereinbefore mentioned; and such justice shall, by warrant (U), order the accused to be taken before any justice in and for the territorial division where the offence is alleged to have been committed, and shall, at the same time, deliver up the information and complaint, and also the depositions and recognizances so taken by him to the constable who has the execution of the last mentioned warrant, to be by him delivered to the justice before whom he takes the accused, in obedience to the warrant, and the despositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the last mentioned justice,—and shall, together with the depositions and recognizances taken by the last mentioned justice in the matter of the charge against the accused, be transmitted to the clerk of the court or other proper officer where the accused ought to be tried, in the manner and at the time herein mentioned, if the accused is committed for trial upon the charge, or is admitted to bail.

88. If the accused is taken before the justice last aforesaid, by virtue of the said last mentioned warrant, the constable or other person or persons to whom the said warrant is directed, and who has conveyed the accused before such last mentioned justice shall, upon producing the accused before such justice, and delivering him into the custody of such person as the said justice directs or names in that behalf, be entitled to be paid his costs, and expenses of conveying the accused before such justice.

89. Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate (U 2) of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.

90. The said constable, on producing such receipt or certificate to the proper officer for paying such charges, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying the accused into such other territorial division, and returning from the same.

91. If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void.

DUTIES OF CORONERS AND JUSTICES.

92. Every coroner, upon any inquisition taken before him, whereby any person is indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the accused, if he can be apprehended,

reduce to writing the evidence given to the jury before him, or as much thereof as is material, giving the accused full opportunity of cross-examination; and the coroner shall have authority to bind by recognizance all such persons as know or declare anything material touching the manslaughter or murder, or the offence of being accessory to murder, to appear at the next court of oyer and terminer, or gaol delivery, or other court or term or sitting of a court, at which the trial is to be, then and there to prosecute or give evidence against the person charged; and every such coroner shall certify and subscribe the evidence and all the recognizances, and also the inquisition taken before him, and shall deliver the same to the proper officer of the court at the time and in the manner specified in the *seventy-seventh* section of this Act.

93. When any person has been committed for trial by any justice or coroner, the prisoner, his counsel, attorney, or agent may notify the committing justice or coroner, that he will, as soon as counsel can be heard, move before a superior court of the Province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under the *eighty-second* section of this Act, for an order to the justice or coroner for the territorial division where such prisoner is confined, to admit such prisoner to bail,—whereupon such committing justice or coroner shall, as soon as may be, transmit to the office of the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court or other proper officer (as the case may be), close under his hand and seal, a certified copy of all informations, examinations and other evidences, touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there is; and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question.

94. Upon such application to any such court or judge, as in the next preceding section mentioned, the same order concerning the prisoner being bailed or continued in custody shall be made as if the prisoner was brought up upon a *habeas corpus*.

95. If any justice or coroner neglects or offends in anything contrary to the true intent and meaning of any of the provisions of the *three* sections next preceding, the court to whose officer any such examination, information, evidence, bailment, recognizance or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, impose such fine upon every such justice or coroner as the court thinks fit.

96. The provisions of this Act relating to justices and coroners, shall apply to the justices and coroners not only of districts and counties at large, but also of all other territorial divisions and jurisdictions.

In the North-West Territories the Indian Commissioner for the Territories, the Judges of the Supreme Court, the Commissioner and Assistant Commissioner of the North-West Mounted Police, and such other persons as the Lieutenant Governor, from time to time appoints, shall be coroners in and for the Territories, Rev. Stat. Can., chap 50, s. 82.

The inquisition of a coroner is defective if it does not identify the body of the deceased as that of the person with whose death the prisoner is charged but if the evidence shows a felony the prisoner may be recommitted. *R.* v. *Berry*, 9 P.R., Ont., 123.

It is a misdemeanor to burn or otherwise dispose of a dead body, with intent thereby to prevent the holding upon such body of an intended coroner's inquest and so to obstruct a coroner in the execution of his duty in a case where the inquest is one which the coroner has jurisdiction to hold.

A coroner has jurisdiction to hold and is justified in holding an inquest if he honestly believes information which has been given him to be true, which, if true, would make it his duty to hold such inquest. *R.* v. *Stephenson*, 13 Q.B.D., 331, 15 Cox, C.C., 379.

To burn a dead body instead of burying it is not a misdemeanor unless it is so done as to amount to a public nuisance. If an inquest ought to be held upon a dead body, it is a misdemeanor so to dispose of the body as to prevent the coroner from holding an inquest. *R.* v. *Price*, 12 Q.B.D., 247.

REMOVAL OF PRISONERS.

97. The Governor in Council or the Lieutenant Governor in Council of any Province may, if, from the insecurity or unfitness of any gaol of any county or district for the safe custody of prisoners, or for any other cause, he deems it expedient so to do, order any person charged with treason or felony confined in such gaol or for whose arrest a warrant has been issued, to be removed to any other gaol of any other county or district in the same Province, to be named in such order, there to be detained until discharged in due course of law, or removed for the purpose of trial to the gaol of the county or district in which the trial is to take place; and a copy of such order, certified by the clerk of the Queen's Privy Council for Canada, or the clerk of the Executive Council, or by any person acting as such clerk of the

Privy Council or Executive Council, shall be sufficient authority to the sheriffs and gaolers of the counties or districts respectively named in such order, to deliver over and to receive the body of any person named in such order.

98. The Governor in Council or a Lieutenant Governor in Council may, in any such order, direct the sheriff in whose custody the person to be removed then is, to convey the said person to the gaol of the county or district in which he is to be confined, and the sheriff or gaoler of such county or district to receive the said person, and to detain him until he is discharged in due course of law, or is removed for the purpose of trial to any other county or district.

99. If a true bill for treason or felony, is afterwards returned by any grand jury of the county or district from which any such person is removed, against any such person, the court into which such true bill is returned, may make an order for the removal of such person, from the gaol in which he is then confined, to the gaol of the county or district in which such court is sitting, for the purpose of his being tried in such county or district.

100. The Governor in Council or a Lieutenant Governor in Council may make an order as hereinbefore provided in respect of any person under sentence of imprisonment or under sentence of death,—and, in the latter case, the sheriff to whose gaol the prisoner is removed shall obey any direction given by the said order or by any subsequent order in council, for the return of such prisoner to the custody of the sheriff by whom the sentence is to be executed.

101. When an indictment is found against any person and such person is confined in any penitentiary or gaol within the jurisdiction of such court, under warrant of commitment or under sentence for some other offence, the court may, by order in writing, direct the warden of the penitentiary or the keeper of such gaol, to bring up such person to be arraigned on such indictment, without a writ of *habeas corpus*, and the warden or keeper shall obey such order.

CHANGE OF VENUE.

102. Whenever it appears to the satisfaction of the court or judge hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person charged with felony, or misdemeanor should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court before which such person is or is liable to be indicted may, at any term or sitting thereof, and any judge who might hold or sit in such court may, at any other time, either before or after the presentation of a bill of indictment, order that the

trial shall be proceeded with in some other district, county or place within the same Province, named by the court or judge in such order; but such order shall be made upon such conditions as to the payment of any additional expense thereby caused to the accused, as the court or judge thinks proper to prescribe:

2. Forthwith upon the order of removal being made by the court or judge, the indictment, if any has been found against the prisoner, and all inquisitions, informations, depositions, recognizances and other documents whatsoever, relating to the prosecution against him, shall be transmitted by the officer having the custody thereof to the proper officer of the court at the place where the trial is to be had, and all proceedings in the case shall be had, or, if previously commenced, shall be continued in such district, county or place, as if the case had arisen or the offence had been committed therein:

3. The order of the court, or of the judge made under this section, shall be a sufficient warrant, justification and authority, to all sheriffs, gaolers and peace officers, for the removal, disposal and reception of the prisoner, in conformity with the terms of such order; and the sheriff may appoint and empower any constable to convey the prisoner to the gaol in the district, county or place in which the trial is ordered to be had:

4. Every recognizance entered into for the prosecution of any person, and every recognizance, as well of any witness to give evidence, as of any person for any offence, shall, in case any such order, as provided by this section, is made, be obligatory on each of the persons bound by such recognizance as to all things therein mentioned with reference to the said trial, at the place where such trial is so ordered to be had, in like manner as if such recognizance had been originally entered into for the doing of such things at such last mentioned place: Provided that notice in writing shall be given either personally or by leaving the same at the place of residence of the persons bound by such recognizance, as therein described, to appear before the court, at the place where such trial is ordered to be had.

INDICTMENTS.

103. It shall not be necessary that any indictment or any record or document relative to any criminal case be written on parchment.

104. It shall not be necessary to state any venue in the body of any indictment; and the district, county or place named in the margin thereof, shall be the venue for all the facts stated in the body of the indictment; but if local description is required, such local description shall be given in the body thereof.

105. The abolition of the benefit of clergy shall not prevent the joinder in any indictment of any counts which might have been joined but for such abolition.

106. Any number of the matters, acts or deeds by which any compassings, imaginations, inventions, devices or intentions, or any of them, have been expressed, uttered or declared, may be charged against the offender, for any felony, under the "*Act respecting Treason and other Offences against the Queen's authority.*"

107. In any indictment for perjury, or for unlawfully, illegally, falsely, fraudulently, deceitfully, maliciously or corruptly taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offence charged against the accused, and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing was taken, made, signed or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding, either in law or equity, and without setting forth the commission or authority of the court or person before whom such offence was committed.

108. In every indictment for subornation of perjury or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice-certificate or other writing, it shall be sufficient, whenever such perjury or other offence aforesaid has been actually committed, to allege the offence of the person who actually committed such perjury or other offence, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully and corruptly did cause and procure the said person to do and commit the said offence in manner and form aforesaid; and whenever such perjury or other offence aforesaid has not actually been committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

109. In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the accused did feloniously, wilfully, of his malice aforethought, kill and murder the deceased,—and it shall be sufficient in any indictment for manslaughter to charge that the accused did feloniously kill and slay the deceased; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter, to charge the principal with the murder or manslaughter,

as the case may be, in the manner hereinbefore specified, and then to charge the accused as an accessory, in the manner heretofore used and accustomed, or by law provided.

110. In any indictment for stealing, or, for any fraudulent purpose, destroying, cancelling, obliterating or concealing the whole or any part of any document of title to land, it shall be sufficient to allege such document to be or contain evidence of the title, or of part of the title, or of some matter affecting the title, of the person or of some one of the persons having an interest, whether vested or contingent, legal or equitable, in the real property to which the same relates, and to mention such real property or some part thereof.

111. Any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, committed by the offender, against Her Majesty, or against the same municipality, master or employer, within the space of six months from the first to the last of such acts, may be charged in any indictment—and if the offence relates to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security ; and such allegation, so far as regards the description of the property, shall be sustained if the offender is proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed is not proved, or if he is proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof although such piece of coin or valuable security was delivered to him in order that some part of the value thereof should be returned to the person delivering the same or to some other person, and such part has been returned accordingly.

112. In any indictment for obtaining or attempting to obtain any property by false pretences it shall be sufficient to allege that the person accused did the act with intent to defraud, and without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security ; and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud.

113. It shall not be necessary to allege, in any indictment against any person for wrongfully and wilfully pretending or alleging that he inclosed and sent, or caused to be inclosed and sent, in any post letter, any money, valuable security or chattel, or to prove on the trial that the act was done with intent to defraud.

114. In any indictment for forging, altering, uttering, offering, disposing of or putting off any instrument whatsoever, where it is necessary to allege an intent to defraud, it shall be sufficient to allege that the person accused did the act with intent to defraud, without alleging an intent to defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud.

115. In any indictment against any person for buying, selling, receiving, paying or putting off, or offering to buy, sell, receive, pay or put off, without lawful authority or excuse, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, at or for a lower rate or value than the same imports or was apparently intended to import, it shall be sufficient to allege that the person accused did buy, sell, receive, pay or put off, or did offer to buy, sell, receive, pay or put off the false or counterfeit coin, at or for a lower rate of value than the same imports, or was apparently intended to import, without alleging at or for what rate, price or value the same was bought, sold, received, paid or put off, or offered to be bought, sold, received, paid or put off.

116. It shall be sufficient in any indictment for any offence against the "*Act respecting Malicious Injuries to Property*," where it is necessary to allege an intent to injure or defraud, to allege that the person accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to injure or defraud, as the case may be.

117. In any indictment for any offence committed in or upon or with respect to,—

(*a.*) Any church, chapel, or place of religious worship, or anything made of metal fixed in any square or street, or in any place dedicated to public use or ornament, or in any burial-ground,—

(*b.*) Any highway, bridge, court-house, gaol, house of correction, penitentiary, infirmary, asylum, or other public building,—

(*c.*) Any railway, canal, lock, dam, or other public work, erected or maintained in whole or in part at the expense of Canada, or of any of the Provinces of Canada, or of any municipality, county, parish or township, or other subdivision thereof,—

(*d.*) Any materials, goods or chattels belonging to or provided for, or at the expense of Canada, or of any such province, or of any municipality or other

sub-division thereof, to be used for making, altering or repairing any highway or bridge, or any court-house or other such building, railway, canal, lock, dam or other public work as aforesaid, or to be used in or with any such work, or for any other purpose whatsoever,—

(*e.*) The whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill petition, answer decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever, of or belonging to any court of justice, or relating to any cause or matter, begun, depending or terminated in any such court, or of any original document in any wise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in any Government or public office,—

(*f.*) The whole or any part of any will, codicil or other testamentary instrument, or,—

(*g.*) Any writ of election, return to a writ of election, indenture, poll-book, voters' list, certificate, affidavit, report, document or paper, made, prepared or drawn out according to any law respecting provincial, municipal or civic elections,—

It shall not be necessary to allege that any such property, instrument or article is the property of any person.

118. If, in any indictment for any offence, it is requisite to state the ownership of any property, real or personal, which belongs to or is in possession of more than one person, whether such persons are partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons and to state the property to belong to the person so named, and another or others as the case may be.

119. If, in any indictment for any offence, it is necessary for any purpose to mention any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision and that of the next preceding section shall extend to all joint stock companies and trustees.

120. In any indictment for any offence committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence or other thing erected or provided by any trustees or commissioners. in pursuance of any Act in force in Canada, or in any Province thereof, for making any turnpike road, or to any conveniences or appurtenances thereunto respectively belonging, or to any materials, tools or implements provided for making, altering or repairing any such road, it shall be sufficient to state any such property to belong to the trustees or commissioners of such road, without specifying the names of such trustees or commissioners.

121. In any indictment for any offence committed on or with respect to any buildings, or any goods or chattels, or any other property, real or personal, in the occupation or under the superintendence, charge or management of any public officer or commissioner, or any county, parish, township or municipal officer or commissioner, it shall be sufficient to state any such property to belong to the officer or commissioner in whose occupation or under whose superintendence, charge or management such property is, and it shall not be necessary to specify the names of any such officers or commissioners.

122. All property, real and personal, whereof any body corporate has, by law, the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate.

123. In any indictment against any person for stealing any oysters or oyster brood from any oyster bed, laying or fishery, it shall be sufficient to describe, either by name or otherwise, the bed, laying or fishery in respect of which any of the said offences has been committed, without stating the same to be in any particular county, district or local division.

124. In any indictment for any offence mentioned in sections twenty-five to twenty-nine, both inclusive, of "*The Larceny Act*," it shall be sufficient to lay the property in Her Majesty, or in any person or corporation, in different counts in such indictment; and any variance in the latter case, between the statement in the indictment and the evidence adduced, may be amended at the trial; and if no owner is proved the indictment may be amended by laying the property in Her Majesty.

125. In any indictment for any offence committed in respect of any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the Legislature of any Province of Canada, for the payment of any fee, rate or duty whatsoever, the property therein may be laid in the person in whose possession, as the owner thereof, it was when the larceny or offence was committed, or in Her Majesty, if it was then unissued, or in the possession of any officer or agent of the Government of Canada or of the Province, by authority of the Legislature whereof it was issued or prepared for issue.

126. In every case of larceny, embezzlement or fraudulent application or disposition of any chattel, money or valuable security, under sections fifty-three, fifty-four and fifty-five of "*The Larceny Act*," the property in any such chattel, money or valuable security may, in the warrant of commitment by the Justice of the Peace before whom the offender is charged, and in the indictment preferred against such offender, be laid in Her Majesty, or in the municipality, as the case may be.

127. An indictment in the common form for larceny may be preferred against any person who steals any chattel let to be used by him in or with any house or lodging,—and in every case of stealing any fixture so let to be used, an indictment in the same form as if the offender was not a tenant or lodger may be preferred,—and in either case the property may be laid in the owner or person letting to hire.

128. No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears upon the record" or "as appears by the record," or of the words "with force and arms," or of the words "against the peace,"—or for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes" or *vice versâ*, or for the omission of such words, —or for the want of an addition or for an imperfect addition of any person mentioned in the indictment, or because any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name,—or for omitting to state the time at which the offence was committed in any case in which time is not of the essence of the offence or for stating the time imperfectly or for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened,—or for want of a proper or perfect venue, or for want of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant,—or for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case in which the value or price or amount of damage, injury or spoil is not of the essence of the offence.

129. Whenever, in any indictment, it is necessary to make an averment as to any money or to any note of any bank, or Dominion or Provincial note, it shall be sufficient to describe such money or note simply as money, without any allegation, so far as regards the description of the property, specifying any particular coin or note; and such averment shall be sustained by proof of any amount of coin or of any such note, although the particular species of coin of which such amount was composed or the particular nature of the note is not proved.

130. Whenever it is necessary to make an averment in an indictment, as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy or *fac simile* of the whole or of any part thereof.

131. In any indictment for forging, altering, offering, uttering, disposing of

or putting off any instrument, stamp, mark or thing, it shall be sufficient to describe the same by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof or otherwise describing the same or the value thereof.

132. In any indictment for engraving or making the whole or any part of any instrument, matter or thing whatsoever, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever has been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing whatsoever has been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same is usually known, without setting out any copy or *fac simile* of the whole or any part of such instrument, matter or thing.

133. Any number of accessories at different times to any felony may be charged with substantive felonies, in the same indictment, and may be tried together, notwithstanding the principal felon, is not included in the same indictment or is not in custody or amenable to justice.

134. Several counts may be inserted in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, committed by him against the same person, within six months from the first to the last of such acts, and all or any of them may be proceeded upon.

135. In any indictment containing a charge of feloniously stealing any property, a count, or several counts, for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen may be added, and in any indictment for feloniously receiving any property, knowing it to have been stolen, a count for feloniously stealing the same may be added.

136. Every one who receives any chattel, money, valuable security or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling and otherwise disposing whereof, amounts to a felony, either at common law or by statute, knowing the same to have been feloniously stolen, taken, extorted, obtained embezzled or disposed of, may be indicted and convicted, either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice: Provided, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

137. Every such receiver may, if the offence is a misdemeanor, be indicted and tried for the misdemeanor, whether the person guilty of the principal misdemeanor has or has not been previously convicted thereof, or is or is not amenable to justice.

138. Any number of receivers at different times, of property, or any part or parts thereof, so stolen, taken, extorted, obtained, embezzled or otherwise disposed of at one time, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon is not included in the same indictment, or is not in custody or amenable to justice.

139. In any indictment for any indictable offence, committed after a previous conviction or convictions for any felony, misdemeanor, or offence or offences punishable upon summary conviction (and for which a greater punishment may be inflicted on that account), it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places convicted of felony or of a misdemeanor, or of an offence or offences punishable upon summary conviction, as the case may be, and to state the substance and effect only, omitting the formal part of the indictment and conviction, or of the summary conviction, as the case may be, for the previous offence without otherwise describing the previous offence or offences.

PRELIMINARY REQUIREMENTS AS TO CERTAIN INDICTMENTS.

140. No bill of indictment for any of the offences following, that is to say: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretenses, forcible entry or detainer, nuisance, keeping a gambling house, keeping a disorderly house, or any indecent assault, shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless the indictment for such offence is preferred by the direction of the Attorney General or Solicitor General for the Province, or by the direction or with the consent of a court or judge having jurisdiction to give such direction or to try the offence:

2. Nothing herein shall prevent the presentment to or finding by a grand jury of any bill of indictment, containing a count or counts for any of such offences, if such count or counts are such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts are founded, in the opinion of the court in or before which the said bill of indictment is preferred, upon the facts or evidence disclosed in any examination or deposition taken before a justice in the presence of the person accused or proposed to be accused by such bill of indictment, and transmitted or delivered to such court in due course of law.

The counsel prosecuting for the crown may give the direction required by this statute in the name of the attorney or solicitor-general, the latter having power to delegate his authority. *R.* v. *Abrahams*, 24 L.C.J., 325.

It will be observed that the statute applies to obtaining money or other property by false pretences and not to an *attempt* to obtain it. Therefore in the latter case the prosecutor need not as a preliminary to the finding of the indictment be bound over to give evidence. *R.* v. *Barton*, 13 Cox C.C., 71.

In considering the sufficiency of a recognizance to prosecute under this section, reference may be made to the accompanying depositions to ascertain the particulars of the offence to be charged. *R.* v. *Bell*, 12 Cox C.C., 37.

PLEAS.

141. No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against him in any court, or to imparl, or to have time allowed him to plead or demur to any such indictment: Provided always, that if the court, before which any person is so indicted, upon the application of such person, or otherwise, is of opinion that he ought to be allowed a further time to plead or demur or to prepare for his defence, or otherwise, such court may grant such further time to plead or demur, or may adjourn the receiving or taking of the plea or demurrer and the trial, or, as the case may be, the trial of such person, to a future time of the sittings of the court or to the next or any subsequent session or sittings of the court, and upon such terms, as to bail or otherwise, as to the court seem meet, and may, in the case of adjournment to another session or sitting, respite the recognizances of the prosecutor and witnesses accordingly,—in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sittings, without entering into any fresh recognizances for that purpose.

142. No indictment shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of any person offering such plea; but if the court is satisfied, by affidavit or otherwise, of the truth of such plea, the court shall forthwith cause the indictment to be amended according to the truth, and shall call upon such person to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

143. Every objection to any indictment for any defect apparent on the face thereof, shall be taken by demurrer or motion to quash the indictment, before

the defendant has pleaded, and not afterwards; and every court before which any such objection is taken may, if it is thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared; and no motion in arrest of judgment shall be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under the authority of this Act.

144. If any person, being arraigned upon any indictment for any indictable offence, pleads thereto a plea of "not guilty," he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court may, in the usual manner, order a jury for the trial of such person accordingly.

145. If any person, being arraigned upon any indictment for any indictable offence, stands mute of malice, or will not answer directly to the indictment, the court may order the proper officer to enter a plea of "not guilty," on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

146. In any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.

147. No plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder is for the same offence as that charged in the indictment.

LIBEL.

148. Every one accused of publishing a defamatory libel may plead that the defamatory matter was true, and that it was for the public benefit that such matter should be published, to which plea the prosecutor may reply generally, denying the whole thereof.

149. Without such plea, the truth of the matters charged as libellous in any such indictment or information, or that it was for the public benefit that such matter should have been published, shall in no case be inquired into.

150. If, after such plea, the defendant is convicted on such indictment or information, the court, in pronouncing sentence, may consider whether the guilt of the defendant is aggravated or mitigated by such plea, and by the evidence given to prove or disprove the same.

151. In addition to such plea of justification, the defendant may plead not guilty; and no defence otherwise open to the defendant under the plea of not guilty shall be taken away or prejudiced by reason of such special plea.

152. On the trial of any indictment or information for the making or publishing of any defamatory libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty, upon the whole matter put in issue upon such indictment or information, and shall not be required or directed, by the court or judge before whom such indictment or information is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a defamatory libel, and of the sense ascribed to the same in such indictment or information; but the court or judge before whom such trial is had shall, according to the discretion of such court or judge, give the opinion and direction of such court or Judge to the jury, on the matter in issue, as in other criminal cases; and the jury may, on such issue, find a special verdict if they think fit so to do; and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act.

153. In the case of an indictment or information by a private prosecutor for the publication of a defamatory libel, if judgment is given against the defendant he shall be liable for the costs sustained by the prosecutor, by reason of such indictment or information; and if judgment is given for the defendant he shall be entitled to recover from such prosecutor the costs incurred by him, by reason of such indictment or information; and such costs, so to be recovered by the prosecutor or defendant respectively, shall be taxed by the court, judge, or the proper officer of the court before which such indictment or information is tried.

154. The costs mentioned in the next preceding section shall be recoverable either by warrant of distress issued out of the said court, or by action or suit as for an ordinary debt.

CORPORATIONS.

155. Every corporation against which a bill of indictment for a misdemeanor is found, at any court having criminal jurisdiction, shall appear by attorney in the court in which such indictment is found, and plead or demur thereto.

156. No writ of *certiorari* shall be necessary to remove any such indictment into any superior court with the view of compelling the defendant to plead thereto; nor shall it be necessary to issue any writ of *distringas*, or other process, to compel the defendant to appear and plead to such indictment.

157 The prosecutor, when any such indictment is found against any corporation, or the clerk of the court, when such indictment is founded on a presentment of the grand jury, may cause a notice thereof to be served on the mayor or chief officer of such corporation, or upon the clerk or secretary thereof, stating the nature and purport of such indictment, and that, unless

such corporation appears and pleads thereto in two days after the service of such notice, a plea of not guilty will be entered thereto for the defendant by the court, and that the trial thereof will be proceeded with in like manner as if the said corporation had appeared and pleaded thereto.

158. If such corporation does not appear, in the court in which the indictment has been found, and plead or demur thereto within the time specified in the said notice, the judge presiding at such court may, on proof to him by affidavit of the due service of such notice, order the clerk or proper officer of the court to enter a plea of "not guilty" on behalf of such corporation; and such plea shall have the same force and effect as if such corporation had appeared by its attorney and pleaded such plea.

159. The court may,—whether such corporation appears and pleads to the indictment, or whether a plea of "not guilty" is entered by order of the court,—proceed with the trial of the indictment in the absence of the defendant in the same manner as if the corporation had appeared at the trial and defended the same; and, in case of conviction, may award such judgment and take such other and subsequent proceedings to enforce the same as are applicable to convictions against corporations.

JURIES AND CHALLENGES.

160. Every person qualified and summoned as a grand juror or as a petit juror, according to the laws in force for the time being in any Province of Canada, shall be and shall be held to be duly qualified to serve as such grand or petit juror in criminal cases in that Province, whether such laws were in force or were or are enacted by the Legislature of the Province before or after such Province became a part of Canada, but subject always to any provision in any Act of the Parliament of Canada, and in so far as such laws are not inconsistent with any such Act.

161. No alien shall be entitled to be tried by a jury *de medietate linguæ*, but shall be tried as if he was a natural born subject.

162. Any quaker or other person allowed by law to affirm instead of swearing in civil cases, or solemnly declaring that the taking of any oath is, according to his religious belief, unlawful, who is summoned as a grand or petit juror in any criminal case shall, instead of being sworn in the usual form, be permitted to make a solemn affirmation beginning with the words following: "I, A.B. do solemnly, sincerely and truly affirm," and then may serve as a juror as if he had been sworn, and his declaration or affirmation shall have the same effect as an oath to the like effect; and in any record or proceeding relating to the case, it may be stated that the jurors were sworn or affirmed; and in any indictment, the words "upon their oath present," shall be understood to include the affirmation of any juror affirming instead of swearing.

163. If any person arrainged for treason or felony challenges peremptorily a greater number of persons returned to be of the jury than twenty, in a case of indictment for treason or felony punishable with death, or twelve, in a case of indictment for any other felony, or four, in a case of indictment for misdemeanor, every peremptory challenge beyond the number so allowed in the said cases respectively, shall be void, and the trial of such person shall proceed as if no such challenge had been made ; but nothing herein contained shall be construed to prevent the challenge of any number of jurors for cause.

164. In all criminal trials, four jurors may be peremptorily challenged on the part of the Crown ; but this shall not be construed to affect the right of the Crown to cause any juror to stand aside until the panel has been gone through, or to challenge any number of jurors for cause.

165. The right of the Crown to cause any juror to stand aside until the panel has been gone through, shall not be exercised on the trial of any indictment or information by a private prosecutor for the publication of a defamatory libel.

166. In those districts in the Province of Quebec in which the sheriff is required by law to return a panel of petit jurors, composed one half of persons speaking the English language, and one half of persons speaking the French language, he shall, in his return, specify separately those jurors whom he returns as speaking the English language, and those whom he returns as speaking the French language respectively ; and the names of the jurors so summoned shall be called alternately from such lists :

2. Whenever any person accused of treason or felony elects to be tried by a jury composed one half of persons skilled in the language of the defence, the number of peremptory challenges to which he is entitled shall be divided, so that he shall only have the right to challenge one half of such number from among the English speaking jurors and one half from among the French speaking jurors.

3. This section applies only to the Province of Quebec.

167. Whenever any person who is arrainged before the Court of Queen's Bench for Manitoba, demands a jury composed for the one half at least of persons skilled in the language of the defence, if such language is either English or French, he shall be tried by a jury composed for the one half at least of the persons whose names stand first in succession upon the general panel, and who, on appearing, and not being lawfully challenged, are found, in the judgment of the court, to be skilled in the language of the defence :

2. Whenever, from the number of challenges, or any other cause, there is, in any such case, a deficiency of persons skilled in the language of the defence, the court shall fix another day for the trial of such case, and the sheriff shall

supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the court orders, and as are found inscribed next in succession on the list of petit jurors :

3. Whenever a person accused of treason or felony elects to be tried by a jury composed one half of persons skilled in the language of the defence, the number of peremptory challenges to which he is entitled shall be divided, so that he shall only have the right to challenge one half of such number from among the English speaking jurors, and one half from among the French speaking jurors :

4. This section applies only to the Province of Manitoba.

168. Whenever, in any criminal case, the panel has been exhausted by challenge, or by default of jurors by non-attendance or not answering when called, or from any other cause, and a complete jury for the trial of such case cannot be had by reason thereof, then, upon request made on behalf of the Crown, the court may, in its discretion, order the sheriff or other proper officer forthwith to summon such number of good men of the district, county or place, whether on the roll of jurors or otherwise qualified as jurors or not, as the court deems necessary and directs, in order to make up a full jury :

2. Such sheriff or officer shall forthwith summon by word of mouth or in writing, the number of persons he is so required to summon and add their names to the general panel of jurors returned to serve at that court, and, subject to the right of the Crown and of the accused respectively, as to challenge or direction to stand aside, the persons whose names are so added to the panel shall, whether otherwise qualified or not, be deemed duly qualified as jurors in the case, and so until a complete jury is obtained, and the trial shall then proceed as if such jurors were originally returned duly and regularly on the panel ; and if, before such order, one or more persons have been sworn or admitted unchallenged on the jury, he or they may be retained on the jury, or the jury may be discharged, as the court directs:

3. Every person so summoned as a juror shall forthwith attend and act in obedience to the summons, and if he makes default shall be punishable in like manner as a juror summoned in the usual way ; and such jurors so newly summoned shall be added to the panel for such case only.

169. In all criminal cases, less than felony, the jury may, in the discretion of the court, and under its direction as to the conditions, mode and time, be allowed to separate during the progress of the trial.

170. Nothing in this Act shall alter, abridge or affect any power or authority which any court or judge has when this Act takes effect, or any practice or form in regard to trials by jury, jury process, juries or jurors, except in cases where such power or authority is expressly altered by or is inconsistent with the provisions of this Act.

VIEW.

171. Whenever it appears to any court having criminal jurisdiction or to any judge thereof, that it will be proper and necessary that the jurors, or some of them, who are to try the issues in such case, should have a view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues, whether such place is situate within the county or united counties in which the venue in any such case is laid, or without such county or united counties, in any other county, such court or judge may order a rule to be drawn up, containing the usual terms,—and, if such court or judge thinks fit, also requiring the person applying for the view to deposit in the hands of the sheriff of the county or united counties in which the venue in any such case is laid, a sum of money to be named in the rule, for payment of the expenses of the view.

172. All the duties and obligations now imposed by law on the several sheriffs and other persons when the place to be viewed is situate in the county or united counties in which the venue in any such case is laid, shall be imposed upon and attach to such sheriffs and other persons when the place to be viewed is situate out of the county or united counties in which the venue in any such case is laid.

SWEARING WITNESSES BEFORE GRAND JURY.

173. It shall not be necessary for any person to take an oath in open court in order to qualify him to give evidence before any grand jury.

174. The foreman of the grand jury and any member of the grand jury who may, for the time being, act on behalf of the foreman in the examination of witnesses, may administer an oath to every person who, under the circumstances hereinafter enacted, appears before such grand jury to give evidence in support of any bill of indictment; and every such person may be sworn and examined upon oath by such grand jury touching the matters in question.

175. The name of every witness examined, or intended to be so examined, shall be indorsed on the bill of indictment; and the foreman of the grand jury, or any member of the grand jury so acting for him, shall write his initials against the name of each witness sworn by him and examined touching such bill of indictment.

176. The name of every witness intended to be examined on any bill of indictment shall be submitted to the grand jury by the officer prosecuting on behalf of the Crown, and no others shall be examined by or before such grand jury, unless upon the written order of the presiding judge.

177. Nothing in this Act shall affect any fees by law payable to any officer of any court for swearing witnesses, but such fees shall be payable as if the witnesses had been sworn in open court.

TRIAL.

178. Every person tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law.

179. Upon the trial the addresses to the jury shall be regulated as follows: the counsel for the prosecution, in the event of the defendant or his counsel not announcing, at the close of the case for the prosecution, his intention to adduce evidence, shall be allowed to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the accused, or his counsel, shall then be allowed to open his case and also to sum up the evidence, if any is adduced for the defence; and the right of reply shall be according to the practice of the courts in England: Provided always, that the right of reply shall be always allowed to the Attorney General or Solicitor General, or to any Queen's counsel acting on behalf of the Crown.

180. Every person under trial shall be entitled, at the time of his trial, to inspect, without fee or reward, all depositions, or copies thereof, taken against him, and returned into the court before which such trial is had.

181. Every person indicted for any crime or offence shall, before being arraigned on the indictment, be entitled to a copy thereof, on paying the clerk ten cents per folio for the same, if the court is of opinion that the same can be made without delay to the trial, but not otherwise.

182. Every person indicted shall be entitled to a copy of the depositions returned into court on payment of ten cents per folio for the same, provided, if the same are not demanded before the opening of the assizes, terms, sittings or sessions, the court is of opinion that the same can be made without delay to the trial, but not otherwise; but the court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged.

183. If, on the trial of any person charged with any felony or misdemeanor, it appears to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment; and no person tried as lastly mentioned shall be liable to be afterwards prosecuted for committing or attempting to commit the felony or misdemeanor for which he was so tried.

184. If, upon the trial of any person for any misdemeanor, it appears that the facts given in evidence, while they include such misdemeanor, amount in law to a felony, such person shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, unless the court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony,—in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor; and the person tried for such misdemeanor, if convicted, shall not be liable to be afterwards prosecuted for felony on the same facts.

185. No person shall be tried or prosecuted for an attempt to commit any felony or misdemeanor, who has been previously tried for committing the same offence.

186. If the facts or matters alleged in an indictment for any felony under the "*Act respecting Treason and other Offences against the Queen's authority*," amount in law to treason, such indictment shall not, by reason thereof, be deemed void, erroneous or defective; and if the facts or matters proved on the trial of any person indicted for felony under the said Act amount in law to treason, such person shall not, by reason thereof, be entitled to be acquitted of such felony; but no person tried for such felony shall be liable to be afterwards prosecuted for treason upon the same facts.

187. The jury empanelled to try any person for treason or felony shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

188. If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may find, in case it so appears in evidence, that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavor to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of birth.

189. If, upon the trial of any indictment for any felony, except in cases of murder or manslaughter, the indictment alleges that the accused did wound or inflict grievous bodily harm on any person with intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with the intent to resist or prevent the lawful apprehension or detainer of any person, and the jury is satisfied that the accused is guilty of the wounding, or inflicting grievous bodily harm, charged in the indictment, but is not satisfied that the accused is guilty of the felony charged in such indictment, the jury may acquit of the felony, and find the accused guilty of unlaw-

fully and maliciously wounding or inflicting grievous bodily harm; and such accused shall be liable to three years' imprisonment.

190. If, upon the trial of any person for unlawfully and maliciously administering to or causing to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, the jury is not satisfied that such person is guilty of such felony, but is satisfied that he is guilty of the misdemeanor of unlawfully and maliciously administering to, or causing to be administered to or taken by such person, any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person, the jury may acquit the accused of such felony, and find him guilty of such misdemeanor; and thereupon he shall be punished in the same manner as if convicted upon an indictment for such misdemeanor.

191. If, upon the trial of any person for any felony whatsoever, the crime charged includes an assault against the person, although an assault is not charged in terms, the jury may acquit of the felony, and find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding, and the person so convicted shall be liable to five years' imprisonment.

192. If, upon the trial of any person upon an indictment for robbery, it appears to the jury, upon the evidence, that the accused did not commit the crime of robbery, but that he did commit an assault with intent to rob, the accused shall not, by reason thereof, be entitled to be acquitted, but the jury may find him guilty of an assault with intent to rob; and thereupon he shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried, as is herein lastly mentioned, shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

193. Every one who is indicted for any burglary, where the breaking and entering are proved at the trial to have been made in the day-time and no breaking out appears to have been made in the night-time, or where it is left doubtful whether such breaking and entering or breaking out took place in the day or night-time, shall be acquitted of the burglary, but may be convicted of the offence of breaking and entering the dwelling house with intent to commit a felony therein.

194. It shall not be available, by way of defence, to a person charged with the offence of breaking and entering any dwelling-house, church, chapel, meeting-house or other place of divine worship, or any building within the curtilage, school-house, shop, warehouse or counting house, with intent to commit any felony therein, to show that the breaking and entering were such

as to amount in law to burglary: Provided, that the offender shall not be afterwards prosecuted for burglary upon the same facts; but it shall be open to the court before which the trial for such offence takes place, upon the application of the person conducting the prosecution, to allow an acquittal on the ground that the offence, as proved, amounts to burglary; and if an acquittal takes place on such ground, and is so returned by the jury in delivering its verdict, the same shall be recorded together with the verdict, and such acquittal shall not then avail as a bar or defence upon an indictment for such burglary.

195. If, upon the trial of any person, indicted for embezzlement or fraudulent application or disposition of any chattel, money or valuable security, it is proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury may acquit the accused of embezzlement or fraudulent application or disposition, and find him guilty of simple larceny or larceny as a clerk, servant or person employed for the purpose or in the capacity of a clerk or servant, or as a person employed in the public service, as the case may be, and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if, upon the trial of any person indicted for larceny, it is proved that he took the property in question in any such manner as to amount in law to embezzlement or fraudulent application or disposition as aforesaid, he shall not, by reason thereof, be entitled to be acquitted, but the jury may acquit the accused of larceny, and find him guilty of embezzlement or fraudulent application or disposition, as the case may be, and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, fraudulent application or disposition; and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition, or embezzlement, upon the same facts.

196. If, upon the trial of any person indicted for obtaining from any other person, by any false pretence, any chattel, money or valuable security, with intent to defraud, it is proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

197. If, upon the trial of any person for any misdemeanor, under any of the provisions of sections sixty to seventy-six, both inclusive, of "*The Larceny Act*," it appears that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of the misdemeanor.

198. If, upon the trial of any person for larceny, it appears that the property taken was obtained by such person by fraud, under circumstances which do not amount to such taking as constitutes larceny, such person shall not by reason thereof be entitled to be acquitted, but the jury may acquit the accused of larceny, and find him guilty of obtaining such property by false pretences, with intent to defraud, if the evidence proves such to have been the case, and thereupon the accused shall be punished in the same manner as if he had been convicted upon an indictment for obtaining property by false pretences, and no person so tried for larceny as aforesaid, shall be afterwards prosecuted for obtaining property by false pretences upon the same facts.

199. If any indictment containing counts for feloniously stealing any property, and for feloniously receiving the same, or any part or parts thereof, knowing the same to have been stolen, has been preferred and found against any person, the prosecutor shall not be put to his election, but the jury may find a verdict of guilty, either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen; and if such indictment has been preferred and found against two or more persons, the jury may find all or any of the said persons guilty either of stealing the property or receiving the same, or any part or parts thereof, knowing the same to have been stolen, or may find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same, or any part or parts thereof, knowing the same to have been stolen.

200. If, upon the trial of two or more persons indicted for jointly receiving any property, it is proved that one or more of such persons separately received any part or parts of such property, the jury may convict, upon such indictment, such of the said persons as are proved to have received any part or parts of such property.

201. If, on the trial of any person for larceny, for embezzlement, or for obtaining any property by false pretences, the jury is of opinion that such person is not guilty of the offence charged in the indictment, but is of opinion that he is guilty of an offence against section eighty-five of "*The Larceny Act*," it may find him so guilty, and he shall be liable to be punished as therein provided, as if he had been convicted on an indictment under such section.

202. If, upon the trial of any indictment for larceny, it appears that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor or counsel for the prosecution shall not, by reason thereof, be required to elect upon which taking he will proceed, unless it appears that there were more than three takings, or that more than six

months elapsed between the first and the last of such takings ; and in either of such last mentioned cases the prosecutor or counsel for the prosecution shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings.

203. When proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his possession stolen property, evidence may be given, at any stage of the proceedings, that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen : Provided, that not less than three days' notice in writing has been given to the person accused, that proof is intended to be given of such other property, stolen within the preceding period of twelve months, having been found in his possession ; and such notice shall specify the nature or description of such other property, and the person from whom the same was stolen.

In order to shew guilty knowledge under this section, it is not sufficient merely to prove that "other property stolen within the preceding period of twelve months" had at some time previously been dealt with by the prisoner. It must be proved that such "other property" was found in the possession of the prisoner at the time when he is found in possession of the property which is the subject of the indictment. *R.* v. *Drage*, 14 Cox C.C., 85.

And where on a charge of stealing and receiving certain property in order to shew guilty knowledge, evidence was admitted that the prisoner, within the preceding twelve months, had been in possession of certain other property which was proved to have been stolen, but of which he had parted with the possession before the date of the larceny alleged, the evidence was held inadmissible. *R.* v. *Carter*, 15 Cox C.C., 448 ; 12 Q.B.D., 522.

204. When proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession,—then if such person has, within five years immediately preceding, been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have

been stolen: Provided, that not less than three days' notice in writing has been given to the person accused, that proof is intended to be given of such previous conviction; and it shall not be necessary, for the purposes of this section, to charge in the indictment the previous conviction of the person so accused.

205. Upon the trial of any person accused of any offence respecting the currency or coin, or against the provisions of the "*Act respecting Offences relating to the Coin*" no difference in the date or year, or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed, for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence; and it shall, in any case, be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

206. If, upon the trial of any person for any felony mentioned in the *ninth* section of the "*Act respecting riots, unlawful assemblies, and breaches of the peace*," the jury is not satisfied that such person is guilty thereof, but is satisfied that he is guilty of any offence mentioned in the *tenth* section of such Act, they may find him guilty thereof, and he may be punished accordingly.

207. The proceedings upon any indictment for committing any offence after a previous conviction or convictions, shall be as follows, that is to say: The offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only, and if the jury finds him guilty, or if, on arraignment, he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged in the indictment; and if he answers that he was so previously convicted, the court may proceed to sentence him accordingly, but if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned inquiry: Provided, that if upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the prosecutor may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty is returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

IMPOUNDING DOCUMENTS.

208. Whenever any instrument which has been forged or fradulently altered is admitted in evidence, the court or the judge or person who admits the same, may, at the request of any person against whom the same is admitted in evidence, direct that the same shall be impounded and be kept in custody of some officer of the court or other proper person, for such period and subject to such conditions as to the court, judge or person admitting the same, seems meet.

DESTROYING COUNTERFEIT COIN.

209. If any false or counterfeit coin is produced in any court, the court shall order the same to be cut in pieces in open court, or in the presence of a justice of the peace, and then delivered to or for the lawful owner thereof, if such owner claims the same.

WITNESSES AND EVIDENCE.

210. Every witness duly subpœnaed to attend and give evidence at any criminal trial before any court of criminal jurisdiction, shall be bound to attend and remain in attendance throughout the trial.

211. Upon proof to the satisfaction of the judge, of the service of the subpœna upon any witness who fails to attend or remain in attendance, and that the presence of such witness is material to the ends of justice, he may, by his warrant, cause such witness to be apprehended and forthwith brought before him to give evidence and to answer for his disregard of the subpœna; and such witness may be detained on such warrant before the judge or in the common gaol, with a view to secure his presence as a witness, or, in the discretion of the judge, he may be released on a recognizance with or without sureties, conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance; and the judge may, in a summary manner, examine into and dispose of the charge against such witness, who, if he is found guilty thereof, shall be liable to a fine not exceeding one hundred dollars, or to imprisonment, with or without hard labour, for a term not exceeding ninety days, or to both.

212. If any witness in any criminal case, cognizable by indictment in any court of criminal jurisdiction at any term, sessions or sittings of any such court in any part of Canada, resides in any part thereof, not within the ordinary jurisdiction of the court before which such criminal case is cognizable, such court may issue a writ of subpœna, directed to such witness, in like manner as if such witness was resident within the jurisdiction of the court; and if such witness does not obey such writ of subpœna, the court issuing the same may proceed against such witness for contempt or otherwise, or bind

over such witness to appear at such days and time as are necessary, and upon default being made in such appearance, may cause the recognizances of such witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness was resident within the jurisdiction of the court.

213. When the attendance of any person confined in any penitentiary or in any prison or gaol in Canada, or upon the limits of any gaol, is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend may, or any judge of such court, or of any superior court or county court may, before or during any such term or sittings at which the attendance of such person is required, make an order upon the warden of the penitentiary, or upon the sheriff, gaoler or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him; and such person shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the said court seems meet.

214. No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to such case.

215. Every person so offered shall be admitted and be compellable to give evidence on oath, or solemn affirmation, where an affirmation is receivable, notwithstanding that such person has or may have an interest in the matter in question, or in the event of the trial in which he is offered as a witness, or of any proceeding relating or incidental to such case, and notwithstanding that such person so offered as a witness has been previously convicted of a crime or offence.

The rules of evidence are in general the same in civil and criminal proceedings. *R.* v. *Atkinson*, 17 C.P. (Ont.), 304.

As a general rule when Justices are authorized by statute to hear and determine or examine witnesses, they have also the power to take the examinations on oath or solemn affirmation, as the case may be (see Rev. Stat. Can., chap. 178, s. 36); and in every case where an oath or affirmation is directed to be made before a Justice, he has full power and authority to administer the same, and to certify to its being made. Rev. Stat. Can., chap. 1, s. 7. (29).

In indictable cases the Rev. Stat. Can., chap. 174, s. 69, ex-

pressly empowers the Justice to administer an oath to a witness. The oath is generally in the following form :—

"The evidence you shall give touching this information (*or* complaint, *or* the present charge, *or* the application, *or as the case may be*,) wherein
is informant (*or* complainant, *or as the case may be*), and
is defendant (*or as the case may be*), shall be the truth, the whole truth, and nothing but the truth, so help you God."

The New Testament should, during the administration of the oath, be held in the witness's right hand, and at its conclusion he should kiss it.

The form of oath must be, in every case, such as the witness considers binding on his conscience according to his particular religious belief.

A conviction for crime, or an interest in the result, does not render a witness incompetent. See s. 214. In some cases, however, the evidence of an interested witness must be corroborated.

Witnesses are allowed to speak of *facts* only, and the *opinions* of witnesses are not, as a general rule, admissible in evidence.

In order to secure impartial and truthful testimony, it is an established rule that a witness should not, on examination-in-chief, be asked leading questions, *i.e.*, questions in such form as to suggest the answers desired. On cross-examination, however, a witness may be asked leading questions, the witness not being favourable to the party cross-examining.

Where a prisoner calls witnesses as to character only, it is not usual to cross-examine them, though the strict right to do so exists. After the cross-examination, the party producing the witness has a right to re-examine him for the purpose of explaining any statements of the witness on cross-examination, but unless by permission of the court, there is no right on re-examination to go into new matter not tending to explain the cross-examination. The person producing the witness should therefore, on the examination-in-chief, ask all necessary questions.

A confession of a prisoner is only admissible when free and voluntary. Any inducement to confess held out to the prisoner

by a person in authority, or any undue compulsion upon him, will be sufficient to exclude the confession: Thus if an oath is administered to the prisoner before taking his statement under section 70 of this Act, the oath will be a sufficient constraint or compulsion to render his statement inadmissible. *R.* v. *Field*, 16 C.P. Ont., 98.

But the deposition on oath of a witness is admissible against such witness, if he is afterwards charged with a crime (*Ib.*); see also *R.* v. *Finkle*, 15 C.P. (Ont.), 453; *R.* v. *Coote*, L.R., 4 P.C. App., 599; excepting so much of them as consists of answers to questions to which he has objected, as tending to criminate him, but which he has been improperly compelled to answer. The exception depends upon the principle "*nemo tenetur seipsum accusare*," but does not apply to answers given without objection, which are to be deemed voluntary. *R.* v. *Coote, supra.*

Where a confession was made by a prisoner to the prosecutor in the presence of a police inspector immediately after the prosecutor had said to the prisoner, "The inspector tells me you are making house-breaking implements; if that is so you had better tell the truth, it may be better for you," the confession was held inadmissible. *R.* v. *Fennell*, L.R. 7, Q.B.D., 147.

M was convicted of stealing goods the property of S. The evidence to connect M with the crime was his statement to a policeman who had him in charge, that if he went to a particular place he would find the goods. This statement was made in consequence of his being told by the policeman that S was a good-hearted man, and he (the policeman) thought that if he got his goods back he would not prosecute. The goods were afterwards found in the place described by the prisoner. It was held that the prisoner's statement was improperly received and the conviction should be quashed. *R.* v. *McCafferty*, 25 Sup. Ct., N.B., 396.

Where it is sought to give in evidence the contents of a telegram sent by the prisoner to a witness, it is absolutely necessary that the original message sent in to the company for transmission should be produced or proof given that it is destroyed, and the copy received by a witness cannot be given in evidence until it is proved that the original is destroyed. *R.* v. *Regan*, 16 Cox, 203.

The Evidence Act (Rev. Stat. Can., chap. 139), provides that *prima facie* evidence of any proclamation, order, regulation or appointment may be given by production of a copy of the *Canada Gazette*, and in several other ways specified in the Act.

The Fugitive Offenders Act (Rev. Stat. Can., chap. 143, s. 18), contains some special provisions as to the authentication of warrants, depositions, official certificates or judicial documents.

As to the competency of witnesses, a prisoner under sentence of death is incapable of being a witness. *R.* v. *Webb*, 11 Cox C.C., 133.

But a child of any age if capable of distinguishing between good and evil may be admitted to give evidence. A child of six years of age was examined; on being interrogated by the Judge and making answers that there was a God, that people would be punished in hell who did not speak the truth, and that it was a sin to tell a falsehood under oath, although he stated he did not know what an oath was. *R.* v. *Berube*, 3 L.C.R., 212.

On a trial for murder, an Indian witness was offered, and on his examination by the Judge, it appeared that he had a full sense of the obligation to speak the truth, but he was not a Christian, and had no knowledge of any ceremony in use among his tribe binding a person to speak the truth or imprecating punishment upon himself, if he asserted what was false. It appeared also, that he and his tribe believed in a future state, and in a Supreme Being who created all things, and in a future state of reward and punishment according to their conduct in this life. He was then sworn in the ordinary way on the New Testament, and it was held that his evidence was admissible. If the witness had belonged to any nation or tribe that had in use among them any particular ceremony which was understood to bind them to speak the truth, however strange and fantastic the ceremony might be, it would have been indispensable that the witness should have been sworn according to such ceremony, because all should be done that can be done to touch the conscience of the witness according to his notions, however superstitious they may be. *R.* v. *Pah-mah-gay*, 20 Q.B. (Ont.), 195.

The evidence of an Indian or non-treaty Indian may be received though he is destitute of the knowledge of God, or of any fixed and clear belief in religion, or in a future state of rewards and punishments, and such evidence may be so received without the usual form of oath being taken by such Indian, upon his solemn declaration to tell the truth, or in such form as is approved of by the Court as most binding on the conscience of the witness. Rev. Stat. Can., chap. 43, s. 120.

Where a client has a criminal object in view in his communication with his solicitor and such communication is a step preparatory to the commission of a criminal offence, the evidence of the solicitor as to the nature of the communication is admissible as evidence in the prosecution of the client for such offence. *R.* v. *Cox*, 15 Cox C.C., 611.

But advice given by a solicitor to his client for the legitimate purpose of assisting the latter in his defence on a criminal charge is privileged. It is otherwise, however, when the advice is before the commission of the crime, and for the purpose of guiding or helping the client to commit it. *(Ib.)*

216. On the summary or other trial of any person upon any complaint, information or indictment, for common assault, or for assault and battery, the defendant shall be a competent witness for the prosecution or on his own behalf :

2. On any such trial the wife or husband of the defendant shall be a competent witness on behalf of the defendant :

3. If another crime is charged, and the court having power to try the same is of opinion, at the close of the evidence for the prosecution, that the only case apparently made out is one of common assault, or of assault and battery, the defendant shall be a competent witness for the prosecution or on his own behalf, and his wife, or her husband, if the defendant is a woman, shall be a competent witness on behalf of the defendant, in respect of the charge of common assault, or assault and battery :

4. Except as in the next preceding sub-section mentioned, this section shall not apply to any prosecution in which any other crime than common assault, or assault and battery, is charged in the information or indictment.

217. Nothing herein contained shall, except as provided in the next preceding section, render any person who is charged, in any criminal proceeding,

with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself, or shall render any person compellable to answer any question tending to criminate himself; and nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding.

This statute was intended to make the defendant a witness for the prosecution or on his own behalf only, in cases where the whole offence charged is one of common assault, or of assault and battery only, and on an indictment for assault and battery occasioning actual bodily harm, the defendant is not a competent witness on his own behalf under the statute. *R.* v. *Richardson*, 46 Q.B. (Ont.), 375.

Except in the case of a common assault and of a prosecution for neglect to maintain, etc., under s. 19 of the Rev. Stat. Can., chap. 162, a prisoner cannot give evidence for himself nor can his wife be admitted as a witness for him. *R.* v. *Humphreys*, 9 Q.B. (Ont.), 337; *R.* v. *Madden*, 14 Q.B. (Ont.), 588.

On the trial of a married woman jointly with another person for larceny of the property of the husband, the latter is not a competent witness against his wife. *R.* v. *Brittleton*, 12 Q.B.D., 266.

The wife of any one of several prisoners jointly indicted stands in the same position with respect to the admissibility of her evidence as her husband, and she cannot give evidence for either of the prisoners. *R.* v. *Thompson*, L.R. 1, C.C.R., 377.

But a married woman may give evidence in favour of a person who has committed a crime jointly with he husband, provided the husband is not on trial for the offence. *R.* v. *Thompson*, 2 Hannay, 71.

Prior to the passing of the Rev. Stat. Can., chap. 162, s. 19, a wife could not testify against her husband when she was prosecuting him for neglect to maintain her. See *R.* v. *Bissell*, 1 Ont. R., 514.

This Act is intended to enlarge the powers and duties of magistrates in cases of this nature, and the word "prosecution"

therein includes the proceedings before magistrates as well as before a higher court. A defendant was charged by his wife before a magistrate with refusing to provide necessary clothing and lodging for herself and children. At the close of the case for the prosecution defendant was tendered as a witness on his own behalf. The magistrate refused to hear his evidence, not because he was the defendant but because he did not wish to hear evidence for the defence, and subsequently without further evidence committed him for trial. It was held that the defendant's evidence should have been taken for the defence, that a magistrate is bound to accept such evidence in cases of this kind and give it such weight as he thinks proper, and that the exercise of his discretion to the contrary is open to review. *R.* v. *Meyer*, 11 P.R., (Ont)., 477.

Under this section a prisoner is not compellable to give evidence against himself, and where in a prosecution for an offence under a municipal by-law the defendant was compelled to give evidence against himself, the court held that this was improper and the conviction was set aside. *R.* v. *McNicol*, 12 Ont. R., 659.

A witness is not the sole judge whether a question put to him may tend to criminate him. To entitle a witness to the privilege of silence the court must see from the circumstances of the case and the nature of the evidence, which the witness is called upon to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer, but if the fact of the witness being in danger be once made to appear, great latitude should be allowed him in judging for himself of the effect of any particular question. *Ex parte Reynolds*, 15 Cox C.C., 108.

A prisoner may if he choose give evidence against himself; thus, where a prisoner being prosecuted for selling liquor on a Sunday admitted that he was a licensed tavern-keeper, and the only other evidence of his being a licensed tavern-keeper was that of a witness who stated that he knew where the defendant's licensed tavern was, it was held that this was sufficient evidence of the fact, and that it was not improper for the magistrate to take the defendant's admission as evidence against him. *Ex parte Birmingham*, 2 Pugsley & Burbidge, 564.

There are several statutory exceptions to the rule that a prisoner is not bound to criminate himself. In a prosecution under The Canada Temperance Act, Rev. Stat. Can., chap. 106, s. 114, the prisoner is compellable to give evidence against himself. *R.* v. *Fee*, 13 Ont., R., 590, overruling *R.* v. *Halpin*, 12 Ont. R., 330.

The same rule applies to a prosecution under the Act respecting the preservation of the peace in the vicinity of public works. See Rev. Stat. Can., chap. 151, s. 22.

The Rev. Stat. Can., chap. 150, s. 8, s.s. 2, known as "The Explosive Substances Act" provides that a witness, examined by a justice of the peace on the order of the Attorney General, in relation to an offence under this Act, is not excused from answering any question on the ground that the answer thereto may criminate or tend to criminate himself, but the answer of the witness is admissible against him only on a charge of perjury.

So under the Dominion Election Act, Rev. Stat. Can., chap. 8, s. 109, no person is excused from answering on the ground that the answer will tend to criminate such person. See also Rev. Stat. Can., chap. 164, s. 71.

Under the Act respecting prize-fighting, Rev. Stat. Can., chap. 153, s. 8, every person offending against the provisions of the Act, except the principals engaged, shall be competent and compellable to give evidence in any proceeding under the Act, and shall not be excused from answering any question on the ground that the answer tends to criminate the witness, but the evidence cannot be used against such witness, and he is exempt from punishment for the offence respecting which he is required to testify.

So under the Act respecting gaming houses (Rev. Stat. Can., chap. 158, s. 9), any person found in a house may be compelled to give evidence criminating himself, but in such case he is protected from prosecution if he make true disclosure.

The fact that evidence has been improperly procured is not a reason for rejecting such evidence. It follows that if one who has had his watch stolen suspected a particular person of the theft, and the owner of the watch knocked the other down and found

the watch upon him, the fact that the suspected person had the watch would be evidence against him, though the evidence was obtained in an irregular way. So under the Canada Temperance Act, though there is no right to issue a search warrant except in aid of a prosecution pending, yet evidence obtained under a search warrant irregularly issued may be used when a charge is afterwards laid. *R.* v. *Doyle*, 12 Ont. R., 347.

218. The evidence of any person interested or supposed to be interested in respect of any deed, writing, instrument or other matter given in evidence on the trial of any indictment or information against any person for any offence punishable under the "*Act respecting Forgery*," shall not be sufficient to sustain a conviction for any of the said offences unless the same is corroborated by other legal evidence in support of such prosecution.

It is usual to require that the testimony of an accomplice be corroborated as to the *identity* of the accused, but not as to the *manner* in which the crime was committed. But there is no positive rule of law that the testimony of an accomplice must receive direct corroboration, and the nature and extent of the corroboration required depend upon the character of the crime charged. *R.* v. *Tower*, 4 Pugsley & Burbidge, 168.

In a prosecution for selling liquor on a Sunday, the persons who purchased the liquor, though accomplices of the accused, are competent witnesses to prove the selling. *Ex parte Birmingham*, 2 Pugsley & Burbidge, 564.

In certain cases there are statutory provisions as to the sufficiency of one witness. Thus the Steamboat Inspection Act (Rev. Stat. Can., chap. 78, s. 61), provides that when no other provision is made in the case, penalties may be recovered on the evidence of one credible witness who may be the prosecuting inspector himself. So under the act respecting the navigation of Canadian waters (Rev. Stat. Can., chap. 79, s. 8), the evidence of one credible witness is sufficient. The evidence of one credible witness, other than the plaintiff or person prosecuting, is sufficient under the Pilotage Act (Rev. Stat. Can., chap. 80, s. 101), and also under the Militia Act, Rev. Stat. Can., chap. 41, s. 111. Independently of these enactments the evidence of one witness

is in general sufficient. But there are some exceptions. Thus in treason the words spoken must be proved by two credible witnesses or confessed in open court by the accused (Rev. Stat. Can., chap. 146, s. 5), and in forgery the evidence of the person whose signature is alleged to be forged must be corroborated. See section 218 of this Act. In perjury, if only one witness is produced his evidence must be corroborated.

Under the Rev. Stat. Can., chap. 157, sections 3, 4 and 5, it is a misdemeanor to seduce or attempt to seduce any girl between twelve and sixteen years of age, and of previously of chaste character, or to seduce any girl under eighteen years of age by means of a promise of marriage, or to induce any girl to resort to any house for the purpose of having illicit connection with any man. In these cases there can be no conviction upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused, and the defendant is made a competent witness on his own behalf. (*Ib.*) s. 6.

219. Any Quaker or other person allowed by law to affirm instead of swearing in civil cases, or who solemnly declares that the taking of any oath is, according to his religious belief, unlawful, who is required to give evidence in any criminal case shall, instead of taking an oath in the usual form, be permitted to make his solemn affirmation or declaration, beginning with the words following, that is to say: "I, (A. B.), do solemnly, sincerely and truly declare and affirm;" which said affirmation or declaration shall be of the same force and effect as if such Quaker or other person as aforesaid had taken an oath in the usual form.

220. Whenever it is made to appear at the instance of the Crown, or of the prisoner or defendant, to the satisfaction of a judge of a superior court, or a judge of a county court having criminal jurisdiction, that any person who is dangerously ill, and who, in the opinion of some licensed medical practitioner is not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, such judge may, by order under his hand, appoint a commissioner to take in writing the statement on oath or affirmation of such person:

2. Such commissioner shall take such statement and shall subscribe the same and add thereto the names of the persons, if any, present at the taking thereof, and if the deposition relates to any indictable offence for which any

accused person is already committed or bailed to appear for trial, shall transmit the same, with the said addition, to the proper officer of the court for trial at which such accused person has been so committed or bailed; and in every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, and such clerk of the peace shall preserve the same and file it of record, and, upon order of the court or of a judge, transmit the same to the proper officer of the court where the same shall be required to be used as evidence:

3. If afterwards, upon the trial of any offender or offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing such commissioner, be read in evidence, either for or against the accused, without further proof thereof,—if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person or his counsel or attorney had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same.

The notice intended by this section is a notice in writing and such a statement is inadmissible against a prisoner, where he has only had oral notice of the intention to take the same, although he is present when the statement is taken. *R.* v. *Shurmer*, 17 Q.B.D., 323.

There must be proof that notice of the intention to take such statement was served upon the person against whom the evidence is proposed to be read, and that he had an opportunity if he choose to be present. This notice must be served before the evidence is taken, and it is therefore impossible for the statute to have any operation in the case of an accused person keeping out of the way. *R.* v. *Quigley*, 18 L.T. Reps., N.S., 211.

A dying declaration is only admissible in evidence where the death of the deceased is the subject of the charge and the circumstances of the death the subject of the dying declaration. There must also be an unqualified belief in the nearness of death, a belief without hope that the declarant is about to die, and the

burden of proving the facts that render the declaration admissible is upon the prosecution. *R.* v. *Jenkins*, L.R. 1, C.C.R., 192.

The deceased shortly after the wound had been given which caused her death made a statement in the prisoner's absence as to the cause of her injuries. She was in fact dying at the time she made the statement. Two witnesses swore she was conscious at the time. The doctor who arrived after she made the statement swore that she was unconscious from the moment of his arrival, but that there might have been intervals of consciousness before death. The statement was made during the doctor's absence from the room. The statement was held inadmissible as a dying declaration, it not appearing that the deceased was conscious of impending death or in fact conscious at all. *R.* v. *Smith*, 16 Cox C.C., 170.

Statements made behind the back of a prisoner are not admissible in evidence as dying declarations, unless the person making them entertains at the time a settled hopeless expectation of immediate death. *R.* v. *Osman*, 15 Cox C.C., 1. But where the deceased, shortly after the occurence which resulted in her death, was seen standing at the door of a neighbor's house in a fainting condition and apparently dying, she said, "I am dying, look to my children," a statement then made as to the cause of her injuries was held admissible. *R.* v. *Goddard*, 15 Cox C.C., 7.

221. Whenever a prisoner in actual custody is served or receives notice of an intention to take such statement as hereinbefore mentioned, the judge who has appointed the commissioner may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice, for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner has been conveyed.

222. If, upon the trial of any accused person, it is proved upon the oath or affirmation of any credible witness, that any person whose deposition has been taken by a justice in the preliminary or other investigation of any charge, is dead, or is so ill as not to be able to travel, or is absent from Canada, and if it is also proved that such deposition was taken in the presence of the person accused, and that he, his counsel or attorney, had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the

justice by or before whom the same purports to have been taken, it shall be read as evidence in the prosecution, without further proof thereof, unless it is proved that such deposition was not in fact signed by the justice purporting to have signed the same.

Under this section the deposition of a witness who is dead may be read before the Grand Jury for the purpose of finding a bill, as well as before the Petty Jury at the trial. *R.* v. *Clements*, 20 L.J.M.C., 193. The presence of the accused and the Justice is indispensable. *R.* v. *Watts*, 33 L.J.M.C., 63. Although the cases of death, illness,and absence from Canada are alone expressly stated in this section as those in which the deposition of a witness may be read against a prisoner on his trial, it is probable that such deposition may also be read in evidence if the witness be bed-ridden, though otherwise not in ill-health (*R.* v. *Stephenson*, 31 L.J.M.C., 147), or if he have become insane, or if he be kept out of the way by the prisoner (*R.* v. *Scaife*, 20 L.J.M.C., 229 ; 17 Q.B., 238), or by some person on his behalf at the time of the trial ; and it is admissible where the witness, having been struck by paralysis, is unable to speak, though still able to travel (*R.* v. *Cockburn*, Dears. & B. 203) ; but it must relate to the charge on which the prisoner is being tried. *R.* v. *Langbridge*, 1 Den. C.C., 448.

It was proposed to read the deposition of a witness, on the ground that the witness was so ill as not to be able to travel. The evidence upon that point was as follows :—The medical attendant of the witness was called and said, "I know M.L., she is very nervous and seventy-four years of age. I think she would faint at the idea of coming into Court, but I think that she could go to London to see a doctor without difficulty or danger. I think the idea of seeing so many faces would be dangerous to her, and that she is so nervous that it might be dangerous to her to be examined at all. I think she could distinguish between the Court going to her house, and she herself coming to the Court." The witness, whose deposition it was proposed to read, lived not far from the Court. The deposition was held inadmissible *R.* v. *Farrell*, L.R. 2, C.C.R., 116.

As a general rule there must be medical evidence of the illness. *R* v. *Welton*, 9 Cox C.C., 295. But in one case the deposition of a married woman was admitted on the evidence of her husband (without medical evidence), that she was from pregnancy unable to attend. *R.* v. *Jones*, 3 F. & F., 285.

The evidence must refer to the state of health within forty-eight hours of the trial—where the evidence that the witness was unable to travel was that of a medical man who last saw the witness on the Monday previous to the trial, which took place on Wednesday, it was held that this was not sufficient and the deposition was rejected. *R.* v. *Bull*, 12 Cox C.C., 31.

The expression in this section, "so ill as not to be able to travel" would seem to signify not able to travel for the purpose of giving evidence. *R.* v. *Wilson*, 8 Cox C.C., 453.

The deposition is not admissible on the ground merely that the prosecutor after using every possible endeavour cannot find the witness.

Upon a prosecution for uttering forged notes the deposition of one S, taken before the police magistrate on the preliminary investigation, was read upon the following proof that S was absent from Canada. R swore that S had a few months before left her R's house, where she, S, had for a time lodged, that she had since twice heard from her in the United States, but not for six months. The Chief Constable of Hamilton, where the prisoner was tried, proved ineffectual attempts to find S by means of personal enquiries in some places and correspondence with the police of other cities. S had for some time lived with the prisoner or his wife. On a case reserved the court held that the admissibility of the deposition was in the discretion of the judge at the trial, and that it could not be said that he had wrongly admitted it. *R.* v. *Nelson*, 1 Ont. R., 500.

Upon a prosecution for wounding with intent to murder, the deposition of one C, taken before the Police Magistrate on the preliminary investigation, was read on the following proof that C was absent from Canada. A witness deposed as follows: "C is to the best of my belief in the United States. He was

employed about ten days ago as one of the crew on a steamer then running between Victoria and an American port. He said when he left me he was going on board the steamer. The steamer has not been on that route since. She is now running between two American ports," and the court held there was sufficient proof of absence from Canada. *R.* v. *Pescaro*, 2 British Columbia L.R., 144.

It is a condition precedent to the admission of the evidence of a deceased witness under this section that there should be proof that the deposition was taken in the presence of the person accused, and that he, his counsel or attorney had full opportunity of cross-examining the witness, but this is a question for the judge at the trial, and his ruling thereon will not be questioned. *R.* v. *Shurmer*, 16 Cox C.C., 94; see *R.* v. *Griffith*, 16 Cox C.C., 46.

Where it is proved that the prisoner was present when the depositions of the deceased were taken, although the law will presume that as he was present he had a "full opportunity" within the section, evidence may nevertheless be offered to prove that he had not a "full opportunity" within the section, so as to render the deposition inadmissible, if, for instance, he were insane at the time he could not be said to have a "full opportunity." *R.* v. *Peacock*, 12 Cox C.C., 21

The words in this section "whose deposition has been taken as aforesaid" refer to this and the sixty-ninth section, and the deposition will not be admissible unless it shows that the accused was charged with an indictable offence and that he, having knowledge of the charge, had a full opportunity of cross-examining the witness. The test of admissibility is the opportunity given the prisoner to cross-examine, he having knowledge that it is his interest to do so. *R.* v. *Milloy*, 6 Legal News, 95.

Where a prisoner is charged before a magistrate with obtaining money by false pretences, and afterwards indicted for uttering a forged promissory note, the charges arising out of one and the same transaction, and being in fact identical, and the prisoner having had the opportunity of cross-examination before the magistrate, it was held that the deposition of a witness taken at

such hearing, and who was afterwards unfit to travel to give evidence, was admissible and might be read at the trial for uttering the forged promissory note. *R.* v. *Williams*, 12 Cox C.C., 101.

223. The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same.

224. Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person, for any other offence whatsoever, upon the like proof and in the same manner, in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged when such depositions were taken.

225 A certificate, containing the substance and effect only, omitting the formal part of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other officer, shall, upon the trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

226. Whenever, upon the trial of any offence, it is necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete on proof of any degree of penetration only.

227. The trial of any woman charged with the murder of any issue of her body, male or female, which, being born alive, would by law, be bastard, shall proceed and be governed by such and like rules of evidence and presumption as are by law used and allowed to take place in respect to other trials for murder.

228. In any prosecution, proceeding or trial for any offence under the eighty-seventh section of the "*The Larceny Act*," a timber mark, duly registered under the provisions of the "*Act respecting the Marking of Timber*," on any timber, mast, spar, saw-log, or other description of lumber, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark; and possession by any offender, or by others in his employ. or on his

behalf, of any such timber, mast, spar, saw-log or other description of lumber so marked, shall in all cases, throw upon the person charged with any such offence the burden of proving that such timber, mast, spar, saw-log or other description of lumber, came lawfully into his possession, or the possession of such others in his employ or on his behalf as aforesaid.

229. When, upon the trial of any person, it becomes necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer or other officer of Her Majesty's mint, or other person employed in producing the lawful coin in Her Majesty's dominions or elsewhere, whether the coin counterfeited is current coin, or the coin of any foreign prince, state or country, not current in Canada, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.

230. A certificate, containing the substance, and effect only, omitting the formal part of any previous indictment and conviction for any felony or misdemeanor, or a copy of any summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court, before which the offender was first convicted, or to which such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed the same.

On the trial of a prisoner for perjury, the indictment preferred at the trial at which the perjury was committed, is not sufficient proof of the proceedings there. It seems there must either be a record of the trial or a certificate of it under this section. *R.* v. *Coles,* 16 Cox C.C., 165.

231. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction; and a certificate, as provided in the next preceding section, shall, upon proof of the identity of the witness, as such convict, be sufficient evidence of his conviction, without proof of the signature or the official character of the person appearing to have signed the certificate.

232. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

233. Comparison of a disputed writing with any writing proved to the satisfaction of the court to he genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury, as evidence of the genuineness or otherwise of the writing in dispute.

234. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad charactor, but if the witness, in the opinion of the court, proves adverse, such party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement.

At a coroner's inquest evidence is properly receivable that a witness at such inquest has made at other times a statement inconsistent with his present testimony. Independently of this section the improper reception of evidence is no ground for a *certiorari* to bring up the coroner's inquisition. *R.* v. *Sanderson*, 15 Ont. R., 106.

235. Upon any trial, a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject matter of the case, without such writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the judge at any time during the trial may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit: Provided, that a deposition of the witness, purporting to have been taken before a justice on the investigation of the charge, and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *prima facie* to have been signed by the witness.

This section applies only to statements made by the witness himself, and which he has either made in writing or which have been reduced into writing. For instance, it would not apply to a policy of insurance issued to the witness, or to receipts which are not shown to be either written or signed by the witness. *R.* v. *Tower*, 4 Pugsley & Burbridge, 168.

236. If a witness, upon cross-examination as to a former statement made by him, relative to the subject matter of the case, and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement.

The general principle is, that when a witness is cross-examined as to a collateral fact, the answer is conclusive. *R. v. Holmes*, 12 Cox C.C., 137.

On the trial of an indictment for rape, or an attempt to commit a rape, or for an indecent assault, if the prosecutrix is asked whether she has not had connection with some other man named, and she denies it, that man cannot be called to contradict her. (*Ib.*)

On a charge of sending a threatening letter, other letters written by the prisoner both before and after the one in question are admissible to explain its meaning. So on a charge of malicious shooting, if it be doubtful whether the shot was fired by accident or design, proof may be given that the prisoner at another time intentionally shot at the same person. *R. v. Voke*, R. & R., 531.

So on a charge of murder by poison, where it is shown that the prisoner attended the deceased, it is competent for the prosecution to tender evidence of other cases of persons who had died from poison, and to whom the prisoner had access, exhibiting exactly similar symptoms before death to those of the case under consideration, for the purpose of showing that this particular death arose from poisoning, not accidentally taken, but designedly administered by some one. Such evidence however is not admissible for the purpose of establishing motives, though the fact that the evidence offered may tend indirectly to that end is no ground for its exclusion. *R.* v. *Flannagan*, 15 Cox C.C., 403.

Where a prisoner was charged with the murder of her child by poison, and the defence was that its death resulted from an accidental taking of such poison, evidence to prove that two other children of hers and a lodger in the house had died previous to

the present charge from the same poison was held to be admissible. *R.* v. *Cotton*, 12 Cox C.C., 400; *R.* v. *Geering*, 18 L.J. M.C., 211, followed. See also *R.* v. *Roden*, 12 Cox C.C., 630.

The prisoner was indicted along with W, the first count charging W with forging a circular note of the National Bank of Scotland, and the second with uttering it knowing it to be forged. The prisoner was charged as an accessory before the fact. Evidence was admitted showing that two persons named F and H had been tried and convicted in Montreal of uttering similar forged circular notes printed from the same plate as those uttered by W, that the prisoner was in Montreal with F, they having arrived and registered their names together at the same hotel and occupied adjoining rooms, that after F and H had been convicted on one charge they admitted their guilt on several others, and that a number of these circular notes were found on F and H which were produced at the trial of the prisoner. Before the evidence was tendered it was proved that the prisoner was in company with W, who was proved to have uttered similar notes. Evidence was also admitted shewing that a large number of the notes were found concealed at a place near where the prisoner had been, and were concealed as was alleged by him after W had been arrested. It was held that the evidence was properly received in proof of the guilty knowledge of the prisoner. *R.* v. *Bent*, 10 Ont. R., 557.

Two indictments were preferred against the defendants for feloniously destroying the fruit trees, respectively, of M and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. The defendants were put on their trial on the charge of destroying M's trees, and evidence relating to the offence charged in the other indictment was held to be receivable, not to establish the other felony, but as circumstances leading to proof of the affirmation that the accused was guilty of the offence for which he was on trial. *R.* v. *McDonald*, 10 Ont. R., 553.

On a trial for endeavouring to obtain an advance from a pawnbroker upon a ring, by the false pretence that it is a diamond

ring, evidence may be given that two days before the transaction in question, the prisoner had obtained an advance from a pawnbroker upon a chain which he represented to be a gold chain, but which was not so, and endeavoured to obtain from other pawnbrokers advances upon a ring which he represented to be a diamond ring, but which in the opinion of the witness was not so. *R.* v. *Francis*, L.R. 2, C.C.R., 128.

Upon a charge of an attempt to commit a rape, the prosecutrix may be cross-examined as to the fact of her having had connection with the prisoner previously to the commission of the alleged offence, and should she deny the fact of such connection having taken place, evidence may be given in order to contradict such denial. *R.* v. *Riley*, 16 Cox C.C., 191 ; 18 Q.B.D., 481. But her denial of intercourse with persons other than the prisoner could not be contradicted. (*Ib.*)

VARIANCES—RECORDS.

237. Whenever, in the indictment whereon a trial is pending before any court of criminal jurisdiction in Canada, any variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof, such court may cause the indictment to be forthwith amended in such particular or particulars, by some officer of the court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance had appeared.

238. Whenever, on the trial of an indictment for any felony or misdemeanor, any variance appears between the statement in such indictment and the evidence offered in proof thereof, in names, dates, places or other matters or circumstances therein mentioned, not material to the merits of the case, and by the misstatement whereof the person on trial cannot be prejudiced in his defence on such merits, the court before which the trial is pending may order such indictment to be amended according to the proof, by some officer of the court or other person—both in that part of the indictment where the variance occurs, and in every other part of the indictment which it may become necessary to amend—on such terms as to postponing the trial to be had before the same or another jury as such court thinks reasonable ; and if the trial is postponed the court may respite the recognizances of the prosecutor and witnesses, and of the defendant and his sureties, if any,—in which case they shall respectively be bound to attend at the time and place to which the trial is

postponed, without entering into new recognizances, and as if such time and place had been mentioned in the recognizances respited, as those at which they were respectively bound to appear.

239. After any such amendment the trial shall proceed, whenever the same is proceeded with, in the same manner and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and in all other respects, as if no such variance had occurred.

240. In such case the order for the amendment shall be indorsed on the record; and all other rolls and proceedings connected therewith shall be amended accordingly by the proper officer and filed with the indictment, among the proper records of the court.

241. When any such trial is had before a second jury, the Crown and the defendant respectively shall be entitled to the same challenges as they were entitled to with respect to the first jury.

242. Every verdict and judgment given after the making of any such amendment shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it is after such amendment has been made.

243. If it becomes necessary to draw up a formal record in any case in which an amendment has been made as aforesaid, such record shall be drawn up in the form in which the indictment remained after the amendment was made, without taking any notice of the fact of such amendment having been made.

244. In making up the record of any conviction or acquittal on any indictment, it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading; and the statement of the arraignment and the proceedings subsequent thereto, shall be entered of record in the same manner as before the passing of this Act, subject to any such alterations in the forms of such entry as are, from time to time, prescribed by any rule or rules of the superior courts of criminal jurisdiction respectively,—which rules shall also apply to such inferior courts of criminal jurisdiction as are therein designated.

FORMAL DEFECTS CURED AFTER VERDICT.

245. No judgment upon any indictment for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace,"

nor for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes," or *vice versâ*, or the omission of such word or words of like import, nor because any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of his proper name, nor for want of or any imperfection in the addition of any defendant or other person, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened, not for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where such value, price, damage, injury or spoil, is not of the essence of the offence, nor for the want of a proper or perfect venue, where the court appears by the indictment to have had jurisdiction over the offence.

246. Judgment, after verdict upon an indictment for any felony or misdemeanor, shall not be stayed or reversed for want of a *similiter*, nor by reason that the jury process has been awarded to a wrong officer, upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who was not returned as a juror by the sheriff or other officer; and where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence, or otherwise.

247. No omission to observe the directions contained in any Act, as respects the qualification, selection, balloting or distribution of jurors, the preparation of the juror's book, the selecting of jury lists, the drafting panels from the jury lists, or the striking of special juries, shall be a ground for impeaching any verdict, or shall be allowed for error upon any writ of error or appeal to be brought upon any judgment rendered in any criminal case.

COSTS.

248. When any person is convicted on any indictment of any assault whether with or without battery and wounding, or either of them, such person may, if the court thinks fit, in addition to any sentence which the court deems proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for loss of time as the court, by affidavit or other inquiry and

examination, ascertains to be reasonable; and unless the sums so awarded are sooner paid, the offender shall be liable to imprisonment for any term not exceeding three months, in addition to the term of imprisonment, if any, to which the offender is sentenced for the offence.

249. The court may, by warrant in writing, order such sum as is so awarded, to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner; and if such sum is so levied, the offender shall be released from such imprisonment.

RESTITUTION OF STOLEN PROPERTY.

250. If any person who is guilty of any felony or misdemeanor, in stealing, taking, obtaining, extorting, embezzling, appropriating, converting or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, is indicted for such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, the property shall be restored to the owner or his representative:

2. In every such case, the court before whom such person is tried for any such felony or misdemeanor, shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner; and the court may also, if it sees fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such felony or misdemeanor, although the person indicted is not convicted thereof, if the jury declares, as it may do, that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such felony or misdemeanor:

3. If it appears before any award or order is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery, by any person, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any felony or misdemeanor, been stolen, taken, obtained, extorted, embezzled, converted or disposed of, the court shall not award or order the restitution of such security:

4. Nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker or other agent intrusted with the possession of goods or documents of title to goods, for any misdemeanor under "*The Larceny Act.*"

251. When any prisoner has been convicted, either summarily or otherwise, of any larceny or other offence, including the stealing or unlawfully obtaining any property, and it appears to the court, by the evidence, that the

prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on the application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner, a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser.

The court before which a conviction takes place has jurisdiction to entertain an application for the restitution of the proceeds of the goods as well as of the goods themselves. If such proceeds are in the hands of the criminal or of an agent who holds them for him, the application should be granted, but if the person holding the proceeds does not hold them for the criminal, the application should not be granted. *R.* v. *Justices*, 16 Cox C.C., 143.

It seems that the power to award restitution is different in the case of negotiable instruments than in regard to ordinary personal property which was always the subject of larceny at common law. Where the defendant *bona fide*, and without cause to suspect, acquired the possession for value of a New Zealand Bond for £1,000, which had been stolen from the plaintiff's possession after the conviction of a person for feloniously receiving the same, it was held that the owner could not recover it from the transferees, the proviso in the section applying to the right to recover as well as the summary restitution of a negotiable instrument. *Chichester* v. *Hill*, 15 Cox C.C., 258.

The court is bound by the statute to order restitution of property obtained by false pretences and the subject of the prosecution in whose hands soever it is found, and so likewise of property received by a person knowing it to have been stolen or obtained by false pretences. But the order is strictly limited to property identified at the trial as being the subject of the charge, and it does not extend to property in the possession of innocent persons which was not produced and identified at the trial as being the subject of the indictment. *R.* v. *Goldsmith*, 12 Cox C.C., 594; *R.* v. *Smith*, 12 Cox C.C., 597.

On the construction of this section, see *Lindsay* v. *Cundy*, L.R. 1, Q.B.D., 348; L.R. 2, Q.B.D., 96.

When a prisoner is acquitted on a charge of larceny the court cannot order property found in his possession to be given to the prosecutor unless evidence sufficient to make out a *prima facie* case either in trover trespass or replevin is in some way or other laid before it. *R.* v. *McIntyre*, 2 Prince Edward Island, 154.

In Ontario the Revised Statutes, chap. 69, provide for a summary trial of the right of the prisoner and the claimant of property in cases where the prisoner is not convicted of any offence in reference to the particular property claimed, and if the property is found to belong to the claimant, restitution may be ordered.

The police have power under a warrant for the arrest of a person charged with stealing goods to take possession of the goods for the purposes of the prosecution. A person, therefore, is justified in refusing to hand over goods to one claiming to be the owner, if such person has been entrusted with them by the police who have taken possession of them under such circumstances. *Tyler* v. *Louden*, 1 C. & E., 285.

Although on the preliminary investigation of a charge of larceny the prisoner is discharged from all liability in connection with it, yet the magistrate is entitled to have the property detained if it has been proved to have been stolen property until the larceny can be tried or until it appears that no trial for the offence can be had on account of the absence of or inability to discover the thief or the like. But if it appears that the goods were not stolen they should be returned to the owner. *Howell* v. *Armour*, 7 Ont. R., 363.

INSANE PRISONERS.

252. Whenever it is given in evidence upon the trial of any person charged with any offence, whether the same is treason, felony or misdemeanor, that such person was insane at the time of the commission of such offence, and such person is acquitted, the jury shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted by it on account of such insanity; and if it finds that such person was insane at the time of committing such offence, the court before which such trial is had, shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until the pleasure of the Lieutenant Governor is known.

253. The Lieutenant Governor of the Province in which the case arises may, thereupon, make such order for the safe custody of such person during his pleasure, in such place and such manner as to him seems fit.

254. If any person, before the passing of this Act, whether before or after the first day of July, one thousand eight hundred and sixty-seven, was acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before which such person was tried, and still remains in custody, the Lieutenant Governor may make a like order for the safe custody of such person during pleasure.

255. If any person indicted for any offence is insane, and upon arraignment is so found by a jury empanelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon the trial of any person so indicted, such person appears to the jury charged with the indictment to be insane, the court, before which such person is brought to be arraigned, or is tried as aforesaid, may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody until the pleasure of the Lieutenant Governor is known.

256. If any person charged with an offence is brought before any court to be discharged for want of prosecution, and such person appears to be insane, the court shall order a jury to be empanelled to try the sanity of such person; and if the jury so empanelled finds him insane, the court shall order such person to be kept in strict custody, in such place and in such manner as to the court seems fit, until the pleasure of the Lieutenant Governor is known.

257. In all cases of insanity so found, the Lieutenant Governor may make such order for the safe custody, during pleasure, of the person so found to be insane, in such place and in such manner as to him seems fit.

258. The Lieutenant Governor, upon such evidence of the insanity of any person imprisoned for an offence, or imprisoned for safe custody charged with an offence, or imprisoned for not finding bail for good behaviour or to keep the peace, as the Lieutenant Governor considers sufficient, may order the removal of such insane person to a place of safe keeping; and such person shall remain there, or in such other place of safe keeping, as the Lieutenant Governor from time to time orders, until his complete or partial recovery is certified to the satisfaction of the Lieutenant Governor, who may then order such insane person back to imprisonment, if then liable thereto, or otherwise to be discharged.

CROWN CASES RESERVED.

259. Every court before which any person is convicted on indictment of any treason, felony or misdemeanor, and every judge within the meaning of "*The*

Speedy Trials Act," trying any person under such Act, may, in its or his discretion, reserve any question of law which arises on the trial, for the consideration of the justices of the court for Crown cases reserved, and thereupon may respite execution of the judgment on such conviction, or postpone the judgment, until such question has been considered and decided ; and in either case the court before which the person is convicted may, in its discretion, commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient sureties, in such sum as such court thinks fit, conditioned for his appearance at such time as such court directs, to receive judgment or to render himself in execution, as the case may be.

260. The judge or other person presiding at the court before which the person is convicted, shall thereupon state in a case to be signed by such judge or other person, any question of law so reserved, with the special circumstances upon which the same arose ; and such case shall be transmitted by such judge, or other person, to the court for Crown cases reserved, on or before the last day of the first week of the term of such court next after the time when such trial was had.

261. The justices of the court for crown cases reserved, to which the case is transmitted, shall hear and finally determine such question, and reverse, affirm or amend any judgment given on the trial wherein such question arose, or shall avoid such judgment or order an entry to be made on the record, that in the judgment of such justices the person convicted ought not to have been convicted, or shall arrest the judgment, or if no judgment has been given, shall order judgment to be given thereon at some future session of the court before which the person was convicted or shall make such other order as justice requires.

262. The judgment and order of such justices shall be certified under the hand of the chief justice, president or senior judge of the court for Crown cases reserved, to the clerk of the court before which the person was convicted, who shall enter the same on the original record in proper form, and a certificate of such entry, under the hand of such clerk, in the form as near as may be, or to the effect mentioned in the third schedule to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted is ; and the said certificate shall be sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as so certified to have been affirmed or amended, and execution shall thereupon be carried out on such judgment, or if the judgment has been reversed avoided or arrested, the person convicted shall be discharged from further imprisonment, and the court before which the person was convicted shall, at its next session, vacate the recognizance of bail, if any ; or if the court before which the

person was convicted is directed to give judgment, such court shall proceed to give judgment at the next session thereof.

263. The judgment of the justices of the court for Crown cases reserved shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or person convicted thinks it fit that the case should be argued, in like manner as other judgments of such court are delivered, but no notice, appearance or other form of procedure, except such only as such justices in such cases see fit to direct, shall be requisite.

264. The justices of the court for Crown cases reserved, when any question has been so reserved for their consideration, may cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment may be delivered after it has been amended.

A justice of the peace or police magistrate, who can act alone where two justices of the peace are required to act, but who nevertheless acts as a justice of the peace, with more extended jurisdiction than an ordinary justice of the peace, cannot reserve a case for the opinion of the Court. *R.* v. *Richardson*, 8 Ont. R., 651.

In Ontario in *R.* v. *Bissell*, 1 Ont. R., 514, the right to reserve a case was clearly recognized, but having regard to the provisions of the Judicature Act, it was uncertain whether a reservation to the Justices of the Queen's Bench Division of the High Court of Justice was authorized. Now the reservation may be to any division of the High Court of Justice for Ontario. Rev. Stat. Can., chap. 174, s. 2, (h.) (1.)

As to the meaning of the term "court for crown cases reserved" in the different Provinces, see *Ib.*, s. 2, (h.) (1) (2) (3) (4) (5) (6).

265. Writs of error shall run in the name of the Queen, and shall be tested and returnable according to the practice of the court granting such writ, and shall, in the Province of Quebec, operate a stay of execution of the judgment of the court below.

266. No writ of error shall be allowed in any criminal case unless it is founded on some question of law which could not have been reserved, or which the judge, presiding at the trial, refused to reserve for the consideration of the court having jurisdiction in such cases.

267. Whenever in a criminal case any writ of error has been brought upon any judgment or any indictment, information, presentment or inquisition,

and the court of error reverses the judgment, the court of error may either pronounce the proper judgment, or remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment or inquisition.

NEW TRIALS.

268. A new trial shall not be granted in any criminal case unless the conviction is declared bad for a cause which makes the former trial a nullity so that there was no lawful trial in the case: Provided that a new trial may be granted in cases of misdemeanor in which, by law, new trials may now be granted, and that nothing herein contained shall interfere with the power of the Supreme Court of Canada to grant a new trial, as provided in "*The Supreme and Exchequer Courts Act.*"

SPECIAL PROVISIONS.

269. Any judge, retired judge, or Queen's counsel presiding at any sittings of the High Court of Justice of Ontario may reserve the giving of his final decision on questions raised at the trial; and his decision, whenever given, shall be considered as if given at the time of the trial.

270. The practice and procedure in all criminal cases and matters whatsoever, in the said High Court of Justice, shall be the same as the practice and procedure in similar cases and matters before the establishment of the said High Court.

271. If any general commission for the holding of a court of assize and nisi prius, oyer and terminer, or general gaol delivery is issued by the Governor General for any county or district in the Province of Ontario, such commission shall contain the names of the justices of the Supreme Court of Judicature for Ontario, and may also contain the names of the judges of any of the county courts in Ontario, and of any of Her Majesty's counsel learned in the law, appointed for the Province of Upper Canada, or for the Province of Ontario, and if any such commission is for a provisional judicial district such commission may contain the name of the judge of the district court of the said district:

2. The said courts shall be presided over by one of the justices of the said Supreme Court, or in their absence by one of such county court judges or by one of such counsel, or in the case of the said district by the judge of the said district court.

272. It shall not be necessary for any court of General Sessions in the Province of Ontario to deliver the gaol of all prisoners who are confined upon charges of simple larceny, but the court may leave any such cases to be tried

at the next court of oyer and terminer and general gaol delivery, if, by reason of the difficulty or importance of the case, or for any other cause, it appears to it proper so to do.

273. If any person is prosecuted in either division of the High Court of Justice for Ontario, for any misdemeanor, by information there filed or by indictment there found, or removed into such court, and appears therein in term time, in person, or, in case of a corporation, by attorney, to answer to such information or indictment, such defendant, upon being charged therewith, shall not imparl to a following term, but shall plead or demur thereto, within four days from the time of his appearance; and in default of his pleading or demurring within four days as aforesaid, judgment may be entered against such defendant for want of a plea.

274. If such defendant appears to such information or indictment by attorney, such defendant shall not imparl to a following term, but a rule, requiring him to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered, in the same manner as might have been done formerly in cases in which the defendant had appeared to such information or indictment by attorney in a previous term; but the court, or any judge thereof, upon sufficient cause shown for that purpose, may allow further time for such defendant to plead or demur to such information or indictment.

275. If any prosecution for misdemeanor instituted by the Attorney General for Ontario in the said court, is not brought to trial within twelve months next after the plea of not guilty has been pleaded thereto, the court in which such prosecution is depending, upon application made on behalf of any defendant in such prosecution, of which application twenty days' previous notice shall be given to such Attorney General, may make an order, authorizing such defendant to bring on the trial of such prosecution; and thereupon such defendant may bring on such trial accordingly, unless a *nolle prosequi* is entered to such prosecution.

276. In the Province of Nova Scotia a calendar of the criminal cases shall be sent by the clerk of the Crown to the grand jury in each term, together with the depositions taken in each case, and the names of the different witnesses, and the indictments shall not be made out, except in Halifax, until the grand jury so directs.

277. A judge of the Supreme Court of Nova Scotia may sentence convicted criminals on any day of the sittings at Halifax, as well as in term time.

GENERAL PROVISIONS.

278. The several forms in the schedules to this Act, or forms to the like effect, shall be good, valid and sufficient in law, and the forms of indictment

contained in the second schedule to this Act may be used, and shall be sufficient as respects the several offences to which they respectively relate; and as respects offences not mentioned in such second schedule, the said forms shall serve as a guide to show the manner in which offences are to be charged, so as to avoid surplusage and verbiage, and the averment of matters not necessary to be proved, and the indictment shall be good if, in the opinion of the court, the prisoner will sustain no injury from its being held to be so, and the offence or offences intended to be charged by it can be understood from it.

The Interpretation Act (Rev. Stat. Can., chap. 1, s. 7), (44), provides that where forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them.

279. Nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

FIRST SCHEDULE.

(A.)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*),
of ,

The information and complaint of C. D. of (*yeoman*), taken this day of , in the year before the undersigned, , a justice of the peace in and for the said District (*or* County, *or as the case may be*), of , who says that (*&c., stating the offence*).

Sworn (*or* affirmed) before (*me*) the day and year first above mentioned, at

When the information is for a second offence, add "and also that he the said , heretofore, and before the commission of the said last men-

tioned offence to wit on the day of , at in , was duly convicted before one of Her Majesty's Justices of the Peace in and for the said County, for that he, the said , on , at , (*here describe the offence as in the first conviction*), and that the said , was thereupon adjudged for his said last mentioned offence, to be imprisoned, (*or as the case may be, stating correctly the terms of the former adjudication*).

(B.)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
District (*or* County, United Counties, *or*, *as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*, of

Whereas A. B., of (*laborer*), has this day been charged upon oath before the undersigned , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of for that he, on , at , did (*&c., stating shortly the offence*): These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , at , in the District (*County, &c.*), aforesaid.

J. S. [L.S.]

(C.)

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To A. B., of , (*laborer*):

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

Given under (*my*) hand and seal, this day of , in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(D.)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas on the day of (instant *or* last past) A. B.,

of the , was charged before (*me* or *us*), the undersigned (*or name the Justice or Justices, or as the case may be*), (*a*) Justice of the Peace in and for the said District *or* County, United Counties, *as the case may be*), of for that (*&c., as in the summons*); and whereas (I, *or* he *the said Justice of the Peace, or* we *or* they, *the said Justices of the Peace*) did then issue (*my, our, his* or *their*) summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at or before such other Justice or Justices of the Peace as should then be there, to answer to the said charge and to be further dealt with according to law; and whereas the said A. B. has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the District (*or* County, &c.), aforesaid.

J. S. [L.S.]

(D. 2.)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any District or County of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed " on land out of Canada, to wit: at in the Kingdom of , *or* at , in the Island of in the West Indies," or at , in the East Indies, *or as the case may be.*

(E.)

CERTIFICATE OF INDICTMENT BEING FOUND.

I hereby certify that at a Court of (Oyer and Terminer, *or* General Goal Delivery, *or* General Sessions of the Peace) holden in and for the District (*or* County, United Counties, *or as the case may be*), of , at , in the said District, (*or* County, &c.), on , a bill of indictment was found by the Grand Jury against A. B., therein described as A. B., late of (*laborer*), for that he (*&c., stating shortly the offence*), and that the said A. B. has not appeared or pleaded to the said indictment.

Dated this day of , in the year

Z. X.
Clerk.

Clerk of the Crown, (*or* deputy clerk of the Crown) for the District (*or* County, United Counties, *or as the case may be*);

or

Clerk of the Peace of and for the said District (*or* County, United Counties, *or as the case may be*).

(F.)

WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas it has been duly certified by J. D., clerk of the Crown, of (*name the court*) (*or* E. G., deputy clerk of the Crown, *or* clerk of the Peace, *as the case may be*), in and for the District (*or* County, United Counties, *or as the case may be*), of , that (*&c., stating certificate*): These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other Justice or Justices of

the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), to be dealt with according to law.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]
J.P.

(G.)

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of .

To all or any of the Constables, or other Peace Officers in the said District (*or* County, *&c.*), of , and the keeper of the common gaol, at , in the said District (*or* County, United Counties, *or as the case may be*), of .

Whereas by a warrant under the hand and seal of (*a*) Justice of the Peace in and for the said District, (*or* County, United Counties, *or as the case may be*,) of under hand and seal, dated , after reciting that it had been certified by J. D., (*&c., as in the certificate*), ( ) the said Justice of the Peace commanded all or any of the Constables, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of or before some other Justice or Justices in and for the said District (*or* County, United Counties, *or as the case may be*), to be dealt with according to law; and whereas the said A. B. has been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by , in the said indictment: These are therefore to command you, the said Constables and Peace Officers, or any of you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said District (*or* County, United Counties, *or as the case may be*), of , and there to deliver him to

the keeper thereof, together with this precept; and (*I*) hereby command you the said keeper to receive the said A. B. into your custody in the said gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of in the year , at , in the District (*or* County, *&c.*). aforesaid.

J. S. [L.S.]
J. P.

(H.)

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of
District, (*or* County, United Counties, *or as the case may be*), of

To the Keeper of the Common Gaol at in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas it has been duly certified by J. D., clerk of the Crown, of (*name the court, or* deputy clerk of the Crown *or* clerk of the Peace) of and for the District (*or* County, United Counties, *or as the case may be*), of that (*&c., stating the certificate*); And whereas (*I am*) informed that the said A. B., is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B., so indicted as aforesaid, and the said A. B. in your custody, as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by a writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal, this day of in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]
J. P.

(I.)

INDORSEMENT IN BACKING A WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Whereas proof upon oath has this day been made before (*me*) , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of that the name of J. S. to the within warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned: I do therefore hereby authorize W.T., who brings to me this warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all Constables and other Peace Officers of the said District (*or* County, United Counties, *or as the case may be*), of , to execute the same within the said last mentioned District (*or* County, United Counties, *or as the case may be*).

Given under my hand, this day of , in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. L.

(K.)

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

The information of A. B., of the , of , in the said District (*or* County, *&c.*), (*yeoman*) taken this day of , in the year , before me, W. S., Esquire, a Justice of the Peace in and for the District (*or* County, United Counties, *or as the case may be*), of

, who says that on the day of (*insert the description of articles stolen*) of the goods and chattels of deponent, were feloniously stolen, taken and carried away, from and out of the (*dwelling house, &c.*), of this deponent, at the (*township, &c.*), aforesaid, by some person or persons unknown (*or name the person*) and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling house, &c.*), of C. D., of , in the said District (*or* County, *&c.*), (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling house, &c.*), of the said C.D., as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn (*or* affirmed) before me the day and year first above mentioned, at , in the said District (*or* County, *&c.*), of

W. S.

(K, 2.)

SEARCH WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers, in the District (*or* County, United Counties, *or as the case may be*), of :

Whereas A.B. of the of in the said District (*or* County, *&c.*), has this day made oath before me the undersigned a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of that, on the day of , (*copy information as far as place of supposed concealment*): These are therefore, in Her Majesty's name, to authorize and require you, and each and every of you, with necessary and proper assistance, to enter in the day-time into the said (*dwelling house, &c.*), of the said , and there diligently search for the said goods and chattels, and if the same, or any part thereof, are found upon such search, that you bring the goods so found, and also the body of the said C. D., before me, and some other Justice of the

Peace, in and for the said District (*or* County, United Counties, *or as the case may be*, of , to be disposed of and dealt with according to law.

Given under my hand and seal, at , in the said District (*or* County, *&c.*), this day of , in the year

W. S. (*Seal.*)

(L.)

SUMMONS TO A WITNESS.

Canada,
Province of
District (*or* County, United Counties, or *as the case may be*), of

To E. F., of (*laborer*):

Whereas information has been laid before the undersigned , a Justice of the Peace in and for the said district (*or* County, United Counties, *or as the case may be*), of , that A. B. (*&c., as in the summons or warrant against the accused*), and it has been made to appear to me upon (*oath*), that you are likely to give material evidence for (*the prosecution*); These are therefore to require you to be and to appear before me on next, at o'clock in the (fore) noon, at , or before such other Justice or Justices of the Peace of the same district (*or* County, United Counties, *or as the case may be*), of , as shall then be there, to testify what you know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of in the year , at , in the district (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(L, 2.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

To all or any of the Constables or other Peace Officers in the said district (*or* County, United Counties, *or as the case may be*), of

Whereas information having been laid before , a Justice of the Peace, in and for the said district (*or* County, *&c.*), of , that A. B. (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of (*laborer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at or before such other Justice or Justices of the Peace for the same district (*or* County, United Counties, *or as the case may be*), as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F.; and whereas the said E. F., has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F., before (*me*) on at o'clock in the (fore) noon, at or before such other Justice or Justices for the same district (*or* County, United Counties, *or as the case may be*), as shall [illegible] be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of in the year , at in the district (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(L, 3.)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas information has been laid before the undersigned , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath, that E. F. of (*laborer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon at , or before such other Justice or Justices of the Peace for the same District (*or* County, United Counties, *or as the case may be*), as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of in the year , at in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(L, 4.)

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN, OR TO GIVE EVIDENCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the District (*or* County, United Counties, *or as the case may be*), of and to the keeper of the common gaol at , in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas A. B. was lately charged before a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of was likely to give material evidence for the prosecution (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other Justice or Justices of the Peace for the same District (*or* County, United Counties, *or as the case may be*) as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf), to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following) without offering any just excuse for such refusal: These are therefore to command you, the said Constables, Peace Officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the District (*or* County, &c.), 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 common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for his said contempt, unless in the mean-

time he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(M.)

WARRANT REMANDING A PRISONER.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the (common gaol *or* lock-up house) at , in the said District (*or* County, *&c.*), of

Whereas A. B. was this day charged before the undersigned , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the warrant to apprehend*), and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, the said Constables and Peace Officers in Her Majesty's name, forthwith to convey the said A. B. to the (common gaol *or* lock-up house) at , in the said District (*or* County, *&c.*), and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said (common gaol *or* lock-up house), and there safely keep him until the day of , (*instant*) when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before (*me*) or before such other Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), 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 day of , in the year , at in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(M, 2.)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

Be it remembered, that on the day of , in the year , A. B. of (*laborer*), L. M., of (*grocer*), and N. O., of (*butcher*) personally came before me, , a Justice of the Peace for the said District (*or* County, United Counties, *or as the case may be*), and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition indorsed (*or* hereunder written).

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

J. S.

CONDITION.

The condition of the within (*or* above) written recognizance is such that whereas the within bounden A. B. was this day (*or* on past) charged before me for that (*&c., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*): If, therefore, the said A. B. appears before me on the said day of (*instant*) at o'clock in the (fore) noon, or before such other Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

(M, 3.)

NOTICE OF RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS SURETIES.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

Take notice that you, A. B., of , are bound in the sum of , and your sureties, L. M. and N. O., in the sum of , each, that you A. B., appear before me, J. S., a Justice of the Peace for the District (*or* County, United Counties, *or as the case may be*), of , on the day of (*instant*), at o'clock in the (fore) noon at , or before such other Justice or Justices of the same District (*or* County, United Counties, *or as the case may be*), as shall then be there, to answer (*further*) to the charge made against you by C. D., and to be further dealt with according to law; and unless you, A. B., personally appear accordingly, the amounts mentioned in the recognizance entered into by yourself and sureties will be forthwith levied on you and them.

Dated this day of , in the year

J. S.

(M, 4.)

CERTIFICATE OF NON-APPEARANCE TO BE INDORSED ON THE RECOGNIZANCE.

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

J. S.
J. P.

(N.)

DEPOSITIONS OF WITNESSES.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

The examination of C. D., of (*farmer*), and E. F., of , (*laborer*), taken on (*oath*) this day of , in the year , at in the District (*or* County, *&c.*, *or as the case may be*), aforesaid, before the undersigned , a Justice of the Peace for the said District (*or* County, United Counties, *or as the case may be*), in the presence and hearing of A. B., who is charged this day before (*me*) for that he, the said A. B., at (*&c.*, *describe the offence as in a warrant of commitment.*)

This deponent, C. D., upon his (*oath*) says as follows : (*&c.*, *stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is completed let him sign it.*)

And this deponent, E. F., upon his (*oath*) says as follows : (*&c.*)

The above depositions of C. D. and E. F. were taken and (*sworn*) before me, at , on the day and year first above mentioned.

J. S.

(O.)

STATEMENT OF THE ACCUSED.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

A. B. stands charged before the undersigned , a Justice of the Peace, in and for the District (*or* County, United Counties, *or as the case*

may be), aforesaid, this day of , in the year , for that the said A. B., on , at (*&c., as in the captions of the depositions*); and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. 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 obliged to say anything unless you "desire to do so; but whatever you say will be taken down in writing, and "may be given in evidence against you at your trial." Whereupon the said A. B. says as follows: (*Here state whatever the prisoner says, and in his very words, as nearly as possible. Get him to sign it if he will*).

A.B.

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

J. S.

(P.)

WARRANT OF COMMITMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the common goal of the District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County, *&c.*), of

Whereas A. B. was this day charged before (*me*) J. S., a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , on the oath of C. D., of (*farmer*), and others, for that (*&c., stating shortly the offence*): These are therefore to command you the said Constables or Peace Officers, or any of you, to take the said A. B. and him safely convey to the common goal at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common goal, to

receive the said A. B. into your custody in the said common goal, and there safely to keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(Q.)

RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on the day of , in the year C. D. of , in the of , in the (*township*) of , in the said District (*or* County, *&c.*), of (*farmer*), personally came before me , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , and acknowledged himself to owe to our Sovereign Lady the Queen, Her heirs and successors, the sum of , 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 Lady the Queen, Her heirs and successors, if the said C. D. fails in the condition indorsed (*or* hereunder written).

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

J. S.

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., a Justice of the Peace within mentioned, for that (*&c., as in the caption of the depositions*); if, therefore, he the said C. D. appears at the next Court of Oyer and Terminer *or* General Goal Delivery, (*or* at the next Court of General or Quarter

Sessions of the Peace), to be holden in and for the District (*or* County, United Counties, *or as the case may be*), of * , and there prefers or causes to be preferred a bill of indictment for the offence aforesaid, against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, otherwise to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus*):—And there prefers or causes to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecutes such indictment, and gives evidence thereon, as well to the jurors who shall then inquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

CONDITION TO GIVE EVIDENCE.

(*Same as the last form but one, to the asterisk,* and then thus*):—And there gives such evidence as he knows upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence, as also to the jurors who shall pass upon the trial of the said A. B., if the said bill shall be found a true bill, then the said recognizance to be void, otherwise to remain in full force and virtue.

(Q. 2.)

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE PROSECUTOR AND HIS WITNESSES.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Take notice that you, C. D. of , are bound in the sum of to appear at the next Court of Oyer and Terminer and General Goal Delivery (*or* at the next Court of General Sessions of the Peace), in and for the District (*or* County, United Counties, *or as the case may be*), of , to be holden at , in the said District (*or* County,

&c.), and then and there (*prosecute and*) give evidence against A. B., and unless you then appear there (*prosecute*) and give evidence accordingly, the amount mentioned in the recognizance entered into by you will be forthwith levied on you.

Dated this day of in the year

J. S.

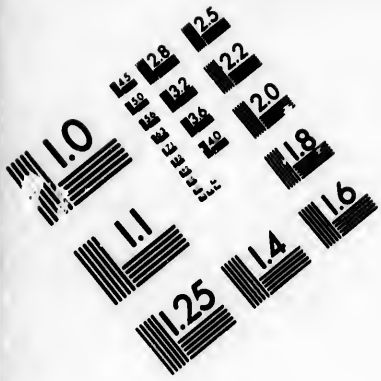
(R.)

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, *&c.*), of , and to the keeper of the common gaol of the said District (*or* County, *&c.*, *or as the case may be*), at , in the said District (*or* County, *&c.*, *or as the case may be*), of :

Whereas A. B. was lately charged before the undersigned (*name of the Justice of the Peace*) a Justice of the Peace in and for the said District (*or* County, *&c.*), of , for that (*&c.*, *as in the summons to the witness*) and it having been made to appear to (*me*) upon oath that E. F., of was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other Justice or Justices of the Peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (or being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid), has been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., now refuses so to do: These are therefore to command you the said Constables or Peace Officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the District (*or* County, *&c.*), aforesaid, and there deliver him to the said keeper thereof, together with this precept:



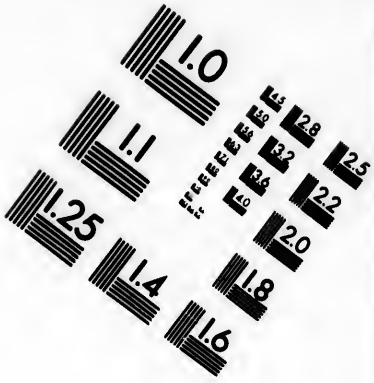
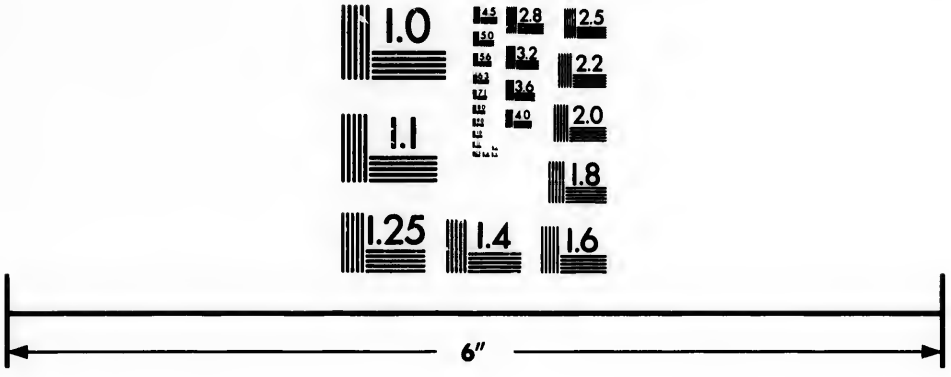
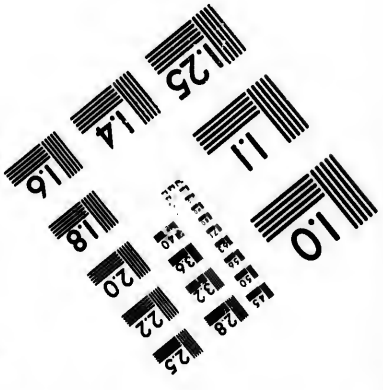


IMAGE EVALUATION
TEST TARGET (MT-3)





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WEBSTER, N.Y. 14580
(716) 872-4503

And I do hereby command you the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. duly enters into such recognizance as aforesaid, in the sum of , before some one justice of the peace for the said district, (*or* County, United Counties *or as the case may be*), conditioned in the usual form to appear at the next court of Oyer and Terminer, or General Gaol Delivery (*or* General *or* Quarter Sessions of the Peace), to be holden in and for the said district (*or* County, United Counties, *or as the case may be*), of , and there to give evidence before the grand jury upon any bill of indictment which shall then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill is found against him for the same.

Given under my hand and seal, this day of , in the year , at in the district (*or* county, &c.), aforesaid.

J. S. [L.S.]

(R, 2.)

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To the keeper of the common gaol at , in the District (*or* County, &c.), of aforesaid .

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F having appeared before (*me*) and being examined as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as afore-

said; and whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you, the said keeper, to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this day of in the year at in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]
J. P.

(S.)

RECOGNIZANCE OF BAIL.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on the day of in the year , A. B. of (*laborer*), L. M. of , (*grocer*), and N. O. of (*butcher*), personally came before (*us*) the undersigned (*two*) Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*), of and severally acknowledged themselves to owe to our Sovereign Lady the Queen, Her heirs and successors, the several sums following, that is to say: the said A B. the sum of and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lady the Queen, Her heirs and successors, if he, the said A. B., fails in the condition indorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before us.

J. S.
J. N.

CONDITION.

The condition of the within (*or* above) written recognizance, is such that whereas the said A. B. was this day charged before (*us*), the Justices within mentioned for that (*&c., as in the warrant*); if, therefore, the said A. B. appears at the next court of Oyer and Terminer (*or* General Goal Delivery *or* court of General or Quarter Sessions of the Peace) to be holden in and for the District (*or* County, United Counties, *or as the case may be*), of , and there surrenders himself into the custody of the keeper of the common goal (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.

(S, 2.)

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS BAIL.

Take notice that you A. B., of are bound in the sum of , and your sureties (L. M. and N. O.) in the sum of , each, that you A. B. appear (*&c., as in the condition of the recognizance*), and not depart the said court without leave; and unless you the said A. B., personally appear and plead, and take your trial accordingly, the amount mentioned in the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this day of , in the year

J. S.

(S, 3.)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be).
of

To the keeper of the common gaol of the District (*or* County, United Counties, *or as the case may be*), of at , in the said District (*or* County, United Counties, *or as the case may be*).

Whereas A. B. late of (*laborer*), has before (*us*) (*two*) Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , entered into his own recognizance, and found sufficient sureties for his appearance at the next court of Oyer and Terminer or General Gaol Delivery (*or* court of General *or* Quarter Sessions of the Peace), to be holden in and for the District (*or* County, United Counties, *or as the case may be*), of , to answer Our Sovereign Lady the Queen, for that (*&c., as in the commitment*), for which he was taken and committed to your said common gaol: These are therefore to command you in Her Majesty's name, that if the said A. B. remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at in the District (*or* County, *&c.*), aforesaid.

J. S. [L S.]
J. N. [L.S.]

(T.)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., Constable of the District (*or* County, *&c.*), of , the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, a Justice of the Peace for the said District (*or* County, United Counties, *or as the case may be*), of , and that the said A. B. was sober, (*or as the case may be*), at the time he was delivered into my custody.

P. K.,
Keeper of the common gaol of the said District (or County, *&c*).

(U.)

WARRANT TO CONVEY THE ACCUSED BEFORE A JUSTICE OF THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, (*or as the case may be*), of

Whereas A. B., of (*laborer*), has this day been charged before the undersigned , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the warrant to apprehend*): and whereas (*I*) have taken the deposition of C. D., a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the District (*or* County, United Counties, *or as the case may be*), of where the said offence is alleged to have been committed: These are therefore to command you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said District (*or* County, United Counties, (*or as the case may be*) of , and there carry him before some Justice or Justices of the Peace in and for that District (*or* County, United Counties, (*or as the case may be*), and in or near unto

the (township of) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (*I*) hereby further command you to deliver to the said Justice or Justices the information in this behalf, and also the said deposition of C. D., now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, *&c.*), aforesaid.

J. S. [L.S.]

(U, 2.)

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of
District (*or* County,
United Counties, *or as the case may be*),
of

I, J. P., a Justice of the Peace in and for the District (*or* County, (*&c.*), of , hereby certify that W. T., Constable, (*or* Peace Officer), of the District (*or* County, United Counties, *or as the case may be*), of has on this day of , in the year , by virtue of and in obedience to a warrant of J. S., Esquire, a Justice of the Peace in and for the District (*or* County, United Counties, *or as the case may be*), of , produced before me one A. B., charged before the said J. S. with having (*&c.*, *stating shortly the offence*), and delivered him into the custody of , by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C D. (*and of*) in the said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S., subscribed to the same.

Dated the day and year first above mentioned, at in the said District (*or* County, *&c.*), of

J. P.

In regard to the statement of the offence the following forms may be used for informations as well as indictments. See s. 2 (c); *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537.

An allegation that the act was done feloniously would seem to be necessary in any case of felony. See *R.* v. *Gough*, 3 Ont. R., 402.

SECOND SCHEDULE.

FORMS OF INDICTMENT.

Murder.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of in the year , at in the County (*or* District) of , did feloniously, wilfully, and of his malice aforethought kill and murder one C. D.

Manslaughter.

County (*or* District) of , to wit : } *Same as last form, omitting* "wilfully and of malice aforethought," *and substituting the word* "slay" *for the word* "murder."

Bodily Harm.

County(*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that J. B., on the day of , at , did feloniously administer to (*or* cause to be taken by) one A. B., poison (*or* other destructive thing) and did thereby cause bodily harm to the said A. B., with intent to kill the said A. B. (*or* C. D.)

Rape.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , by force and against her will, feloniously ravished and carnally knew J. D., a woman above the age of *twelve* years.

Simple Larceny.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously steal a *gold watch*, the property of C. D.

Robbery.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously rob C. D. (and at the time of, or immediately before or after such robbery (*if the case is so*), did cause grievous bodily harm to the said C. D. (*or to any person, naming him*).

Burglary.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at did feloniously break into and enter the dwelling-house of C. D., in the night-time, with intent to commit a felony therein (*or as the case may be*).

Stealing Money.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously steal a certain sum of money, to wit, to the amount of dollars, the property of one C. D. (*or as the case may be*).

Embezzlement.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , being a servant (*or* clerk) then employed in that capacity by one C. D., did then and there, in virtue thereof, receive a certain sum of money, to wit, to the amount of , for and on account of the said C. D., and the said money did feloniously embezzle.

False Pretences.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, on their oath, present that A. B., on the day of , at , unlawfully, fraudulently and knowingly, by false pretences, did obtain from one C. D., *six yards of muslin*, of the goods and chattels of the said C. D., with intent to defraud.

Offences against the Habitation.

County (*or* District) of , to wit: } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously and maliciously set fire to the dwelling-house of C. D., the said C. D. (*or some other person by name, or if the name is unknown*, some person) being therein.

Malicious Injuries to Property.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously and maliciously set fire, or attempt to set fire, to a certain building or erection, that is to say (a house *or* barn *or* bridge, *or as the case may be*) the property of one C. D. (*or as the case may be*).

Forgery.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did feloniously forge (*or* utter, knowing the same to be forged) a certain *promissory note, &c.* (*or* clandestinely and without the consent of the owner, did make an *alteration* in a certain written instrument with intent to defraud, *or as the case may be*).

Coining.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, on their oath, present that A. B., on the day of , at , did feloniously counterfeit a gold coin of the United Kingdom, called a *sovereign*, current by law in Canada, with intent to defraud, (*or* had in his possession a counterfeit of a gold coin of the United Kingdom, called a *sovereign*, current by law in Canada knowing the same to be counterfeit, and with intent to defraud by uttering the same).

Perjury.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that heretofore, to wit, at the (*assizes*) holden for the county (*or* district) of , on the day of before (*one of the judges of our Lady the Queen*), a certain issue between one E. F. and one J. H., in a certain action of *covenant*, was tried, upon which trial A. B. appeared as a witness for and on behalf of the said E. F., and was then and there duly *sworn* before the said , and did then and there, upon his *oath*, aforesaid, falsely, wilfully and corruptly, depose and *swear* in substance and to the effect following, "*that he saw the said G. H. duly execute the deed on which the said action was brought*," whereas, in truth, the said A. B. did not see the said G. H. execute the said deed, and the said deed was not executed by the said G. H., and the said A. B. did thereby commit wilful and corrupt perjury.

Subornation of Perjury.

County (*or* District) of , to wit : } *Same as last form to the end, and then proceed* :—And the jurors further present, that before the committing of the said offence by the said A. B., to wit, on the day of , at , C. D., unlawfully, wilfully and corruptly did cause and procure the said A. B. to do and commit the said offence in manner and form aforesaid.

Offences against the Public Peace.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , with *two* or more persons, did riotously and tumultuously assemble together to the disturbance of the public peace, and with force did demolish, pull down or destroy (*or* attempt or begin to demolish, *&c.*), a certain building or erection of C. D.

Offences against the Administration of Justice.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at did corruptly take or receive money under pretence of helping C. D. to a chattel (*or* money, *&c.*), that is to say, a horse (*or* five dollars, *or* a note, *or* a carriage), which had been stolen (*or as the case may be*).

Bigamy or offences against the Law for the Solemnization of Marriage.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , being then married, did feloniously marry C. D. during the lifetime of the wife of the said A. B.—(*or* not being duly authorized, did solemnize (*or* assist in the solemnization of) a marriage between C. D. and E. F., *or* being duly authorized to marry, did solemnize marriage between C. D. and E. F. before proclamation of banns according to law, *or* without a license for such marriage under the hand and seal of the Governor.

Offences relating to the Army.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B, on the day of , at , did solicit (*or* procure) a soldier to desert the Queen's service (*or as the case may be*).

Offences against Public Morals and Decency.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did keep a common gaming, bawdy *or* disorderly house (*or* rooms).

General Form.

County (*or* District) of , to wit : } The jurors for our Lady the Queen, upon their oath, present that A. B., on the day of , at , did *here describe the offence in the terms in which it is described in the law, or state such facts as constitute the offence intended to be charged, and if the offence is felony state the act to have been done feloniously.*

THIRD SCHEDULE.

Whereas at (*stating the session of the court before which the person was convicted*), held for the county (*or* united counties) of , on before A. B., late of , having been found guilty of felony, and judgment thereon given, that (*state the substance*), the court before whom he was tried reserved a certain question of law for the consideration of the justices of (*name of court*), and execution was thereupon respited in the meantime (*as the case may be*): This is to certify that the justices of (*name of court*) having met at , in term (*or as the case may be*), it was considered by the said justices there, that the judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the judgment of the said justices, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

(Signed) E. F.
Clerk of (*as the case may be*).

To the sheriff of , and
the gaoler of , and
all others whom it may concern.

SUPPLEMENTARY FORMS NOT IN THE ACT.

INFORMATION AGAINST AN ACCESSORY AFTER THE FACT TO A FELONY WITH THE PRINCIPAL.

Proceed as in A, ante page 141, and after describing the offence of the principal, state thus:—And that C. S., of, &c., well knowing the said A. B. to have committed the felony aforesaid, afterwards, to wit, on the day of instant, at the of aforesaid, feloniously did receive, harbour and maintain the said A. B.

THE LIKE WITHOUT THE PRINCIPAL OR WHERE THE PRINCIPAL IS UNKNOWN.

Proceed as in A, ante page 141, to the statement of the offence, then thus:— That one A. B., of, &c., (or some person or persons whose name or names is or are unknown), on the day of at the of etc., feloniously did (*describe the offence of the principal*), and that E. S., of well knowing the said A. B. (or person unknown) to have committed the felony aforesaid, afterwards, to wit, on the day of at the of aforesaid, feloniously did receive, harbour, and maintain the said A. B. (or person unknown).

DEPOSITION OF THE CONSTABLE OF THE SERVICE OF THE SUMMONS.

Canada,
Province of
District (*or* County,
United Counties, *or as the case may be*),
of

The deposition of J. N., Constable of the of C., in the said (*County*,) taken upon oath before me the undersigned, one of Her Majesty's Justices of the Peace for the said (*County*) of C., at N., in the same (*County*), this day of 18 , who saith that he served A. B., mentioned in the annexed (*or* within) summons, with a duplicate thereof, on the day of last personally (*or* "by leaving the same with N. O., a grown person, at the said A. B's usual *or* last place of abode at N., in the County of S.").

Before me J. S.

J. N.

DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

The deposition of J. N., of the of C., in the said County (*farmer*), taken on oath before me the undersigned, one of Her Majesty's Justices of the Peace in and for the said County of C., at N., in the said County, this day of , 18 , who saith that E. F., of the of C., aforesaid (*grocer*), is likely to give material evidence on behalf of the prosecution, in this behalf, touching the matter of the annexed (*or* "within") information (*or* "complaint"); And that this deponent verily believes that the said E. F. will not appear voluntarily for the purpose of being examined as a witness (*or if a warrant be granted in the first instance*, "without being compelled so to do)."

Before me, J. S.

J. N.

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE WHO ATTENDS WITHOUT A SUMMONS.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be),
of

To all or any of the Constables, or other Peace Officers, in the District (*or* County, United Counties, *or as the case may be*), of and to the Keeper of the Common Gaol at , in the said District (*or* County, United Counties, *or as the case may be*) of

Whereas A. B. was this day brought before me, the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said (*County*) of , for that he the said A. B. on &c., at &c., (*here state the charge as in the Summons, Warrant or caption of the depositions*); And whereas one E. F. of &c., here in the presence of the said A. B. now under examination before me the

said Justice on the charge aforesaid, now voluntarily appears as a witness for the prosecution in that behalf, and the said E F. appearing to me, upon oath, likely to give material evidence for the prosecution, but being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, (*or* being duly sworn as a witness, doth now refuse to answer certain questions concerning the premises, which are here put to him), without offering any just cause for such his refusal: "These are therefore to command you the said Constable to take the said E. F., and him safely convey to the (*Common Gaol*) at , in the (*County*) aforesaid, and there deliver him to the said Keeper thereof with this precept, and I do hereby command you the said Keeper of the said (*Common Gaol*) to receive the said E. F. into your custody in the said (*Common Gaol*), and him there safely keep for the space of days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient Warrant."

Given under my Hand and Seal, this day of , in the year of our Lord , at in the (*County*) aforesaid.

J. S. (L.S.)

DEPOSITIONS OF THE WITNESSES ON THE REMAND DAY.

This will be on the like caption as the form No. (N.) ante page 157, but the description of the offence need not be repeated.

The jurat will be as follows:—The above depositions of F. G., &c., were taken and sworn before me at , on the day of 18 , (and the depositions of C. D., and E. F., taken on the day of 18 , (and the depositions of C. H. and L. M. taken on the day of 18 ,) being at the same time severally read over and resworn in the presence and hearing of the before-named prisoner.

J. S.

Where the same justice hears the further evidence on the remand day, there would be no necessity for the former depositions to be re-sworn, and consequently no allusion to it in the jurat.

If on the remand day there is a committal for trial by another justice without any additional evidence, place the following jurat: "The forgoing depositions of C. D. and E. F. taken on &c. (and the depositions of F. G., &c., taken on &c.), were severally read over and re-sworn before me at , on the day of 18 , in the presence and hearing of the before-named prisoner.

J. L.

MEMORANDUM TO BE WRITTEN ON DOCUMENTS PRODUCED IN EVIDENCE.

This is the plan (*or as the case may be*) produced to me, the undersigned, (*one*) of Her Majesty's Justices of the Peace for the (*County*) of , on the examination of A. B., charged with arson, (forgery, &c.), and referred to in the examination of C. D. touching the said charge, taken before me this day of 18 .

J. S.

NOTICE OF RECOGNIZANCE WHEN THERE IS A SURETY FOR A WITNESS.

Take notice, that you C. D. of &c., are bound in the sum of to appear (*or* for the appearance of L. M., of &c., a minor *or* the wife of J. M. of &c., *as the case may be*) at the next Court of General Quarter Sessions of the Peace (*or* Oyer and Terminer and General Gaol Delivery) in and for the said (*County*) of , and then and there to (prosecute and) give evidence against A. B. for (felony), and unless you (he) then appear (appears and prosecutes) and give evidence accordingly, the Recognizance entered into by you will be forthwith levied on you.

Dated day of , 18 .

J. S. the Justice of the Peace for the said (*County*) of , before whom the Recognizance was entered into.

ORDER TO BRING UP ACCUSED BEFORE EXPIRATION OF REMAND.

To the Keeper of the (*Common Gaol*) at , in the said (*County*) of

to wit: } Whereas A. B. (hereinafter called the "accused" was on the day of , committed (by me) to your custody in the said (*Common Gaol*) charged for that (*&c., as in the warrant remanding the prisoner*), and by the warrant in that behalf* you were commanded to have him at , on the day of , now next, at o'clock in the forenoon, before such Justice or Justices of the Peace for the said (*County*), as might then be there, to answer further to the said charge, and to be further dealt with according to law.

(*Or shortly, from the asterisk,** "he was remanded to the day of next") unless you should be otherwise ordered in the meantime:

and whereas it appears to me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said (*County*) of , (*or* me the said Justice), to be expedient the said accused should be further examined before the expiration of the said remand: These are therefore to order you in Her Majesty's name to bring and have the said accused at (*&c., follow from the asterisk in the preceding form, supra, to the end*).

COMPLAINT OF BAIL FOR A PERSON CHARGED WITH AN INDICTABLE OFFENCE IN ORDER THAT HE MIGHT BE COMMITTED IN DISCHARGE OF THEIR RECOGNIZANCES.

Proceed as in the preceding form to the asterisk altering it to two complaints if there be more than one surety, then thus:* that they the said C. D., and E. F., were on the day of now last past, severally and respectively bound by recognizance before J. P., Esquire, one of Her Majesty's Justices of the Peace for the said (County) of , in the sum of each, upon condition that one A. B., of &c., should appear at the next term of the Court of Queen's Bench (Crown Side), for the District of , (or Court of Oyer and Terminer and General Gaol Delivery, *or* Court of General Quarter Sessions of the Peace), to be holden in and for the (*County*) of , and there surrender himself into the custody of the Keeper of the (*Common Gaol*) there, and plead to such indictment as might be found against him by the grand jury for or in respect to the charge of (stating the charge shortly), and take his trial upon the same and not depart the said Court without leave; and that these complainants have reason to suspect and believe and do verily suspect and believe, that the said A. B. is about to depart from this part of the country; and therefor they pray of me the said Justice that I would issue my warrant of apprehension of the said A. B., in order that he may be surrendered to prison in discharge of them his said bail.

Before me, J. P.

C. D.
E. F.

WARRANT TO APPREHEND THE PERSON CHARGED.

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to C. D. and E. F., severally and respectively.

to wit: } Whereas you the said C. D. and E. F., have this day made complaint to me the undersigned, one of Her Majesty's Justices of the Peace in and for the said (*County*) of , that you the said C. D. and E. F., were, &c., (*as in the complaint, to the end*): These are

therefore to authorize you the said C. D. and E. F., and also to command you the said (*Constable or other* Peace Officer), in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before me or some Justice or Justices of the Peace in and for the said (*County*), to the intent that he may be committed to the (*common gaol*) in and for the said (*County*), until the next Court of Oyer and Terminer and General Gaol Delivery (*or* Court of General Quarter Sessions of the Peace, to be holden in and for the said (*County*) of *or &c., as the case may be*), unless he find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*County*) aforesaid.

J. S. [L.S.]

COMMITMENT OF THE PERSON CHARGED ON SURRENDER OF HIS BAIL AFTER APPREHENSION UNDER A WARRANT.

To all or any of the Constables, or other Peace Officers in the District (*or* County, United Counties, *or as the case may be*) of , and to the Keeper of the common gaol of the District (*or* County, United Counties, *or as the case may be*) at , in the said District (*or* County, &c.,) of :

to wit: } Whereas on the day of instant, complaint was made to me the undersigned (*or* J. S.) one of Her Majesty's Justices of the Peace, in and for the said (County) of , by C. D. and E. F., of &c., that (*as in the complaint, to the end*), I (*or* the said Justice) thereupon issued my warrant authorizing the said C. D. and E. F., and also commanding the said Constables of , and all other Peace Officers in the said (*County*) of , in Her Majesty's name forthwith to apprehend the said A. B., and to bring him (*follow to end of warrant*, preceding form); and whereas the said A. B., hath been apprehended under and by virtue of the said warrant, and being now brought before me the said Justice (*or* me the undersigned, one, &c.) and surrendered by the said C. D. and E. F., his said sureties, in discharge of their said recognizances, I have required the said A. B., to find new and sufficient sureties to become bound for him in such recognizance as aforesaid, but the said A. B. hath now refused so to do; These are therefore to command you the said Constables (*or other Peace Officers*) in Her Majesty's name, forthwith to take and safely to convey the said A. B., to the said (*common gaol*) at , in the said (*County*) and there deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B.

into your custody in the said (*common gaol*), and him there safely to keep until the next Court of Oyer and Terminer and General Gaol Delivery (*or* Court of General Quarter Sessions of the Peace), to be holden in and for the said (*County*) of , unless in the meantime the said A. B. shall find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given, &c., (*as in the preceding form.*)

CHAPTER 175.

An Act for the speedy trial, in the Provinces of Ontario, Quebec and Manitoba, of certain indictable offences.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as "*The Speedy Trials Act.*"

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "judge" means and includes,—

(1.) In the Province of Ontario, any judge of a county court, junior judge or deputy judge authorized to act as chairman of the General Sessions of the Peace, and also the judge of the provisional district of Algoma, authorized to act as chairman of the General Sessions of the Peace ;

(2.) In the Province of Quebec, in any district wherein there is a judge of the sessions, such judge of sessions, and in any district wherein there is no judge of sessions but wherein there is a district magistrate, such district magistrate, and in any district wherein there is neither a judge of sessions nor a district magistrate, the sheriff of such district ;

(3.) In the Province of Manitoba, the chief justice, or a puisné judge of the Court of Queen's Bench or a judge of a county court :

(*b.*) The expression "Court of General Sessions of the Peace" means and includes,—

(1.) In the Province of Quebec, any court for the time being discharging the functions of a court of General Sessions of the Peace ;

(2.) In the Province of Manitoba, the Court of Queen's Bench and the county court judges' criminal courts :

(*c.*) The expression "county attorney" or "clerk of the peace" includes, in the Province of Manitoba, any deputy clerk of the peace, Crown attorney, the prothonotary of the Court of Queen's Bench and any deputy prothonotary thereof.

3. This Act shall apply to the Provinces of Ontario, Quebec and Manitoba only.

4. The judge sitting on any trial under this Act, for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a Court of

Record, and in the Provinces of Ontario and Manitoba such court shall be called "The County Judge's Criminal Court" of the county or union of counties or judicial district in which the same is held :

2. The record in any such case shall be filed among the records of the court of General Sessions of the Peace, as indictments are filed, and as part of such records.

In Ontario by virtue of the provisions in the Revised Statutes, chap. 49, the court constituted by the Act now under consideration, is a Court of Record, and in case of conviction before such court there is no right to a *habeas corpus* under the Rev. Stat., chap. 70, s. 1. *R.* v. *St. Denis*, 8 P.R. (Ont.), 16.

5. Every person committed to a gaol for trial on a charge of being guilty of any offence for which he may be tried at a court of General Sessions of the Peace, may, with his own consent (of which consent an entry shall then be made of record), and subject to the provisions herein, be tried out of sessions, whether the court before which, but for such consent, the said person would be triable for the offence charged, or the grand jury thereof is or is not then in session, and if such person is convicted, he may be sentenced by the judge.

In Manitoba, forgery is not triable under the Act. *R.* v. *Scott*, 1 Manitoba L.R., 448, for it is not triable at the sessions. *R.* v. *Herbert*, 3 D.R., 381. See *post* sessions as to offences triable there.

6. Every sheriff shall within twenty-four hours after any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him,—whereupon with as little delay as possible, such judge shall cause the prisoner to be brought before him.

7. The judge, upon having obtained the depositions on which the prisoner was so committed, shall state to him,—

(*a.*) That he is charged with the offence, describing it ;

(*b.*) That he has the option to be forthwith tried before such judge without the intervention of a jury, or to remain untried until the next sittings of the court of the General Sessions of the Peace or of a Court of Oyer and Terminer, or, in Quebec, of any court having criminal jurisdiction.

2. If the prisoner demands a trial by jury, the judge shall remand him to gaol; but if he consents to be tried by the judge without a jury, the county

attorney or clerk of the peace shall draw up a record of the proceedings as nearly as may be in one of the forms A or B in the schedule to this Act; and if, upon being arraigned upon the charge, the prisoner pleads guilty, such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed at any Court of General Sessions of the Peace.

This section does not, in express terms, give the judge the same powers as the General Sessions to punish or imprison, except where the party pleads guilty. In the latter case the judge shall pass the sentence which shall have the same force and effect as if passed at the General Sessions of the Peace.

Where a prisoner was convicted of receiving stolen goods and sentenced to imprisonment, it was held that the conviction and sentence were right. *R.* v. *St. Denis*, 8 P.R. (Ont.), 16.

Section 13 gives the judge the same powers as to acquitting or convicting as a jury would have on a trial at sessions, and according to the authority just cited the power to punish and imprison is incidental to the power to convict.

Under this statute it is not necessary to have more than one record, in which shall be entered the proceedings from time to time taken, until the final determination of the matter.

After the prisoner has heard the charge read to him, and has elected to have it tried by the Judge and has pleaded to it, and has been tried, he cannot object to the record which has been made up against him, because it describes or lays the charge in different forms to meet the facts of the case, so long as it does not contain different distinct offences. The Judge's jurisdiction is not confined to the trial only of the charge as stated in the commitment. A prisoner was committed to gaol for trial on a charge of kidnapping another person, with intent to cause such person to be secretly confined or imprisoned in Canada, which is felony under the Rev. Stat. Can., chap. 162, s. 46. On being brought before the Judge under this statute, he was charged and tried also for the other offence under the statute of, without lawful authority, forcibly seizing and confining any other person within Canada. It was held that this might be lawfully done, the

prisoner being committed on a charge for which he might be tried at the Sessions. *Cornwall* v. *R.*, 33 Q.B. (Ont.), 106. See section 12.

The purpose of this statute was not to compel the Judge to try the prisoner upon any charge he was confined upon, in the language of that charge, but to try him on that charge in any form in which the charge could properly be laid against him. But it was never intended that if the prisoner were committed for trial for stealing the goods of A, that the same goods should not be described in another count, if it were necessary to do so, as the goods of B, nor if he were in on a charge of larceny, that he should not also be tried for feloniously receiving the same goods, nor if he were in on a charge for unlawfully and maliciously wounding with intent to maim, that he should not be tried on another count for the same wounding with intent to do some grievous bodily harm. So it would seem also in those cases in which a jury could acquit of the felony and convict of a misdemeanor or of an assault, or could acquit of the offence charged, if it were not completed, and convict the prisoner of an attempt to commit it, the Judge might under the statute do the same thing. (*Ib.*), 119, 120.

The record will be properly framed, if it states the offence charged in such form as the depositions or evidence show, that it should have been laid, and the Judge is not to call for the warrant of commitment to find out what offence the prisoner is charged with, but he is to obtain "the depositions on which the prisoner was committed," and he is to state to the prisoner the offence with which he is there charged.

Where the Judge has appointed a day for trial under the 11th section, and the prisoner on being brought up before the Judge on the appointed day, declares his readiness to proceed, the Judge has nevertheless power on the application of the counsel for the Crown to adjourn the trial to a subsequent day, and the record is not objectionable in failing to mention the cause of adjournment. *Cornwall* v. *R.*, 33 Q.B. (Ont.), 106.

The Judge has also power to amend the record by changing the

name of the prisoner; in the case in question, Rufus Bratton was changed to James Rufus Bratton (*Ib.*)

A record which follows the form provided by the statute is sufficient, although the special jurisdiction conferred by the Act is not shewn. The notice from the sheriff under section 6 need only shew the nature of the charge against the prisoner, and need not charge the different offences of which the prisoner is tried as in the counts of an indictment (*Ib.*)

8. If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand the said prisoners to gaol to await trial, in all respects as if this Act had not been passed.

9. If under "*The Summary Trials Act*," or "*The Juvenile Offenders' Act*," any person has been asked to elect whether he would be tried by the magistrate or justices of the peace, as the case may be, or before a jury, and he has elected to be tried before a jury, and if such election is stated in the warrant of committal for trial, the sheriff and judge shall not be required to take the proceedings directed by this Act.

10. If, on the trial under "*The Summary Trials Act*," or "*The Juvenile Offenders' Act*," of any person charged with any offence triable under this Act, the magistrate or justices of the peace decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under this Act.

11. If the prisoner upon being so arraigned and consenting as aforesaid pleads not guilty, the judge shall appoint an early day, or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the prisoner being ready, the judge shall proceed to try him, and if he is found guilty, sentence shall be passed as hereinbefore mentioned; but if he is found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

12. The county attorney or clerk of the peace may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried at a court of General Sessions of the Peace, other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned in the depositions upon which the prisoner was so committed.

13. The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner was tried at a sitting of the court of General Sessions of the Peace, and may render any verdict which may be rendered by a jury, upon a trial at a sitting of a court of General Sessions of the Peace.

The prisoners were charged with having defrauded one C by a game called three card monte. They consented to be summarily tried; when brought up for trial, the Crown Attorney asked for and obtained leave to substitute a charge of combining to obtain money by false pretences, the prisoners objecting. The trial proceeded without the consent of the prisoners obtained to be tried summarily for this offence. On error brought the court held that the prisoners consent to be summarily tried on the substituted charge should distinctly appear and that in its absence the conviction was bad. *Goodman* v. *The Queen*, 3 Ont. R., 18.

But such objection cannot be taken on *habeas corpus*. *R.* v. *Goodman*, 2 Ont. R, 468.

14. If a prisoner elects to be tried by the judge without the intervention of a jury, the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court is adjourned or there is any other reason therefor; and such bail may be entered into and perfected before the clerk of the peace in open court.

15. If a prisoner elects to be tried by a jury, the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk of the peace in open court.

16. The judge may adjourn any trial from time to time until finally terminated.

17. The judge shall have all powers of amendment which the court of General Sessions of the Peace would have if the trial was before such court.

18. Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœnaed to attend and give evidence before such judge, sitting on any such trial, on the day appointed for the same, shall be bound to attend, and remain in attendance throughout the trial; and if he fails so to attend, he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly.

19. Upon proof to the satisfaction of the judge of the service of subpœna upon any witness who fails to attend before him, as required by such subpœna, and such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his disregard of the same; and such witness may be detained on such warrant before the said judge or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default, in not attending upon the said subpœna, as for a contempt; and the judge may, in a summary manner, examine into and dispose of the charge of contempt against the said witness who, if found guilty thereof, may be fined or imprisoned, or both,—such fine not to exceed one hundred dollars, and such imprisonment to be in the common gaol, with or without hard labor, and not to exceed the term of ninety days:

2. Such warrant may be in the form C, and the conviction for contempt in the form D, in the schedule to this Act, and the same shall be authority to the persons and officers therein required to act, to do as therein they are respectively directed.

The Rev. Stat. Can., chap. 174, s. 259, gives power to a judge acting under "The Speedy Trials Act" to reserve a case for the opinion of the court. Prior to this Act there was no such power. See *R.* v. *Malouin*, 2 D.R., 66.

SCHEDULE.

(A.)

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Province of , County (*or* District) of , to wit: Be it remembered that A. B., being a prisoner in the gaol of the said county (*or* district), committed for trial on a charge of having, on day of , 18 , feloniously stolen, &c. (*one cow, the property of C. D., or as the case may be, stating briefly the offence*), and being brought before me, (*describe the judge*) on the day of 18 , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that upon the day of

, 18 , the said A. B., being again brought before me for trial, and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as aforesaid, and I accordingly sentence him to be (*here insert such sentence as the law allows and the judge thinks right*), (*or* I find him not guilty of the offence with which he is charged, and discharge him accordingly).

Witness my hand at , in the county (*or* district) of , this day of , 18 .

O. K.,
Signature of Judge.

(B.)

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Province of
County (*or* District) of
, to wit:

Be it remembered that A. B., being a prisoner in the gaol of the said county (*or* district), on a charge of having on the day of , 18 , feloniously stolen, &c., (*one cow, the property of, or as the case may be, stating briefly the offence*), and being brought before me (*describe the judge*) on the day of , 18 , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that the said A. B., being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to be (*here insert such sentence as the law allows and the judge thinks right*).

Witness my hand this day of , 18 .

O. K.,
Signature of Judge.

(C.)

FORM OF WARRANT TO APPREHEND WITNESS.

(L.S.) Canada,
Province of ,
County (*or* District, *as the case may be*) of
, to wit:

To all or any of the Constables or other Peace Officers in the said County (*or* District, *or as the case may be*) of

Whereas it having been made to appear before me, that E. F., in the said county (*or* district, *or as the case may be*), was likely to give material evidence on behalf of the prosecution or defence (*as the case may be*) on the trial of a

certain charge of (*as larceny, or as the case may be*), against A. B., and that the said E. F. was duly subpœnaed or bound under recognizances to appear on the day of , 18 , at in the said County (*or* District *or as the case may be*) at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said E. F.

And whereas proof has this day been made before me, upon oath, of such subpœna having been duly served upon the said E. F., or of the said E. F. having been duly bound in recognizances to appear before me (*as the case may be*); and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are therefore to command you to take the said E. F., and to bring him and have him forthwith before me, to testify what he knows concerning the said charges against the said A. B., and also to answer his contempt for such neglect.

Given under my hand this day of , in the year 18 .

O. K.,
Judge.

(D.)

FORM OF CONVICTION FOR CONTEMPT.

(L.S.) Canada, Province of , County (*or* District) of , to wit: } Be it remembered, that on the day of , in the year 18 , in the County (*or* District, *or as the case may be*) of , E. F. is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of (*larceny, or as the case may be*), although duly subpœnaed or bound by recognizance to appear and give evidence in that behalf (*as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the Common Gaol of the County (*or* District) of at for the space of , there to be kept at hard labor (*and in case a fine is also intended to be imposed, then proceed*); and I also adjudge that the said E. F., do forthwith pay to and for the use of Her Majesty a fine of dollars, and in default of payment, that the said fine, with the cost of collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, then the clause for imprisonment is to be omitted*).

Given under my hand at in the said county (*or* district) of , the day and year first above mentioned.

O. K.,
Judge.

(E.)

ACCUSATION. (Not in Statute).

In the County Judge's Criminal Court for the County of .

Province of , } The day of , A. D.
County of , } 18 , at , in the County of
to wit : } , before Esquire, County Judge of the said County, exercising criminal jurisdiction under the provisions of the Act, entitled "An Act for the Speedy Trial in the Provinces of Ontario, Quebec, and Manitoba, of certain indictable offences," A. B., who is committed for trial to the Common Gaol of the said County, and is now a prisoner in close custody therein, stands charged this day before the said Judge, sitting in public open court assembled for the trial of the said A. B. First count, for that he, the said A. B., on the day of , in the year A.D. 18 , at the city of , in the said county, did feloniously and without lawful authority, forcibly seize and confine one C. D. within Canada, against the form of the Statute in such case made and provided, and against the peace of our Lady the Queen, Her Crown and Dignity. Second count, and for that he, the said A. B., afterwards, to wit, on the day and year last aforesaid at the city and county aforesaid, without lawful authority, did feloniously kidnap one C. D., with intent to cause the said C. D. to be unlawfully transported out of Canada against his will, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, Her Crown and Dignity.

(Signed) E. F.,
County Crown Attorney, County of .

A. B., within named, upon the within charge being read to him by the Judge in open Court, and being informed by the judge that he has his option either of being forthwith tried without the intervention of a jury upon the said charge, or of remaining untried until the next court of Oyer and Terminer of this county, consents to be now tried upon the said charge, by the said judge, without a jury, and the prisoner pleads not guilty to the said charge.

"ORDER AMENDING ACCUSATION.

"*County Judge's Criminal Court, County of* .

"*The Queen* v. *A.B.*

"It is ordered that the accusation be amended by the inserting the name James before the names C. D.

"By the court,

"(Signed) "E. F.,
"Clerk of the Peace."

(F.)

SHERIFF'S NOTICE. (Not in Statute.)

To His Honour the County Judge of the
County of .

Pursuant to the 6th section of the Act for the Speedy Trial in the Provinces of Ontario, Quebec and Manitoba, of certain indictable offences.

I, , Sheriff of the said County, certify that the several persons whose names are mentioned in the first column of the schedule hereunder written, were committed for trial to the common gaol of the said county, and were received by the gaoler of the said gaol on the days severally mentioned in the second column of the said schedule, opposite the names of the said persons respectively, and were so committed to the said gaol, and were received each severally, under and by virtue of a warrant from L. L., P.M., on a charge of being guilty of an offence which may be tried at a General Sessions of the Peace, and that the nature of the charge against the said several persons respectively as contained in the warrant of commitment is set forth in the third column of said schedule opposite the names of the said several persons respectively.

SCHEDULE ABOVE REFERRED TO.

Name of prisoner.	Time when committed for trial.	Nature of charge as contained in the Warrant of Commitment.
A. B.	15 June, 1886.	

(Signed)
Sheriff of the County of .

CHAPTER 176.

An Act respecting the Summary Administration of Criminal Justice.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as "*The Summary Trials Act.*"

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "magistrate" means and includes,—

(1.) In the Provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court, being a justice of the peace, commissioner of police, judge of the sessions of the peace, police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority, with power to do alone such acts as are usually required to be done by two or more justices of the peace, and acting within the local limits of his or of its jurisdiction ;

(2.) In the Provinces of Nova Scotia and New Brunswick, any recorder judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace ;

(3.) In the Provinces of Prince Edward Island and British Columbia and in the District of Keewatin, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace :

(4.) In the North-West Territories, any judge of the Supreme Court of the said Territories, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace :

(*b.*) The expression "the common gaol or other place of confinement," in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the Province in which the conviction referred to takes place, and to which by the law of that Province the offender may be sent ; and—

(*c.*) The expression "property" includes everything included under the same expression or under the expression "valuable security," as defined by "*The Larceny Act*," and in the case of any "valuable security," the value thereof shall be reckoned in the manner prescribed in the said Act.

Under this Act the Recorder's court of the city of Montreal has jurisdiction over charges of keeping houses of ill-fame within the city. *Ex parte Cherrier*, 5 Legal News, 343.

The police limits of the city of Montreal, mean the territory over which the corporation has police jurisdiction, and are co-extensive with the corporation. (*Ib.*)

3. Whenever any person is charged before a magistrate,—

(*a.*) With having committed simple larceny, larceny from the person, embezzlement or obtaining money or property by false pretences, or feloniously receiving stolen property, and the value of the property alleged to have been stolen, embezzled, obtained or received, does not, in the judgment of the magistrate, exceed ten dollars,—

(*b.*) With having attempted to commit larceny from the person, or simple larceny,—

(*c.*) With having committed an aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously wounding any other person,—

(*d.*) With having committed an assault upon any female whatsoever, or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other Act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape,—

(*e.*) With having assaulted, obstructed, molested or hindered any magistrate, bailiff or constable, or officer of customs or excise or other officer, in the lawful performance of his duty, or with intent to prevent the performance thereof,—

(*f.*) With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy house, or,—

(*g.*) With using or knowingly allowing any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool, or—

Keeping, exhibiting, or employing, or knowingly allowing to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording or registering any bet or wager, or selling any pool, or,—

Becoming the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged, or,—

Recording or registering any bet or wager, or selling any pool,—

Upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast,—

The magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way.

Offences against section 85 of the Rev. Stat. Can., chap. 164, are not triable summarily under this Act. *R.* v. *Young*, 5 Ont. R., 400.

A charge of an assault and beating is not a charge of aggravated assault, and a complaint of the former will not sustain a conviction of the latter under the statute, though when the party is before the magistrate, the charge of aggravated assault may be made in writing and followed by a conviction therefor. *Re McKinnon*, 2 U.C.L.J., N.S., 327.

In reference to keeping a house of ill-fame, the language of clause (*f*) does not seem to constitute the offence a statutable one. It seems rather to indicate that such offence, and the other specified offences therein mentioned, shall be within the jurisdiction of the magistrate, and shall be tried and disposed of by him in the manner therein prescribed. A conviction for keeping a house of ill-fame, alleging it to be "against the form of the statute in such case made and provided" is not void on that ground. If this Act constitutes the keeping of a house of ill-fame a statutable offence, the reference to the statute would be right, and if it is only a common law offence, the reference to the statute may be rejected as surplusage. *R.* v. *Flint*, 4 Ont. R., 214.

This statute makes the being such habitual frequenter a substantial offence, punishable as in section 11, and does not merely create a procedure for trial and punishment. But a conviction for being an *unlawful* instead of an habitual frequenter of a house of ill-fame, and which adjudged the payment of costs which is unauthorized by the statute must be quashed. *R.* v. *Clark*, 2 Ont. R., 523.

The prisoner was convicted by the Police Magistrate for the City of Toronto, for that she "did on," etc., "at the said City of Toronto, keep a common, disorderly, bawdy-house on Queen Street, in the said city," etc., and committed to gaol at hard

labour for six months. A *habeas corpus* and *certiorari* issued; in return, to which the commitment, conviction, information, and depositions, were brought up. On application for her discharge, no motion being made to quash the conviction, it was held,—

(1) No objection that the commitment stated the offence to have been committed on the 11th August instead of the 10th, as in the conviction the variance not being material to the merits, and the Court not being able to go behind the return and commitment which was set forth.

(2) Nor that the commitment charged that the prisoner "was the keeper of," and the conviction that "she did keep," both differing from the statute, which designates the offence as "keeping any disorderly house," etc.; for it would seem the Court could not go behind the commitment, and all these expressions conveyed but one idea

(3) Nor that the commitment did not follow the form of conviction given in the statute, in showing that the party was charged before the convicting magistrate, *i.e.*, charged as the statute requires, namely, put upon her trial and asked whether she was guilty or not guilty, nor whether she pleaded to the charge or confessed it. It might and probably would be, a defect in the conviction, if it did not pursue the statutory form in shewing that the party was charged, more especially as by this section of the Act the jurisdiction is made to depend upon the fact of the party being charged before the convicting Justice. That point, however, was not decided; the Court merely intimating that it might or might not be a defect in the conviction. Unless the commitment must contain all that the conviction does or ought to contain, it is unnecessary to state the information in it; and more especially as by the form given by the statute it does not appear necessary that the information should be set out in the conviction.

(4) Nor that the conviction was not sustained by the information, the latter being that the defendant was the keeper of a well-known disorderly house; and the former that the prisoner did keep a common, disorderly bawdy-house, for the commitment

would not be void on the face of it because of a variance between the original information and the conviction made after hearing evidence. But if the prisoner had been charged in the information, and on being called on to answer had confessed the information, and then had been convicted of matter not contained in the information, no doubt the conviction could be quashed; but even in that case, while it stood unreversed, it would warrant a commitment following its terms.

(5) Nor that the offence of "keeping a common disorderly bawdy-house," was not sufficiently certain; for the legal meaning of the last two words is clear, and a house will not be less a public nuisance because it is found to be disorderly as well as bawdy: and if keeping a disorderly house be no offence the term becomes mere surplusage, and would not vitiate an otherwise sufficient statement. But the statute does give jurisdiction over persons charged with keeping any disorderly house, house of ill-fame, or bawdy-house. *R.* v. *Munro*, 24 Q.B. (Ont.), 44.

It would seem that though a magistrate may have a general jurisdiction to hear any complaint against a disorderly inn or house, he has no right to issue a warrant to arrest a casual guest visiting a licensed tavern as a guest at a time subsequent to the charge, and in no way present at or assisting in any disturbance or disorder. *Cleland* v. *Robinson*, 11 C.P. (Ont.), 421.

The owner of a house letting it to several young women for the purpose of prostitution cannot be indicted for keeping a disorderly house. *R.* v. *Stannard*, 9 Cox C.C., 405; *R.* v. *Barrett*, (*Ib.*), 255.

As to the evidence necessary to shew that a house is a house of ill-fame see *R.* v. *Newton*, 11 P.R. (Ont.), 98. It seems that the evidence of a witness who speaks of the character by reputation only is not sufficient, some improper act must be proved.

A master who instructs his servant to keep a disorderly house would be liable as a principal, and the servant as aiding and abetting. *Wilson* v. *Stewart*, 9 Jur., N.S., 1130.

It is not necessary that the disorderly conduct should be visible

from the exterior of the house. *R.* v. *Rice*, L.R. 1, C.C.R., 21. See also vagrancy, *post.*

4. The jurisdiction of such magistrate shall be absolute in the case of any person charged, within the police limits of any city in Canada, with therein keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or-bawdy house, and shall not depend on the consent of the person charged to be tried by such magistrate, nor shall such person be asked whether he consents to be so tried; nor shall this Act affect the absolute summary jurisdiction given to any justice or justices of the peace in any case by any other Act.

5. The jurisdiction of the magistrate shall be absolute in the case of any person who, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, is charged, either within the city of Quebec, as limited for the purpose of the police ordinance, or within the city of Montreal, as so limited, or in any other seaport city or town in Canada, where there is such mag strate, with the commission therein of any of the offences hereinbefore mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence; and such jurisdiction shall not depend on the consent of any such person to be tried by the magistrate, nor shall such person be asked whether he consents to be so tried.

6. The jurisdiction of the magistrate under this Act shall, in the Provinces of Prince Edward Island and British Columbia, and in the District of Keewatin, be absolute without the consent of the person charged.

7. If any person is charged, in the Province of Ontario, before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such Province, with having committed any offence for which he may be tried at a court of General Sessions of the Peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice of the peace, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the court of General Sessions of the Peace.

8. Whenever the magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily under the provisions of this Act, such magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and

before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him, and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it could soonest be tried*);" and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused, the magistrate shall reduce the charge to writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge.

9. If the person charged confesses the charge, the magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence, the magistrate shall hear such defence, and shall then proceed to dispose of the case summarily.

Under this Act, the magistrate may, before any formal examination of witnesses, ascertain the nature and extent of the charge, and if the party consents to be tried summarily, may reduce it into writing. It would seem that the magistrate may then (that is when a person is charged before him prior to the formal examination of witnesses) reduce the charge into writing, and try the party on the charge thus reduced to writing, and if this is the meaning of the statute, it would not signify whether the original information and warrant to apprehend did or did not state a charge in the precise language of the Act. But the magistrate must either, by the original information, or by the charge which he makes when the party is before him, have the charge in writing, and must read it to the prisoner, and ask him whether he is guilty or not. *Re McKinnon*, 2 U.C.L.J., N.S., 327.

10. In the case of larceny, feloniously receiving stolen property, or attempt to commit larceny from the person, or simple larceny, charged under paragraphs (*a*) or (*b*) of the third section of this Act, the magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the

charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labor, for any term not exceeding six months.

11. In any case summarily tried under paragraphs (*c*) (*d*) (*e*) (*f*) or (*g*), of the third section of this Act, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labor, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term ; and such fine may be levied by warrant of distress under the hand and seal of the magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid.

It appears that no costs can be added to the fines under this section. *R.* v. *Clark*, 2 Ont. R., 523.

Under this section the amount of the costs in the case must be deducted from the $100, and the balance or difference is the utmost limit of the fine, and a fine of $100 without costs cannot be imposed, for the costs referred to are not those which the offender is liable to pay but the costs in the case. *R.* v. *Cyr*, 12 P.R. (Ont.), 24.

This section authorizes that the fine may be levied by warrant of distress under the hand and seal of the magistrate, or the party convicted may be condemned in addition to any other imprisonment on the same conviction, to be committed to the common gaol for a further period not exceeding six months unless such fine be sooner paid. One of two alternatives only for the collection of the fine is authorized, either distress or commitment for a further period unless the fine be sooner paid. Where a conviction for keeping a disorderly house and house of ill-fame adjudged that the fine should be levied by distress and sale, and then in default of sufficient distress or of non-payment it was ordered that the defendant should be further imprisoned, it was held that this was more than a mere formal defect, although it related to one part of the penalty, namely, the mode of enforcing

payment of the fine, and that it vitiated the whole conviction. *R.* v. *Richardson*, 11 P.R. (Ont.), 95. See also *Re Slater*, 9 U.C. L.J., 21.

The defendant was convicted under this statute for keeping a house of ill-fame, and the conviction merely ordered but did not adjudge any imprisonment or any forfeiture of the fine imposed, and this was held bad as substituting the personal order of the magistrate for a condemnation or adjudication, besides the order to pay did not necessarily imply a forfeiture, and without it there is no right to pay the fine for public purposes. *R.* v. *Newton*, 11 P.R. (Ont.), 98.

But the warrant of commitment for non-payment of the fine should direct that the fine be paid to the gaoler, otherwise he cannot receive it officially, and how is he to know whether it has been paid or not. *R.* v. *Newton, (supra).*

A commitment setting out a conviction "for that the prisoner unlawfully did commit an aggravated assault," (omitting the word "maliciously") is sufficient.

A typographical error in the date of the commitment contradicted by the body of the document does not invalidate the commitment under this section. *Ex parte McIntosh*, 5 Legal News, 4.

The charge against the prisoner who was brought up on a *habeas corpus* was "for keeping a bawdy-house for the resort of prostitutes in the City of Winnipeg." "Keeping a bawdy-house" is in itself a substantive offence, so is "keeping a house for the resort of prostitutes," but the court held that there was only one offence charged, and that the commitment was good, for calling a house kept for the resort of prostitutes a bawdy-house, does not render keeping it less a crime. *R.* v. *McKenzie*, 2 Manitoba L.R., 168.

12. When any person is charged before a magistrate with simple larceny, or with having obtained property by false pretences, or with having embezzled, or having feloniously received stolen property, or with committing larceny from the person, or with larceny as a clerk or servant, and the value of the property stolen, obtained, embezzled or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate,

if the case appears to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers conferred by this Act, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who can be tried summarily without his consent, shall then put to him the question mentioned in the eighth section, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course.

13. If the person so charged consents to be tried by the magistrate, the magistrate shall then ask him whether he is guilty or not of the charge, and if such person says that he is guilty, the magistrate shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of the offence, and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding twelve months.

14. If, when his consent is necessary, the person charged does not consent to have the case heard and determined by the magistrate, or whenever it appears to the magistrate that 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 to be disposed of summarily, such magistrate may, before such person has made his defence, decide not to adjudicate summarily upon the case, and shall deal therewith in all respects as if this Act had not been passed ; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do.

15. If, when his consent is necessary the person charged does not so consent, but elects to be tried before a jury, the magistrate shall state in the warrant of committal the fact of such election having been made.

16. In every case of summary proceedings under this Act, 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 attorney.

17. Every court, held by a magistrate for the purposes of this Act, shall be an open public court, and a written or printed notice of the day and hour for holding such court shall be posted up or affixed, by the clerk of the court, upon the outside of some conspicuous part of the building or place where the same is held.

Non-compliance with this section as to the notice will not invalidate a conviction. *R.* v. *Munro*, 24 Q.B. (Ont.), 44.

18. The magistrate before whom any person is charged under this Act may, by summons, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him, and then and there to give evidence upon the hearing of such charge; and if any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate, before whom such person should have attended, may issue a warrant to compel his appearance as a witness.

19. Every summons issued under this Act may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode; and every person so required by any writing under the hand of any magistrate to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

20. Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal.

21. If, upon the hearing of the charge, the magistrate is of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, he may dismiss the person charged, without proceeding to a conviction.

22. Every conviction under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, except that no conviction under this Act shall be attended with forfeiture beyond the penalty, if any, imposed in the case.

This section does not take away the right to a *certiorari* in the case of a void conviction. *R.* v. *Richardson*, 11 P.R. (Ont.), 95.

23. Every person who obtains a certificate of dismissal or is convicted under this Act, shall be released from all further or other criminal proceedings for the same cause.

24. No conviction, sentence or proceeding under this Act, shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same.

A conviction charged that the prisoner did "unlawfully and maliciously cut and wound one Mary Kelly, with intent then and there to do her grievous bodily harm." The word "feloniously" was not used, and the court held that the conviction could not be held to be for a felony, and the addition of the words "with intent to do grievous bodily harm" did not vitiate the conviction as for the statutable misdemeanor, under the Rev Stat. Can., chap. 162, s. 14, and the conviction having adjudged the defendant to be imprisoned at hard labour for a year, this was held proper under the Act. *R.* v. *Boucher*, 8 P.R. (Ont.), 20.

25. The magistrate adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of General or Quarter Sessions of the Peace or to the court discharging the functions of a court of General or Quarter Sessions of the Peace, for the district, county or place, there to be kept by the proper officer among the records of the court.

26. A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceedings whatsoever.

27. The magistrate by whom any person has been convicted under this Act, may order restitution of the property stolen, or taken or obtained by false pretences, in any case which the court, before whom the person convicted would have been tried but for this Act, might by law order restitution.

28. Whenever any person is charged before any justice or justices of the peace, with any offence mentioned in this Act, and in the opinion of such justice or justices the case is proper to be disposed of by a magistrate, as herein provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the nearest magistrate, in like manner in all respects as a justice or justices are authorized to remand a person accused for trial at any court, under "*The Criminal Procedure Act.*"

29. No Justice or Justices of the Peace, in any Province, shall so remand any person for further examination or trial before any such Magistrate in any other Province.

30. Any person so remanded for further examination before a Magistrate

in any city, may be examined and dealt with by any other Magistrate in the same city.

31. If any person suffered to go at large, upon entering into such recognizance as the Justice or Justices are authorized, under the last mentioned Act, to take on the remand of a person accused, conditioned for his appearance before a Magistrate, does not afterwards appear, pursuant to such recognizance, the Magistrate before whom he should have appeared shall certify, under his hand, on the back of the recognizance, to the Clerk of the Peace of the District, County or place, or other proper officer, as the case may be, the fact of such non-appearance, and such recognizance shal be proceeded upon in like manner as other recognizances ; and such certificate shall be *primâ facie* evidence of such non-appearance.

32. Every fine and penalty imposed under the authority of this Act shall be paid and applied as follows, that is to say :—

(*a.*) In the Province of Ontario, to the Magistrate who imposed the same, or to the Clerk of the Court or Clerk of the Peace, as the case may be, to be paid over by him to the County Treasurer for county purposes ;

(*b.*) In any new District in the Province of Quebec, to the Sheriff of such district, as treasurer of the building and jury fund for such District, to form part of such fund,—and if in any other District in the said Province, to the Prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor in Council, towards the keeping in repair of the Court House in such District, or to be added by him to the moneys and fees collected by him for the erection of a Court House and Gaol in such district, so long as such fees are collected to defray the cost of such erection ;

(*c.*) In the Provinces of Nova Scotia and New Brunswick, to the County Treasurer for county purposes ; and—

(*d.*) In the Provinces of Prince Edward Island, Manitoba and British Columbia, to the Treasurer of the Province.

33. Every conviction or certificate may be in the form in the schedule hereto applicable to the case, or to the like effect, and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the Magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which tho person convicted is to be subjected if the fine is not sooner paid.

34. The provisions of "*The Criminal Procedure Act*," except as mentioned in the twenty-eighth section, and of "*The Summary Convictions Act*," shall not apply to any proceedings under this Act.

35. Nothing in this Act shall affect the provisions of "*The Juvenile Offenders' Act*," and this Act shall not extend to persons punishable under that Act, so far as regards offences for which such persons may be punished thereunder.

SCHEDULE.

(A.)

CONVICTION.

Province of , City (*or as the case may be*) of to wit:

Be it remembered that on the day of , in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A. B., &c. (*stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labor) for the term of

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

J. S. [L.S.]

(B.)

CONVICTION UPON A PLEA OF GUILTY.

Province of , City (*or as the case may be*) of to wit:

Be it remembered that on the day of , in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), for that he, the said A. B., &c., (*stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him, the said A. B., for his said offence, to be imprisoned in the , (and there kept to hard labor) for the term of

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

J. S. [L.S.]

(C.)

CERTIFICATE OF DISMISSAL.

Province of , City (*or as the case may be*) of , to wit :

I, the undersigned, , of the City (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily) for that he, the said A. B., &c., (*stating the offence charged, and the time and place when and where alleged to have been committed*), I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , at aforesaid

J. S. [L.S.]

CHAPTER 177.

An Act respecting Juvenile Offenders.

Her Majesty, by and with the consent advice and of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as "*The Juvenile Offenders' Act.*"

2. In this Act, unless the context otherwise requires :—

(*a*) The expression "two or more Justices," or "the Justices" includes,—

(1) In the Province of Ontario and Manitoba any judge of the County Court being a Justice of the Peace, Police Magistrate or Stipendiary Magistrate or any two Justices of the Peace, acting within their respective jurisdictions ;

(2) In the Province of Quebec any two or more Justices of the Peace, the Sheriff of any District, except Montreal and Quebec, the Deputy Sheriff of Gaspé, and any Recorder, Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate acting within the limits of their respective jurisdictions ;

(3) In the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia, and in the District of Keewatin, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more Justices of the Peace ;

(4) In the North-West Territories any Judge of the Supreme Court of the said Territories, any two Justices of the Peace sitting together and any functionary or tribunal having the powers of two Justices of the Peace ;

(*b*) The expression "the Common Gaol or other place of confinement" includes any reformatory prison provided for the reception of juvenile offenders in the Province, in which the conviction referred to takes place, and to which, by the law of that Province, the offender may be sent.

3. Every person charged with having committed, or having attempted to commit, or with having been an aider, abettor, counsellor or procurer in the commission of any offence which is simple larceny, or punishable as simple larceny, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the Justice before whom he is brought or appears, exceed the age of sixteen years, shall, upon conviction thereof, in open court, upon his own confession or upon proof,

before any two or more Justices, be committed to the Common Gaol or other place of confinement within the jurisdiction of such Justices, there to be imprisoned, with or without hard labor, for any term not exceeding three months, or, in the discretion of such Justices, shall forfeit and pay such sum, not exceeding twenty dollars, as such Justices adjudge.

4. Whenever any person, whose age is alleged not to exceed sixteen years, is charged with any offence mentioned in the next preceding section, on the oath of a credible witness, before any Justice of the Peace, such Justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two Justices of the Peace, at a time and place to be named in such summons or warrant.

5. Any Justice of the Peace, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any such offence as aforesaid.

6. Every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other Justice or Justices of the Peace for further examination, or for trial before two or more Justices of the Peace as aforesaid, or for trial by indictment at the proper court of criminal jurisdiction, as the case may be.

7. Every such recognizance may be enlarged, from time to time, by any such Justice or Justices to such further time as he or they appoint; and every such recognizance, not so enlarged, shall be discharged without fee or reward, when the person has appeared according to the condition thereof.

8. The Justices before whom any person is charged and proceeded against under this Act, before such person is asked whether he has any cause to show why he should not be convicted, shall say to the person so charged, these words, or words to the like effect:

"We shall have to hear what you wish to say in answer to the charge "against you; but if you wish to be tried by a jury, you must object now to "our deciding upon it at once:"

And if such person, or a parent or guardian of such person, then objects, such person shall be dealt with as if this Act had not been passed; but nothing in this Act shall prevent the summary conviction of any such person before one or more Justices of the Peace, for any offence for which he is liable to be so convicted under any other Act.

9. If the Justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the

provisions of this Act, such Justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this Act had not been passed; and, in the latter case, shall state in the warrant of commitment the fact of such election having been made.

10. Any Justice of the Peace may, by summons, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this Act, at a time and place to be named in such summons.

11. Any such Justice may require and bind by recognizance every person whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him, and then and there to give evidence upon the hearing of such charge.

12. If any person so summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the Justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness.

13. Every summons issued under the authority of this Act may be served by delivering a copy thereof to the person, or to some inmate at such person's usual place of abode, and every person so required by any writing under the hand or hands of any Justice or Justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

14. If the Justices, upon the hearing of any such case, deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged,—in the latter case, on his finding sureties for his future good behaviour, and in the former case, without sureties, and then make out and deliver to the person charged a certificate in the form A in the schedule to this Act, or to the like effect, under the hands of such Justices, stating the fact of such dismissal.

15. Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause.

16. The Justices before whom any person is summarily convicted of any offence hereinbefore mentioned, may cause the conviction to be drawn up in the form B in the schedule hereto, or in any other form to the same effect, and the conviction shall be good and effectual, to all intents and purposes.

17. No such conviction shall be quashed for want of form, or be removed

by *certiorari* or otherwise into any court of record ; and no warrant of commitment shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted, and there is a good and valid conviction to sustain the same.

18. The Justices before whom any person is convicted under the provisions of this Act, shall forthwith transmit the conviction and recognizances to the Clerk of the Peace or other proper officer, for the District, City, County or Union of Counties wherein the offence was committed, there to be kept by the proper officer among the records of the court of General or Quarter Sessions of the Peace, or of any other court discharging the functions of a court of General or Quarter Sessions of the Peace.

19. Every Clerk of the Peace, or other proper officer, shall transmit to the Minister of Agriculture a quarterly return of the names, offences and punishments mentioned in the convictions, with such other particulars as are, from time to time, required.

20. No conviction under the authority of this Act shall be attended with any forfeiture, except such penalty as is imposed by the sentence ; but whenever any person is adjudged guilty under the provisions of this Act, the presiding Justice may order restitution of the property in respect of which the offence was committed, to the owner thereof or his representatives.

21. If such property is not then forthcoming, the Justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money ; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

22. The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court.

23. Whenever the Justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Act, and such penalty is not forthwith paid, they may, if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security, to the satisfaction of the Justices, for his appearance on such day ; and the Justices may take such security by way of recognizance or otherwise in their discretion.

24. If at any time so appointed such penalty has not been paid, the same or any other Justices of the Peace may, by warrant under their hands and seals, commit the offender to the Common Gaol or other place of confinement

within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication.

25. The Justices before whom any person is prosecuted or tried for any offence cognizable under this Act, may, in their discretion, at the request of the prosecutor, or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein,—and may order payment to the Constables and other Peace Officers for the apprehension and detention of any person so charged.

26. The Justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith.

27. Every fine imposed under the authority of this Act shall be paid and applied as follows, that is to say :—

(*a.*) In the Province of Ontario, to the Justices who impose the same, or the Clerk of the County Court, or the Clerk of the Peace, or other proper officer, as the case may be, to be by him or them paid over to the County Treasurer for county purposes ;

(*b.*) In any new District in the Province of Quebec, to the Sheriff of such District as treasurer of the building and jury fund for such District, to form part of such fund, and in any other District in the Province of Quebec, to the Prothonotary of such District, to be applied by him, under the direction of the Lieutenant-Governor in Council, towards the keeping in repair of the Court House in such District, or to be added by him to the moneys or fees collected by him for the erection of a Court House or Gaol in such District, so long as such fees are collected to defray the cost of such erection ;

(*c.*) In the Provinces of Nova Scotia and New Brunswick, to the County Treasurer, for county purposes ; and—

(*d.*) In the Provinces of Prince Edward Island, Manitoba and British Columbia, to the Treasurer of the Province.

28. The amount of expenses of attending before the Justices and the compensation for trouble and loss of time therein, and the allowances to the Constables and other Peace Officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be

ascertained by and certified under the hands of such Justices; but the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars.

29. Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices of the peace as aforesaid, shall be forthwith made out and delivered by the said Justices or one of them, or by the Clerk of the Peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this Act are required to be paid over in the District, City, County or Union of Counties in which the offence was committed, or was supposed to have been committed, who, upon sight of every such order, shall forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this Act, the money in such order mentioned, and shall be allowed the same in his accounts of such moneys.

30. This Act shall not apply to any offence committed in the Provinces of Prince Edward Island or British Columbia, or the District of Keewatin, punishable by imprisonment for two years and upwards, and in such Provinces and District it shall not be necessary to transmit any recognizance to the Clerk of the Peace or other proper officer.

31. This Act shall not authorize two or more Justices of the Peace to sentence offenders to imprisonment in a reformatory in the Province of Ontario.

SCHEDULE.

(A.)

, } , Justices of the Peace for
To wit: } the of , (*or if a Recorder*,
&c., I, a , of the
of , *as the case may be*), do hereby certify, that on the
day of , in the year , at ,
in the said of , (M. N.) was brought before us, the

said Justices (*or* me, the said), charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said Justices, (*or* I, the said) thereupon dismissed th said charge.

Given under our hands (*or* my hand) this day of

J. P. [L.S.]
J. R. [L.S.]
or S. J. [L.S.]

(B.)

, } Be it remembered, that on the day of
To wit: } , in the year , at
, in the District of (County *or* United Counties, &c., *or as the case may be*), A. O. is convicted before us, J. P. and J. R., Justices of the Peace for the said District (*or* city, &c., *or* me, S. J., *recorder*, &c., , of the , of , (*or as the case may be*) for that, he, the said A. O. did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (*or* I, the said S. J.), adjudge the said A. O., for his said offence, to be imprisoned in the (*or* to be imprisoned in the , and there kept at hard labor), for the space of , (*or* we) (*or* I) adjudge the said A. O., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and in default of immediate payment of the said sum to be imprisoned in the (*or* to be imprisoned in the , and kept at hard labor for the term of unless the said sum is sooner paid.

Given under our hand and seals (*or* my hand and seal) the day and year first above mentioned.

J. P. [L.S.]
J. R. [L.S.]
or S. J. [L.S.]

CHAPTER 178.

An Act respecting summary proceedings before Justices of the Peace.

Her Majesty by and with the advice and consent of the Senate and House Commons of Canada, enacts as follows :—

SHORT TITLE.

1. This Act may be cited as "*The Summary Convictions Act.*"

In certain cases where the consequences of an act have not been serious, a magistrate has a discretion to dispose of the matter summarily instead of committing the offender for trial. Thus under section 11 of the Act respecting malicious injuries to property, Rev. Stat. Can., chap. 168, it is a misdemeanor for any one by such negligence as shows him to be reckless or wantonly regardless of consequences, to set fire to any forest, tree, lumber, etc., so that the same is injured or destroyed, but the Magistrate on preliminary investigation, if the above circumstances concur, may impose a fine not exceeding fifty dollars instead of sending the offender for trial. (*Ib.*, s.s. 2). So under the Wrecks and Salvage Act (Rev. Stat. Can., chap. 81, s. 41), a person concealing wreck may, in the discretion of the Justices, be fined on summary proceedings or may be committed for trial.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "Justice" means a Justice of the Peace, and includes two or more Justices if two or more Justices act or have jurisdiction, and also a Police Magistrate, Stipendiry Magistrate and any person having the power or authority of two or more Justices of the Peace ;

(*b.*) The expression "Clerk of the Peace" includes the proper officer of the court having jurisdiction in appeal under this Act ;

(*c.*) The expression "Territorial Division" means District, County, Union of Counties, Township, City, Town, Parish or other Judicial division or place ;

(*d.*) The expression "District" or "County" includes any Territorial or

Judicial Division or Place, in and for which there is such Judge, Justice, Justice's Court, Officer or Prison as is mentioned in the context;

(*e.*) The expression "Common Gaol" or "Prison" means any place other than a Penetentiary in which persons charged with offences are usually kept and detained in custody.

JURISDICTION.

3. This Act shall apply to,—

(*a.*) Every case in which any person commits, or is suspected of having committed any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(*b.*) Every case in which a complaint is made to any Justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such Justice has authority by law to make any order for the payment of money or otherwise;—

Subject to any special provision otherwise enacted with respect to such offence, act or matter.

4. Every complaint and information shall be heard, tried, determined and adjudged by one Justice or two or more Justices, as directed by the Act or law upon which the complaint or information is framed, or by any other Act or law in that behalf.

This includes the conviction of the offender, and when an Act requires the conviction to be before two Justices a conviction by one only will be bad. *McGilvery* v. *Gault*, 1 Pugsley & Burbidge, 641.

5. If there is no such direction in any Act or law, then the complaint or information may be heard, tried, determined and adjudged by any one Justice for the territorial division where the matter of the complaint or information arose.

6. Any one Justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary, preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more Justices.

An information to be *tried* before two Justices of the Peace is

good though only signed by one. *Falconbridge* q.t. v. *Tourangeau*, Rob. Dig., 260.

Under this statute, one Justice may receive the complaint and grant the summons, even where the information and complaint must be heard and determined by two or more Justices. *R.* v. *Simmons*, 1 Pugsley, 158.

The special authority given to Justices must be exactly pursued according to the letter of the Act by which it is created, or their acts will not be good.

When two Justices of the Peace are appointed by statute to adjudicate upon complaints, more or less than two does not meet the requirement. *R.* v. *Lougee*, 10 C.L.J., N.S., 135.

And where a statute empowers two Justices of the Peace to convict, a conviction by one only is not sufficient. *Re Crow*, 1 U.C.L.J., N.S., 302.

An information under "*The Canada Temperance Act*," can be laid before one Justice, although two must try the case as the procedure is directed to be according to this Act. *R.* v. *Klemp*, 10 Ont. R., 143.

If one Justice make a conviction where, by statute, two are required to convict, he is liable in trespass. *Graham* v. *McArthur*, 25 Q.B. (Ont.), 478.

When the statute under which the information is laid or the complaint made, requires expressly that it shall be laid or made before two Justices, this section does not apply. *R.* v. *Griffin*, 9 Q.B., 155; *R.* v. *Russell*, 13 Q.B., 237.

In a case heard before three Justices of the Peace, judgment may be rendered by two, where, by the statute, one Justice might have heard and determined the case. *Ex parte Trowley*, 9 L.C.J., 169.

Where a case is heard before two Justices of the Peace, and taken *en delibere*, it is incompetent for one Justice to render judgment alone. *Ex parte Brodeur*, 2 L.C.J., 97. See also *St. Gemmes* v. *Cherrier*, 9 L.C.J., 22.

Where authority is given to two Justices to do a judicial act, they must be together at the time they do it, in order that they

may consult together upon the judgment. *Penny* v. *Slade*, 5 Bing, N.C., 319. See also section 9.

When Justices are called upon to do an act within their jurisdiction, and they do it, they are *functi officio* with respect to that act, and cannot treat it as a nullity and do it over again, nor can any other Justice do so; it must be quashed first either on appeal or upon *certiorari* before they or others again exercise their jurisdiction in respect of it.

7. After a case has been heard and determined, one Justice may issue all warrants of distress or commitment thereon.

8. It shall not be necessary that the Justice, who acts before or after the hearing, be the Justice or one of the Justices by whom the case is or was heard and determined.

But it would seem that it is not necessary that the Magistrate who convicts should also issue the warrant of distress or commitment under the seventh section. The warrant of commitment should, however, shew before whom the conviction was had. *Re Crow*, 1 U.C.L.J., N.S., 302.

A case may be returned before one Magistrate and adjourned from day to day by one or more, and the trial and conviction may be before a different Magistrate, the jurisdiction not belonging exclusively to the one first having cognizance of it. *Ex Parte Carignan*, 5 L.C.R., 479; see also *R.* v. *Milne*, 25 C.P. (Ont.), 94.

9. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices shall be present and acting together during the whole of the hearing and determination of the case.

10. Every Judge of Sessions of the Peace, Recorder, Police Magistrate, District Magistrate or Stipendiary Magistrate, appointed for any district, County, City, Borough, Town or Place, shall have full power to do alone whatever is authorized to be done by two or more Justices.

LIMITATIONS.

11. If no time is specially limited for making any complaint or laying any information in the Act or law relating to the particular case, the complaint

shall be made and the information shall be laid within three months from the time when the matter of the complaint or information arose, except in the North-West Territories and in that part of the county of Saguenay which extends from Portneuf, in the said County, to the eastward as far as the limits of Canada, including all the islands adjoining thereto, where the time within which such complaint shall be made, or such information shall be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose.

The meaning of the words "when the matter of the complaint or information arose" in this section, is that proceedings shall be taken within three months from the time when the liability or default of the defendant was complete, and the remedy given by the statute was capable of being enforced against him. *Labalmondiere* v. *Addison*, 1 El. & El., 41.

The time counts from the matter which gives rise to the real offence or cause of proceeding. *Hill* v. *Thorncroft*, 3 E. &. E. 257; and when it is complete, *Jacomb* v. *Dodgson*, 27 J.P., 68. The word "months" in this section means calendar months. Rev. Stat. Can., chap. 1, s. 7., (25.)

ABETTORS.

12. Every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

The general rule of law is that no one can be made criminally responsible for the acts of third persons, but in some cases a man may be brought within a penal statute by the acts of his agents or servants. The employment of an agent in the defendant's usual course of business, is sufficient evidence in such cases, whence the Magistrates may if they think fit, presume that such agent was authorized to do the prohibited act with which it is sought to charge the principal. *Attorney General* v. *Siddon*, 1 C. & J., 220.

Where a master intends a servant to commit some offence, he should be summoned as principal, and the servant as aiding and

abetting, (*Wilson* v. *Stewart*, 3 B. & S., 913); or the master may be charged with aiding the servant. *Howells* v. *Wynne*, 15 C.B., N.S., 3. In some cases the master may be responsible for the criminal act of his servant, though done without his knowledge,—as, for example, under the Licensing Act. *Mullins* v. *Collins*, 38 J.P., 34.

A conviction cannot be procured under this section, unless the principal offence has been committed. Though there may be accessories after the fact in regard to felonies, there can be none such in the case of an offence punishable on summary conviction, as the above section only applies to aiding, etc., the commission of any offence. Kerr's Acts, 165.

ENFORCING ATTENDANCE OF DEFENDANTS.

13. Whenever an information (A) is laid before any Justice for any Territorial Division of Canada, that any person, being within the jurisdiction of such Justice, has committed or is suspected to have committed any offence or act for which he is liable by law, on summary conviction, to be imprisoned or fined, or otherwise punished; or a complaint is made to any such Justice in relation to any matter upon which he has authority by law to make any order for the payment of money or otherwise, such Justice may issue his summons (B), directed to such person, stating shortly the matter of the information or complaint, and requiring him to appear at a certain time and place, before such Justice, or before such other Justice in and for the same Territorial Division as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law.

Under this Act a clear distinction exists between informations and complaints.

It is called an information where it is for an offence punishable on summary conviction, a complaint where it is sought to obtain an order merely. A similar distinction exists between *convictions* and *orders*, the former following an information and the latter following a complaint. See *Morant* v. *Taylor*, L.R. 1, Ex. D., 188. See sections 23, 24 and 26.

It is not necessary that an information should be on oath or even in writing, unless required to be so by some statute. *Basten* v. *Carew*, 3 B. & C., 649; *Friel* v. *Ferguson*, 15 C.P. (Ont.), 594; *Re Conklin*, 31 Q.B. (Ont.), 168; see section 24. By section 25

of this statute, where a warrant is issued in the first instance, the information must be upon oath.

By section 26 every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. The person aggrieved or some specified individual must be the informer, if the statute so states. *R.* v. *Daman*, 2 B. & A., 378. But if no prosecutor is described, then any person may inform. *Morden* v. *Porter*, 7 C.B., N.S., 641, even though the penalties go to a specified individual. *Coles* v. *Coulton*, 2 E. & E., 695.

It seems that it is not necessary, under this statute, that the Justice who issues the summons should also hear and determine the matter. See section 8. " Such other Justice in and for the same Territorial Division as shall then be there," would seem to have the power to adjudicate. At all events, under the Rev. Stat. Ont., chap. 139, respecting master and servants, the Justice who issues the summons has no exclusive right to deal with the case. Where on the return of a summons issued by one Justice under this statute, two other Justices were present, who, without any objection from the Justice issuing the summons, heard the complaint with him, the conviction of the latter, in opposition to the judgment of the other two, was quashed. *R.* v. *Milne*, 25 C.P. (Ont.), 94.

In regard to the number of Justices required, the provisions of the particular law on which proceedings are instituted must be observed. In the absence of any direction in the Act or law upon which the complaint or information is framed, one Justice is sufficient. See sections 4 and 5. Where two Justices are required, they must be present and acting together during the whole of the hearing and determination of the case. See section 9. See also Rev. Stat. Can , chap. 1, s. 7, (35). Under the 10th section of this Act, certain persons, such as the Recorder, Police or Stipendiary Magistrate, have the power of two Justices of the Peace, and may do alone whatever the Act authorizes two Justices to do. See also Rev. Stat. Can., chap. 174, s. 7 ; Rev. Stat. Ont., chap. 72, s. 21.

Justices of the Peace have no jurisdiction to convict summarily at common law in any case, but in all cases a direct legislative authority must be shewn or the conviction will be illegal. *Bross* v. *Huber*, 18 Q.B. (Ont.), 286. See also *Ferguson* v. *Adams*, 5 Q.B. (Ont.), 194; *R.* v. *Carter*, 5 Ont. R., 651.

The jurisdiction of Justices to hear and determine offences summarily is entirely given by the statutes creating the offence. Although owing to some omission in the statute, summary jurisdiction may not be expressly given, the Justices may still proceed when it may reasonably be implied from the rest of the statute, that such jurisdiction was intended to be given to them. *Cullen* v. *Trimble*, L R. 7, Q.B., 416; *Johnson* v. *Colam*, L.R. 10, Q.B., 544.

The information should contain the name, address, and occupation of the informer; the date and place of taking, and description of the Justice receiving it; the name of the accused, or a full description if the name is not known—see section 19, s.s. 2, which requires the warrant to name, or otherwise describe, the offender —the date and place of the commission of the offence, shewing the jurisdiction of the Justice; but stating the place in the margin of the information is sufficient, and it need not be set out in the body. Rev. Stat. Can., chap. 174, s. 104, and s. 2 (c.) *R.* v *Cavanagh*, 27 C.P. (Ont.), 537.

The charge must be set out in such distinct terms that the accused may know exactly what he has to answer, for the accused cannot be convicted of a different offence from that contained in the information. *Martin* v. *Pridgeon*, 28 L.J.M.C., 179; *ex parte Hogue*, 3 L.C.R., 94.

There must also be an allegation of any particular matters necessary to bring the accused under the scope of the Act or law on which the proceedings are founded, *i.e.* when any particular description of person is mentioned in the Act, the accused must be described as such person, and when such words as "maliciously," "knowingly," etc., are used, the offence must be described as having been so committed. In stating the offence in the summons, or warrant, the nearer the exact words of the statute are

followed the better. *Ex parte Perham*, 5 H. & N., 30. If the proceeding is on a second offence the previous conviction should be mentioned.

Certainty and precision are required in the statement and description of an offence under a penal statute, and an information charging several offences in the disjunctive, is bad, though the words of the statute are copied in the information, the statute relating to several offences in the disjunctive. *Ex parte Hogue*, 3 L.C.R., 94. The confession of the defendant to an information defective in the above particulars will not aid or cure the defect.

The 107th section of this Act provides that no information, summons, conviction, order, or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes. But independently of this provision an information charging an offence in the alternative, is bad. Therefore, where the information charged the defendant with selling beer *or* ale without a license, the Court held that it was bad, both in matter and substance, and could not be made out by evidence nor helped by intendment. *R.* v. *North*, 6 D & R., 143; *R.* v. *Jukes*, 8 T.R., 536.

Where a prosecutor is not obliged to negative the exceptions in a statute, and negatives some of them only, that part of the information will be rejected as surplusage. *R.* v. *Hall*, 1 T.R., 320.

But an information founded on a penal statute must negative the exceptions in the enacting clause creating the penalty, and also those contained in a former clause, to which the enacting clause refers in express terms. *R.* v. *Pratten*, 6 T. R. 559; see also *R.* v. *Breen*, 36 Q.B. (Ont.), 84. See section 47.

An information against A will not justify the issue of a warrant for the arrest of B. Where an information was laid against A, the keeper of a disorderly house, and the prayer in the information was for the arrest of A, and all others found or concerned in the house, it was held that this information did not authorize a warrant for the arrest of a person found in the house, but against whom the information was not laid otherwise than in the prayer as above. *Cleland* v. *Robinson*, 11 C.P. (Ont.), 416.

If a statute gives summary proceedings for various offences specified in several sections, an information is bad which leaves it uncertain under which section it took place; and where a statute creates several offences, one of which is charged in an information, a conviction of another offence, the subject of the same penalty will be bad. *Thompson* v. *Durnford*, 12 L.C.J., 285-7

Where two or more persons may commit an offence under an Act, the information may be jointly laid against them. *R.* v. *Littlechild*, L.R. 6, Q.B., 295. But where the penalty is imposed on each person, it is wrong to convict them jointly, even when they are charged in a joint information, and in such case there may be separate convictions (*Ib.*) But under the fifty-fourth section of this Act, when each joint offender is adjudged to forfeit a sum equivalent to the value of the property, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only; and the corresponding sum forfeited by the other offender shall be applied in the same manner as other penalties are directed to be applied.

A sufficient information by a competent person relating to a matter within the Magistrate's cognizance, gives him jurisdiction irrespective of the truth of the facts contained in it. His authority to act does not depend upon the veracity or falsehood of the statements, or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation, and he will be protected, although the information may disclose no legal evidence, or purport to be founded upon inadmissible evidence, or upon mixed allegations of law and fact. *Cave* v. *Mountain*, 1 M. & G., 257, 264.

But the information cannot be rendered valid by the evidence offered in support of it, for the office of the evidence is to prove, not to supply, a legal charge. *R.* v. *Wheatman*, Doug., 435; *Wiles* v. *Cooper*, 3 A. & E., 524.

The laying of the information is the commencement of a prosecution before a Magistrate. *R.* v. *Lennox*, 34 Q.B. (Ont.), 28.

If when the information is sworn to, a blank is left for the defendant's Christian name, and this blank is afterwards filled up

by the Justice, the information will be void, and the Justice will have no right to issue a warrant thereon, and any warrant issued thereon will be void. *Garrison* v. *Harding*, 1 Pugsley, 166.

An information is unnecessary where the Justices have power to convict on view as by 8 Hen. 6, chap. 9, for forcible detainers, and 19 Geo. 2, chap. 21, s. 2, against profane swearing. *R.* v. *Jones*, 12 A. & E., 684; *R.* v. *Bennett*, 3 Ont. R., 45; or where the defendant is already present before the Justices. *Turner* v. *Postmaster-General*, 5 B. & S., 756. *R.* v. *Hughes*, L.R. 4, Q.B.D., 614.

But a defendant who has been summoned from without the jurisdiction of the Justices for an offence that has taken place also out of their jurisdiction, does not by his appearance on the summons cure the defect of want of jurisdiction. *Johnson* v. *Colam*, L.R. 10, Q.B., 544.

The laying of the information or complaint will give the Magistrate jurisdiction to hear the case if the defendant appears; and though no summons is issued or any steps taken to bring the person complained of before the Magistrate. Where the information or complaint is laid, the actual presence of the defendant is all that is required, whether he appears voluntarily or on summons or warrant is immaterial, the Magistrate having jurisdiction in either case; (*R.* v. *Mason*, 29 Q.B. (Ont.), 431). And if a party appears and defends without any summons being issued, he cannot afterwards object that there was no complaint on oath. *Ex parte Wood*, 1 Allen, 422.

But in order to give jurisdiction over the person of the offender, in the case of a summary conviction, it must either appear that an information has been laid, or that the information has been waived. *Stoness* v. *Lake*, 40 Q.B. (Ont.), 326; *R.* v. *Fletcher*, L.R. 1, C.C.R., 320; *Blake* v. *Beech*, L.R. 1, Ex. D., 320.

The plaintiff, on an information against him for selling liquor without a license, was brought before the defendants, Magistrates. It was proved that this was his second offence, though the information did not charge it as such. The plaintiff, represented by counsel, disputed the evidence as to the first conviction, but did not object to the information, and the Magistrates convicted and

adjudged him to be imprisoned for ten days, which they had power to do only for second offence. It was held that the plaintiff had waived the objection to the information, and that defendants were not liable in trespass. *Stoness* v. *Lake*, 40 Q. B. (Ont.), 320

There is a marked distinction between the jurisdiction to take cognizance of an offence and the jurisdiction to issue a particular process to compel the accused to answer it. For the former purpose a written information is not necessary, nor is any process required when the accused is bodily before the Magistrate, and the charge is made in his presence, and he appears and answers it without objection; and the same rule applies to illegal process as to no process. Thus where H, a Constable, procured a warrant to be illegally issued, without a written information or oath for the arrest of S, upon a charge of assaulting and obstructing him, H, in the discharge of his duty, upon such warrant S was arrested and brought before Justices and was, without objection, tried by them and convicted, the Court held that the conviction was right. *R.* v. *Hughes*, L.R. 4, Q.B.D., 614.

Every objection to any information, for any defect apparent on the face thereof, should be taken before the Magistrate, when the substance of the information is stated to the defendant under section 43. If not then taken the objection will be waived, and if the objection is taken, the Magistrate may forthwith cause the information to be amended in such particular. See *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537. See sections 28 and 79. Where, therefore, objection was taken to a conviction for selling liquor without license, that the conviction did not name or otherwise describe the person to whom the liquor was sold, it was held that the objection should have been made before the Magistrate, and though a fatal objection, if taken at the proper time, it was removed by the delay.

According to the decision in *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537, that the Criminal Procedure Act, Rev. Stat. Can., chap. 174, applies to informations in cases of summary convictions (see section 2 (c); all the provisions of that Act already given in relation to indictable cases, will apply to informations under this Act.

In *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537, it was held that the information might be amended. See Rev. Stat. Can., chap. 174, s. 143; also *Crawford* v. *Beattie*, 39 Q.B. (Ont.), 13, *ante*, p. 60. But if the information is on oath, it must be resworn. *Re Conklin*, 31 Q.B. (Ont.), 160.

And it seems that the amendment makes the information a new one and that there should be another summons if the defendant does not waive it. *R.* v. *Bennett*, 3 Ont R, 64.

Where the information is for one offence, and where, if the defendant appear, the charge against him is for another offence, the proceedings are irregular and the conviction cannot be upheld. *Martin* v. *Pridgeon*, 1 E. & E., 778. But such an irregularity may be waived. *Turner* v. *Postmaster-General*, 5 B. & S., 756. And it seems the proper course for the Justices in such a case would be to amend the information.

The general rule is that no person can have an order or conviction made against him without first being summoned and having an opportunity of defence, but his appearing will waive the summons. *R.* v. *Smith*, L.R. 1, C.C.R., 110, even where no summons is issued. *R.* v. *Bennett*, 3 Ont. R., 45.

But asking an adjournment for the purpose of procuring evidence is not necessarily a waiver of a summons or notice. *R.* v. *Vrooman*, 1 Manitoba L.R., 509.

It seems that the summons under this section should on its face show the authority of the Magistrate issuing it to act. In the Province of Quebec a defendant had been convicted of selling liquor without license. In the absence of Mr. Coursol, Mr. Brehaut had presided. The usual form of words in the summons, requiring the defendant to be and appear before "C. J. Coursol, Esq.," and stating under what authority, had been struck out, and the words "M. Brehaut, P.M.," substituted. On the return of the summons, the defendant pleaded to the jurisdiction, and on this being overruled he pleaded to the merits. The Court held that the plea to the jurisdiction was not a waiver of the plea to the merits, and they quashed the conviction. *Durnford* v. *Faireau*, 3 L.C.L.J., 19. But if the defendant had made a

motion instead of pleading to the jurisdiction, the subsequent plea to the merits would be a waiver of the objection to the jurisdiction. *Durnford* v. *St. Marie*, 3 L.C.L.J., 19.

The words in this section, "order for the payment of money or otherwise," include orders of every kind which a Justice of the Peace has authority to make, and orders other than those for the payment of money. *Morant* v. *Taylor*, L.R. 1; Ex. D., 188. The rule as to words *ejusdem generis* does not apply here, or limit the effect of the words "or otherwise." (*Ib.*)

When proceedings in the nature of a criminal prosecution are set on foot by a sufficient information laid before a Magistrate, and he issues a summons on such information, the death of the informer causes no abatement of the proceedings. *R.* v. *Truelove*, 14 Cox C.C., 408. It would also seem that after laying the complaint, the complainant cannot, by making terms with the defendant, prevent the Magistrate from going on with the case.

14. Every such summons shall be served by a Constable or other Peace Officer, or other person to whom the same is delivered, upon the person to whom it is directed, by delivering the same to such person personally, or by leaving it with some person for him at his last or most usual place of abode.

A wife who carries on business for her husband in his absence, may be served at such place of business for the husband, and such service will be good service on the husband. *R. v. McAuley*, 14 Ont. R., 643.

The delivery may be to a person on the premises apparently residing there as a servant, and the Constable would do well to explain the nature of the summons to the person with whom it is left. *R. v. Smith*, L.R. 10, Q.B., 604.

If the summons cannot be personally served it must be left for the party at his present place of abode, if he have one, or if not then at his last place of abode. *R.* v. *Evans*, 19 L.J.M.C., 151; *R.* v. *Higham*, 7 E. & B., 557. It should be served a reasonable time before the day appointed in it for his appearance, but it is for the Justice to decide whether the summons has been served a reasonable time before or not. Two days or more would gener-

ally be deemed reasonable, (*Re Williams*, 21 L.J.M.C., 46; *ex parte Hopwood*, 15 Q.B., 121); see section 17. An objection to the service should be taken at the hearing. *R.* v. *Berry*, 23 J.P. 86. A summons under this Act may be served by any person to whom it is delivered, including either the informant or complainant. The summons should be signed in duplicate, and one of them retained by the party serving.

15. The Constable, Peace Officer or person who serves such summons, shall attend at the time and place, and before the Justice in the summons mentioned, to depose, if necessary, to the service thereof.

It seems that under this section the Justice must himself administer the oath which he has full power to do; (Rev. Stat. Can. chap. 1, s. 7, 29); and a Commissioner for taking affidavits has no power to swear to the affidavit of service of the summons. *R.* v. *Golding*, 2 Pugsley, 385.

16. Nothing herein contained shall oblige any Justice to issue any such summons whenever the application for any order may, by law, be made *ex parte*.

17. If the person served with a summons does not appear before the Justice at the time and place mentioned in the summons, and it is made to appear to the Justice, by oath or affirmation, that the summons was duly served, a reasonable time, in the opinion of the Justice, before the time therein appointed for appearing to the same, the Justice, upon oath or affirmation being made before him, substantiating the matter of the information or complaint to his satisfaction, may, if he thinks fit, issue his warrant (C) to apprehend the person so summoned, and to bring him before such Justice or before some other Justice in and for the same Territorial Division, to answer to the said information or complaint, and to be further dealt with according to law.

If the defendant does not appear, the Magistrate has no jurisdiction without proof of the service of the summons. *Re McEachern*, 1 Russell & Geldert, N.S., 321.

It is clear there would be no power to issue a warrant under this section until such proof was adduced.

Under this section the information must set forth facts disclosing an offence, and there is no right to issue a warrant where

assuming the facts sworn to be true no offence is shown. See *ex parte Boyce*, 24 Sup. Ct. N.B., 347.

18. Any Justice before whom any such information is laid for any offence punishable on summary conviction, may, if he thinks fit, upon oath or affirmation being made before him, substantiating the matter of the information to his satisfaction, instead of issuing a summons, issue in the first instance his warrant (D) for apprehending the person against whom the information has been laid, and bringing him before such Justice, or before some other Justice in and for the same Territorial Division, to answer to the information and to be further dealt with according to law: Provided, that whenever a warrant is issued in the first instance, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each person arrested at the time of such arrest.

This section is confined to informations and does not extend to complaints.

Under the 1 Vic., chap. 21, s. 27, a Magistrate could not cause the arrest of a party in the first instance on a charge of neglect to perform statute labour. That Act required the prior issue of a summons. *Cronkhite* v. *Somerville*, 3 Q.B. (Ont.), 129.

Complaint under oath of an assault was made before a Justice, on which he issued a summons. The defendant not appearing, the Justice, on proof of service of the summons, issued the warrant (C) under the 17th section, upon which the defendant was arrested, brought before the Justice and convicted—he protesting against the proceedings. It was held that as there was a complaint under oath, the Justice had authority to issue a warrant in the first instance, and that his having used the form (C) instead of (D), did not make the arrest illegal, and that he had power to convict, though the summons served was defective in not stating the day the defendant was to appear. *R.* v. *Perkins*, Stephens' Dig., N.B., 256.

19. Every warrant to apprehend a defendant, that he may answer to an information or complaint, shall be under the hand and seal of the Justice issuing the same, and may be directed to any one or more or to all of the Constables or other Peace Officers of the Territorial Division within which it is to be executed, or to such Constable and all other Constables in the Territorial Division within which the Justice who issued the warrant has jurisdiction, or

generally to all the Constables or Peace Officers within such Territorial Division;

2. Such warrant shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the Constables or other Peace Officers to whom it is directed, to apprehend the defendant and to bring him before one or more Justice or Justices of the same Territorial Division, as the case requires, to answer to the information or complaint and to be further dealt with according to law.

20. It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in full force until executed; and the warrant may be executed by apprehending the defendant at any place in the territorial division within which the Justice who issued the same has jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining Territorial Division, within seven miles of the border of the first mentioned Territorial Division, without having the warrant backed as hereinafter mentioned.

21. If the warrant is directed to all Constables or Peace Officers in the Territorial Division within which the Justice who issued the same has jurisdiction, any Constable or Peace Officer for any place within the limits of the jurisdiction may execute the warrant, in like manner as if the warrant was directed specially to him by name, and notwithstanding that the place in which the warrant is executed is not within the place for which he is a Constable or Peace Officer.

22. If any person against whom any warrant has been issued is not found within the jurisdiction of the Justice by whom it was issued, or, if he escapes into, or is or is suspected to be in any place within Canada, out of the jurisdiction of such Justice, any Justice, within whose jurisdiction such person is or is suspected to be, upon proof, upon oath or affirmation of the handwriting of the Justice issuing the warrant, may make an indorsement upon it, signed with his name, authorizing the execution of the warrant within his jurisdiction; and such indorsement shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all Constables or other Peace Officers of the Territorial Division wherein the indorsement is made, to execute the same in any place within the jurisdiction of the Justice indorsing the same, and to carry the offender, when apprehended, before the Justice who first issued the warrant or some other Justice having the same jurisdiction.

INFORMATIONS AND COMPLAINTS.

23. It shall not be necessary that any complaint upon which a Justice may make an order for the payment of money or otherwise, shall be in writing,

unless it is so required by some particular Act or law upon which such complaint is founded.

The Fisheries Act, Rev. Stat. Can., chap. 95, s. 19, provides that the penalties and forfeitures imposed by the Act may be recovered on parol complaint.

24. Every complaint upon which a Justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is herein or by some particular Act or law otherwise provided, be made or laid without any oath or affirmation as to the truth thereof.

See *Ex parte Cousine*, 7 L.C.J., 112; *R.* v. *McConnell*, 6 O.S., 629. The word "herein" used in any section of an Act, is to be understood to relate to the whole Act, and not to that section only. Rev. Stat. Can., chap 1, s. 7 (5).

25. Whenever the Justice issues his warrant in the first instance, the matter of the information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before the warran is issued.

It seems that the informant must pledge his oath to that which would constitute an offence assuming the oath to be true. And an information stating that the complainant has just cause to suspect and believe, and does suspect and believe that the party charged has committed an offence, will not authorize the issue of a warrant in the first instance, for such information shows no offence. *Ex parte Boyce*, 24 Sup. Ct., N.B., 347.

26. Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences; and every complaint or information may be laid or made by the complainant or informant in person, or by his Counsel or Attorney or other person authorized in that behalf.

The 107th section of the Act does not extend to complaints but in reference to informations, its provisions must be kept in view An information which includes the three distinct offences of keeping for sale, selling and bartering intoxicating liquors which are

prohibited by section 99 of the Canada Temperance Act, contravenes this 26th section, *R.* v. *Bennett*, 1 Ont. R., 445. But such an information may be amended by striking out all the offences charged, except one, and such an amendment may be made after the case has been closed and reserved for decision. *(Ib.)* See also *R.* v. *Walsh*, 2 Ont. R., 206; *R.* v. *Klemp*, 10 Ont. R., 143.

Under this section the offence may be laid as having been committed on divers days and times between two dates. *Onley* v. *Gee*, 30 L.J.M.C., 222. And this section does not prevent a principal and an aider or abettor from being charged in the same information. The provision in this section that every information shall be for one offence only, does not refer to the number of offenders, and it seems to be quite legal to include several persons in one information or complaint (and conviction or order) when they are all charged with the same offence or matter, committed at the same time and place. *R.* v. *Bacon*, 21 J.P., 404; *R.* v. *Cridland*, 7 E. & B., 853.

According to the decision in *ex parte Cariguan*, 5 L.C.R., 479, the provision in this section, that every information or complaint must be for one offence, only applies when a warrant is issued in the first instance, and a complaint or information may be made or laid for two offences, provided the object be not to arrest the defendant in the first instance.

A complaint can only have reference to one matter, and not to two or more, and an information to but one offence; not to two or more unless the law under which the one or the other is made permit it. *Pacaud* v. *Roy*, 15 L.C.R., 205.

27. In any information or complaint, or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint tenants, parceners or tenants in common, or *par indivis*, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named, and another or others, as the case may be:

2. Whenever, in any information or complaint, or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, or *par indivis*, it shall be sufficient to describe them in the manner aforesaid:

3. Whenever, in any information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained or repaired at the expense of the corporation or inhabitants of any Territorial Division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such Territorial Division or place.

28. No objection shall be allowed to any information, complaint, summons or warrant, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint :

2. Any variance between the information, for any offence or act punishable on summary conviction, and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material, if it is proved that such information was, in fact, laid within the time limited by law for laying the same :

3. Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, if the offence or act is proved to have been committed within the jurisdiction of the Justice by whom the information is heard and determined :

4. If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the Justice present, and acting at the hearing, to be such that the defendant has been thereby deceived or misled, the Justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day.

An information by a person who has no authority to make it is the same as no information, and this provision in the Act, curing objections for defects in form, must be held to apply only to informations made by persons who have authority to make them, and not to give validity to an information made by a person without any authority. *Ex parte Eagles*, 2 Hannay, 51.

In all cases after judgment given, and in the event of an appeal, the appellant will not be allowed to succeed for any such variance, unless he proves that the objection was made before the Justice trying the case, and unless he also proves that such Justice refused to adjourn, on its being shown to him that the person summoned etc., was deceived or misled by the variance. See sec-

tion 79. Under the 80th section the appeal is to be disposed of on its merits, notwithstanding any defect of form.

Any objection will be disposed of, if both parties still consent to the Justice proceeding in the case. *R.* v. *Cheltenham*, 1 Q.B., 467.

Objections should be distinctly taken at first, for a person cannot waive the objection, and renew it when the decision is against him. *Wakefield* v. *West Riding*, L.R. 1, Q.B., 84. If a party appears before Justices and allows a charge which they have jurisdiction to hear, to be proceeded with without objection, he waives the want of a summons. *R.* v. *Shaw*, 11 Jur., N.S., 415.

An information, not under oath, was laid for selling liquor without license. The defendant's counsel appeared, however, on the day of trial, and though he raised this objection he did not ask a delay or adjournment. The Justice then proceeded with the hearing, the defendant's counsel cross-examined the witnesses, and the Justice, upon clear proof of the offence charged, convicted the defendant. It did not appear that the defendant was in any way misled or prejudiced by the alleged defect in the information. Under these circumstances it was held that the statute cured the defect. *R.* v. *McMillan*, 2 Pugsley, 110.

If the information is not on oath, this section would seem to warrant the Justice in proceeding to hear a charge quite defectively stated, if the evidence shewed an offence had been committed over which he had jurisdiction, without any amendment in terms being made in the information. The defendant being present, the evidence would amount to a charge which he was bound then and there to answer, unless the hearing is adjourned by the Justice, and a conviction valid in form supported by evidence would not be liable to be quashed because it varied from the original information. *R.* v. *Bennett*, 1 Ont. R., 445.

A summons under the Canada Temperance Act issued by one Justice on an information laid before two Justices, recited the laying of the information "before the undersigned," and the Court held that though the summons did not conform to the facts, yet as the two Justices who took the information were both present

at the hearing, and the defendant was convicted on the merits, the objection was cured by this section. *R.* v. *Durnion*, 14 Ont. R., 672. See also *R.* v. *Green*, 12 P.R., (Ont.), 373.

The objection that the defendant has pleaded guilty to a defective information is not admissible in view of the provisions of this section. *R.* v. *McCarthy*, 12 Ont. R. 657.

WITNESSES.

29. If it is made to appear to any Justice, by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his summons (E 1) to such person, requiring him to be and appear at a time and place mentioned in the summons, before such Justice, or any other Justice in and for the Territorial Division, who shall then be there, to testify what he knows concerning the information or complaint.

In the Province of Quebec it has been held that the Court of Queen's Bench has the right to order the issue of a writ of *habeas corpus* to bring a prisoner, detained for a debt on a *capias*, before a Magistrate, to attend at the preliminary examination of the information laid against him for a criminal offence. *Ex Parte Tibbs*, 3 D.R., 116.

Only the Justice before whom the information is laid has authority to issue a summons for a witness under this section. It gives no authority to a Justice, who is a stranger to the proceedings instituted, to summon witnesses to appear before the Justice who took the information. *Byrne* v. *Arnold*, 24 Sup. Ct., N.B., 161.

Under this section the witness must be within the jurisdiction of the Justice, but either party, either prosecutor or defendant, may invoke the provisions of the section.

A Justice cannot be ordered to attend at the house of an infirm witness to take his deposition. *Ex parte Kimbolton*, 25 J.P., 759.

Every prosecutor of any information who has not a pecuniary interest in the result, and every complainant, whatever his

interest may be, is a competent witness, and a liability for costs will not exclude a prosecutor. See sec. 37.

The Justice under this section can, as we have already seen, issue his summons to witnesses for the prosecutor, complainant, or defendant, whilst under Rev Stat. Can., chap. 174, s. 60, he can only summon witnesses for the presecution, but the person so to be summoned must by the oath or affirmation of the person whose deposition supports the application, be shewn to be within the jurisdiction, *i.e.*, the Territorial Division, of the Justice to whom it is made; whilst under chapter 174, he can summon any one within the limits of Canada.

The power of the Justice, under this section, to issue summons and warrant is conditional upon its being made to appear by the *oath* or *affirmation* of any credible person, that any person within the jurisdiction of such Justice, is likely to give material evidence on behalf of the prosecutor, and will not voluntarily appear; without such oath the summons or warrant is unauthorized. *Cross* v. *Wilcox*, 39 Q.B. (Ont.), 193.

These sections in no manner apply to the case of a prosecutor unwilling to proceed, and entitled so to refuse (as for instance where the charge is of assault only), but only to the case of a material witness other than the prosecutor refusing to attend, where the prosecutor is desirous of proceeding. *Cross* v. *Wilcox*, 39 Q.B. (Ont.), 187. A Magistrate who by warrant causes the arrest of the prosecutor to *answer the charge contained in the information*, and to be further dealt with according to law, exceeds his jurisdiction and is liable in trespass.

30. If any person so summoned neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal, then, after proof upon oath or affirmation of the summons having been served upon him, either personally or by leaving the same for him with some person at his last or most usual place of abode, the Justice before whom such person should have appeared may issue a warrant (E 2) to bring and have such person, at a time and place to be therein mentioned, before the Justice who issued the summons, or before any other Justice in and for the same Territorial Division, who shall then be there to testify as aforesaid, and the said warrant may, if necessary, be backed as herein men-

tioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

A was summoned to appear as a witness for the prosecution on the trial of an information for a violation of the Canada Temperance Act. He was served with the summons and paid the regular fees for travel and attendance, but disobeyed the summons and made no excuse. The Magistrate, before whom the information was laid, issued four warrants in succession to have A arrested and brought before him to testify, and adjourned the hearing of the cause from time to time for that purpose. A evaded arrest under the first three warrants, but was arrested under the fourth. Having escaped, he was rearrested by defendants, who gained access to a house in which he had taken refuge by raising a window, and, on refusing to give bail, A was placed in gaol. The Court held that the laying of the information gave the Magistrate jurisdiction to go on with the inquiry and issue the warrant, even though the Canada Temperance Act might not be in force, and, the prosecution being a criminal proceeding, the defendants were justified in opening the window and entering the house and in placing A in gaol on his refusal to give bail. *Messenger* v. *Parker*, 6 Russell & Geldert, 237.

31. If the Justice is satisfied, by evidence upon oath or affirmation, that it is probable that the person will not attend to give evidence without being compelled so to do, he may instead of issuing a summons issue his warrant (E 3) in the first instance, and the warrant may, if necessary, be backed as aforesaid.

A Magistrate has no right to issue a warrant for the apprehension of a person to attend to find bail for his appearance as a witness at the Assizes, although it is sworn that the witness is material, and had refused to obey a summons which had previously been issued, to give evidence before the Magistrate. *Evans* v. *Rees*, 12 A. & E., 55.

32. If, on the appearance of the person so summoned before the Justice, either in obedience to the summons or upon being brought before him, by virtue of the warrant, such person refuses to be examined upon oath or affir-

mation, concerning the premises, or refuses to take an oath or affirmation, or having taken the oath or affirmation, refuses to answer such questions concerning the premises as are then put to him, without offering any just excuse for his refusal, any Justice then present and having jurisdiction, may, by warrant (E 4), commit the person so refusing to the Common Gaol or other prison for the Territorial Division where the person then is, there to remain and be imprisoned for any term not exceeding ten days, unless, in the meantime, he consents to be examined and to answer concerning the premises.

HEARING.

33. The room or place in which the Justice sits to hear and try any complaint or information shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

34. The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

This right of defence extends to the cross-examination of witnesses for the prosecution, and to the examination of a sitting Magistrate as to his interest in the prosecution, but not to the extent of compelling the prosecution to disclose the sources of their information.

In a prosecution under the Canada Temperance Act it was claimed that C and M were members of an association for the enforcement of the Act, and that they were instrumental in laying the charge and in selecting the Magistrates, and that one of the Magistrates hearing the case was also a member of the association and had been present at a meeting thereof. At the hearing S, the License Inspector, who had laid the information, gave evidence in support of the charge. On cross-examination by the defendant, he was asked whether the License Commissioners were consulted before laying the charge; whether he laid it of his own accord or had consulted with any person outside of the Commissioners, and his reason for suspecting and believing that liquor was sold, etc. Whom did he see before laying the information? Did he see the Magistrate or C or M? Had C and

M anything to do with the selection of the Magistrates? The Magistrates ruled that he was not bound to answer these questions, and he refused to do so. One of the Magistrates was called as a witness for the defence with a view of showing his interest, but he refused to be sworn or to give evidence. It was held that the Justices properly refused to allow the disclosure of the sources of information on which the complaint was founded; but by their refusal to allow the cross-examination of S in reference to his communication with one of the Magistrates and the other alleged members of the association, and in refusing to allow the Magistrate to be sworn as a witness, the defendant was deprived of his right of making full defence under this section. *R.* v. *Sproule*, 14 Ont. R., 375.

35. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by Counsel or Attorney on his behalf.

36. Every witness at any hearing shall be examined upon oath or affirmation, and the Justice before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation.

37. Every prosecutor of any information not having any pecuniary interest in the result, and every complainant in any complaint, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint, and no prosecutor shall be deemed incompetent as a witness on the ground only that he may be liable to costs.

A difference is here created between summary convictions and orders. In seeking to obtain a conviction, the informant, if he has no pecuniary interest, can be a witness, but if he seeks thereby compensation for a wrong he cannot testify, and the same rule applies to the informant's wife. On the other hand a complainant seeking an order, whatever his interest may be, is a competent witness, and his wife is also competent. Kerr's Acts, 202.

This section requires that the witnesses shall be examined on oath. Where Magistrates first took the examination of witnesses not on oath, in support of a conviction, and afterwards swore

them to the truth of their evidence, the Court expressed its disapprobation of the practice. *R.* v. *Kiddy*, 4 D. & R., 734.

38. The evidence of the person aggrieved, and also the evidence of any inhabitant of the District, County or place in which any offence has been committed, shall be admitted in proof of the offence, notwithstanding that any forfeiture or penalty incurred by the offence is payable to any public fund of such District, County or place.

39. If, on the day and at the place appointed by the summons for hearing and determining the complaint or information, the defendant against whom the same has been made or laid does not appear when called, the Constable, or other person who served the defendant with the summons, shall declare upon oath in what manner he served the summons; and if it appears to the satisfaction of the Justice that such Constable or other person duly served the summons a reasonable time before the time appointed for appearance, such Justice may proceed *ex parte* to hear and determine the case, in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons; or the Justice, upon the non-appearance of the defendant, may, if he thinks fit, issue his warrant in manner herein directed, and adjourn the hearing of the complaint or information until the defendant is apprehended.

The sufficiency of the service is generally a question for the Justices to decide. *Re Williams*, 21 L.J.M.C., 46; and the Court will not interfere with their decision unless it clearly appears that there was in fact no service. *Ex parte Jones*, 19 L.J. M.C., 151; or that the defendant was not allowed the interval fixed by the particular statute between the service and the time limited for appearance. *Mitchell* v. *Foster*, 12 A. & E., 472; or that the Justices have mistaken the law as to the kind of service required, and have therefore declined to entertain the matter. *R.* v. *Goodrich*, 19 L.J., Q.B., 415. The foregoing rules, however, apply only to those cases where the defendant does not in fact appear, for if he actually appears and pleads, there is no longer any question upon the sufficiency or regularity of the summons, or its service.

Justices ought to be very cautious how they proceed in the absence of a defendant who has been summoned only, unless they have strong ground for believing that the summons has reached

him, and that he is wilfully disobeying it; and this rule applies, though under the fourteenth section of the statute, the summons may be legally served by leaving the same at the last or most usual place of abode of the defendant. The defendant was a fisherman and went to sea in pursuit of his calling on the 9th of March. On the same day a summons for an assault was taken out against him, requiring him to appear to answer the charge upon the 12th. On that day it having been proved that a summons was served on the defendant on the 10th, by leaving it with his mother at his usual place of abode, the Justice convicted him in his absence, though it did not appear that the defendant's mother knew the nature of the summons. The defendant returned on the 9th of April, and was arrested under the conviction, but the Court held that there was no evidence that a reasonable time had elapsed between the time of the service of the summons and the day for hearing, and that the Justices had therefore no jurisdiction to convict. *R.* v. *Smith*, L.R. 10, Q.B., 604. It will be observed that the seventeenth section of the Act gives the Justice power to issue a warrant on the non-appearance of the party in obedience to the summons.

This course is sanctioned by the section now under consideration, and should be pursued by the Justices in every case before conviction. See also *R.* v. *Eli*, 10 Ont. R., 727.

There is no power to proceed *ex parte* under this section when the summons has merely been left with some person for the defendant at his "last or most usual place of abode." There must be service *upon the party*, that is personal service, a reasonable time before the time fixed for appearance. *R.* v. *Ryan*, 10 Ont. R., 254.

Where a statute fixed no period for delay between the service and the return of the summons, it was held that a service on the defendant at his domicile, twenty miles from the place where he was by the writ summoned to appear on the following day, at ten o'clock in the forenoon, the service being effected about three o'clock in the afternoon of the day preceding, was not reasonable and the plaintiff could not legally proceed *ex parte*. *Ex parte Church*, 14 L.C.R., 318.

To force on the trial of a case without giving the defendant time to prepare his defence, is contrary to natural justice, and the conviction will be set aside. In one case a summons was served about 4 p.m. on the 21st of September, calling upon the defendant to appear at 8.30 a.m. on the 22nd, and on the latter day, at 8.15 a.m., two other summonses for similar offences were served requiring the defendant to appear before the Magistrate at 9 a.m. on the day of service. When the Court met, the first case was partially gone into, and before it was closed the prosecutor asked the Magistrate to take up the second and third cases. The defendant stated that he had not understood what the second summonses meant, as he was served while in the act of leaving home to attend to the first case, and by advice of Counsel he refused to plead. The Magistrate entered a plea in each case of not guilty and went on with both cases. The defendant and his Counsel were in Court all the time awaiting completion of the evidence in the first case, but refused in any way to plead or take part in the second and third cases, or to ask adjournment thereof. The Magistrate, after taking all the evidence therein, at request of defendant adjourned the first case, and in the second and third cases convicted the defendant. It was shown by affidavit that the Magistrate was willing, had the defendant pleaded, to adjourn after taking the evidence of the witnesses present. The Court held that the proceedings were contrary to natural Justice, as the summonses were served almost immediately before the sittings of the Court, which defendant had already been summoned to attend, and the convictions were quashed with costs against the complainant. *R.* v. *Eli*, 10 Ont. R., 727.

40. When the defendant has been apprehended under the warrant, he shall be brought before the Justice who issued it, or some other Justice in and for the same Territorial Division, who shall thereupon, either by his warrant (F) commit the defendant to the Common Gaol or other prison, or if he thinks fit, verbally, to the custody of the Constable or other person who apprehended him, or to such other safe custody as he deems fit, and may order the defendant to be brought up at a certain time and place before him, —of which order the complainant or informant shall have due notice; but no committal under this section shall be for more than one week.

A warrant was issued by a Magistrate for the apprehension of the defendant who was brought before another Magistrate thereon, convicted and fined; subsequently the Magistrate who had issued the warrant caused the defendant to be summoned before him for the same offence, and again convicted and fined him after refusing to receive evidence of the prior conviction. The Court quashed the second conviction with costs and held that, even assuming that the first conviction was void by reason of the defendant having been brought before a Magistrate other than the one who issued the warrant, his appearance and pleading thereto amounted to a waiver and at any rate the Magistrate who convicted a second time could not take advantage thereof. *R.* v. *Bernard*, 4 Ont. R., 603.

41. If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his Counsel or Attorney, the Justice shall dismiss the complaint or information, unless for some reason he thinks proper to adjourn the hearing of the same until some other day, upon such terms as he thinks fit.

42. If both parties appear, either personally or by their respective Counsel or Attorneys, before the Justice who is to hear and determine the complaint or information, such Justice shall proceed to hear and determine the same.

If, after the issue of the summons, and before the day appointed for the hearing by the Justice, the parties compromise the matter and inform the Justice thereof, the Justice has still jurisdiction to convict, and may, on taking the evidence in the case, legally adjudicate thereon notwithstanding the compromise. *R. v. Justice Wiltshire*, 8 L.T., N.S., 242. See also *R. v. Truelove*, 14 Cox C.C., 408.

Under this section, in all cases of offences punishable on summary conviction, the defendant may be represented on the hearing by Counsel or Attorney, and the actual personal presence of the defendant is not required. *Bessell v. Wilson*, 1 E. & B., 489-500

It is optional with the defendant to send a Solicitor to appear for him. (*Ib.*). See also section 49.

In the case of corporations the regular practice is to appear by Attorney in cases of misdemeanor. See *ante*, p. 97.

43. If the defendant is present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

44. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the Justice present at the hearing, shall convict him or make an order against him accordingly.

This admission should not only agree with the charge, but should contain an admission of such facts as amount to the complete offence complained of, for the confession only admits the charge, not the legal effect of it.

45. If the defendant does not admit the truth of the information or complaint, the Justice shall proceed to hear the prosecutor or complainant, and such witnesses as he examines and such other evidence as he adduces, in support of his information or complaint, and shall also hear the defendant and such witnesses as he examines, and such other evidence as he adduces in his defence, and also hear such witnesses as the prosecutor or complainant examines in reply, if such defendant has examined any witnesses or given any evidence other than evidence as to his general character.

Where a defendant submits to examination before a Magistrate, it is too late afterwards to object to its propriety, but such appearance and examination will not give jurisdiction where there is otherwise none. *R.* v. *Ramsay*, 11 Ont. R., 210.

Although this section does not say how the examination shall be taken, yet it seems to be the duty of the Magistrate to take the examination and evidence in writing. *R.* v. *Flannigan*, 32 Q.B. (Ont.), 593-599.

Under this section the prosecutor or complainant has no right to go into evidence in reply, unless the defendant has examined witnesses other than as to his general character.

The plain rule is that witnesses for the defence, in the absence of any provision expressly taking away the right to examine

them, are admissible as a matter of unquestionable right. *Re Holland*, 37 Q.B. (Ont.), 214. See also *R.* v. *Sproule*, 14 Ont. R., 375.

The refusal to admit material evidence when tendered by the defendant will be good ground for quashing a conviction. Thus where a by-law prohibited the beating of drums or other unusual noises on the streets, and the conviction was for beating a drum simply, it was held that evidence should have been given by the prosecution shewing that the beating of a drum produced an unusual noise, and a refusal to admit evidence on the part of the defendant shewing that the noise was not unusual, was a good ground on which to quash the conviction. *R.* v. *Nunn*, 10 P.R. (Ont.), 395. See also *R.* v. *Meyer*, 11 P.R. (Ont.), 477.

46. The prosecutor or complainant shall not be entitled to make any observations in reply, upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply.

47. If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he wishes to avail himself of the same.

Where there is an exception in the statute on which the information is laid, the information or complaint should negative the exception; in such case it is not necessary that proof thereof should be adduced by the informant or complainant, but if the information does not negative the exception, and there is no evidence to prove the negative, the conviction will be invalid. *R.* v. *Mackenzie*, 6 Ont. R., 165.

There is a provision in the Rev. Stat. Can., chap. 131, s. 20, respecting trade unions that exceptions etc., need not be specified in the information but may be proved by the defendant, but if specified and negatived in the information no proof shall be required on the part of the informant or prosecutor. There is also similar provision in the Act respecting threats, intimidation and other offences. Rev. Stat. Can., chap. 173, s. 12, s.s. 4.

48. Before or during the hearing of any information or complaint, the Justice may, in his discretion, adjourn the hearing of the same to a certain time and place, to be then appointed and stated in the presence and hearing of the party or parties or of their respective Attorneys or Agents then present, but no such adjournment shall be for more than one week.

There is inherent power by common law for the Magistrate to adjourn, and the section cannot therefore be interpreted to mean more than it says. The section prohibits only the adjournment of the hearing, and does not prevent the adjournment of the adjudication or determination of the charge after the hearing is completed, and Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for purpose of informing themselves as to the legal penalty, or the amount proper to be imposed, or taking advice as to the law applicable to the case. *R.* v. *Hall*, 12 P.R. (Ont.), 142.

In reference to the provisions of this section care should be taken that the adjournment is not for more than a week. If such adjournment is made, the Magistrate would not have jurisdiction to proceed at the adjourned hearing, and a conviction made then would be quashed. *R.* v. *French*, 13 Ont. R., 80. But it would seem this is the rule only where the defendant does not ask the adjournment, and does not appear at the adjourned hearing. Where an adjournment for more than a week was made at the request of the defendant, who afterwards attended on the resumed proceedings, taking his chance of securing a dismissal of the prosecution, and urging that on the evidence it ought to be dismissed, it was held that the defendant had estopped himself from objecting afterwards that such subsequent proceedings were illegal by reason of the adjournment. *R.* v. *Heffernan*, 13 Ont. R., 616. It seems that this provision as to adjournment is directory only. At all events in the opinion of the writer the case of *R.* v. *French*, *supra*, went too far in the direction of holding every adjournment for more than a week illegal. If the defendant's appearance without summons will authorize his conviction, because he submits to the jurisdiction, there can be no reason why his appearance at the adjournment would not also give jurisdiction.

It seems that an adjournment for four weeks cannot be legally made, but if at the end of that time the defendant appears and asks for further time, the objection would be waived, but if the Magistrate after adjourning to a time and place certain changes such time and place without the knowledge of the defendant and in the face of the protest of his Counsel, this will render the conviction invalid. *R.* v. *Hall*, 8 Ont. R., 407.

A week is a period of seven days computed from and exclusive of the day of adjournment, and includes the whole of the last of the seven days, that is up to midnight, so that if the adjournment were actually made at 6 p.m., the fact that the Court did not sit to 6.30 p.m. on the last day to which the hearing was adjourned, would not make any difference. *R.* v. *Collins*, 14 Ont. R., 613.

Where none of the adjournments are for more than one week it is immaterial that the whole exceed a month, and it seems the Act is not intended to prevent more than one adjournment. At all events a witness, regularly summoned to attend the trial, could not take advantage of this objection. *Messenger* v. *Parker*, 6 Russell & Geldert, 237.

If Justices of the Peace adjourn their proceedings to a day subsequent to the repeal of an Act of Parliament, under which they act, their jurisdiction will cease. *R.* v. *Loudin*, 3 Burr, 1456.

49. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their Counsel or Attorneys respectively, before the Justice or such other Justice as shall then be there, the Justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

50. If the prosecutor or complainant does not appear, the Justice may dismiss the information with or without costs, as to him seems fit.

51. Whenever any Justice adjourns the hearing of any case, he may suffer the defendant to go at large or may commit him (G), to the Common Gaol or other prison, within the Territorial Division for which such Justice is then acting, or to such other safe custody as such Justice thinks fit, or may discharge the defendant upon his recognizance (H), with or without sureties, at the discretion of such Justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned :

2. Whenever any defendant who is discharged upon recognizance or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned, the Justice may issue his warrant for the apprehension of the defendant.

Information having been laid before the defendant, a Justice of the Peace against the plaintiff, he issued a summons and copy, but the copy was defective in not containing the return day.

The Constable made oath before the Justice that he had served a true copy of the summons, whereupon the plaintiff not appearing at the return, the defendant issued the warrant in form C in the statute, for the plaintiff's arrest. On being brought before the defendant the plaintiff refused to enter into a recognizance, though the Justice offered to take his own recognizance. The Justice thereupon by warrant, from G, under this section of the statute, remanded the plaintiff to the "Common Gaol at Kingston," King's County, for five days, from which he was discharged by a Judge's order. An Act had just been passed, not known to the defendant, removing the shire town from Kingston, and making the Common Gaol of St. John or Westmoreland the Common Gaol of Kings. The Court held that the Justice was not liable in the absence of malice or want of reasonable and probable cause, and that the plaintiff's imprisonment was legal as a remand for safe custody under this section of the statute. *Birch* v. *Perkins*, 2 Pugsley, 327.

The commitment, therefore, under this section, need not necessarily be to the Common Gaol of the County for which the Justice acts. It may be to another prison or verbally to the custody of the Constable, "or to such other safe custody" as the Justice may think fit (*Ib.*)

A warrant of commitment for an indefinite time, or which directs the prisoner to be kept in custody until the costs are paid, without stating the amount, is bad. *Dawson* v. *Fraser*, 7 Q.B. (Ont.), 391; see also. *Dickson* v. *Crabb*, 24 Q.B. (Ont), 494; followed in *Moffat* v. *Barnard*, 24 Q.B. (Ont.), 498.

A warrant reciting a coroner's inquisition, and stating the offence as follows:—that C "stands charged with having inflicted

blows on the body of the said F," and not showing the place where the blows, if any, were inflicted, or the offence, if any, was committed, is bad. *Re Carmichael*, 10 U.C.L J., 325. The warrant should show the place. *Re Beebe*, 3 P.R. (Ont.), 270.

Omitting to state the conviction of a defendant in his warrant of commitment, will not subject a Justice to an action for false imprisonment, provided the actual conviction is proved upon his defence. *Whelan* v. *Stevens*, Taylor, 245.

A warrant, for non-performance of statute labour, to imprison for the remainder of the penalty, for twelve days absolutely, and not unless the fine and costs should be sooner paid, after alleging summons, appearance, conviction, and warrant of distress, averred that part of the sum directed to be levied had been made, and that the plaintiff had no more goods, it was held that the warrant was clearly bad, because it was after part of the fine had been paid, and was for an absolute time, and not unless fine and costs should be sooner paid. *Trigerson* v. *Board*, P.C. 6, O.S., 405.

Under the Summary Punishment Act, Magistrates could not issue their warrant to imprison absolutely for so many days, but only to imprison for so many days, unless the fine and costs be sooner paid. *Ferguson* v. *Adams*, 5 Q.B. (Ont.), 194.

52. The Justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same, and convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be.

53. If the Justice convicts or makes an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the Justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction (J 1, 2, 3) or of orders (K 1, 2, 3) in the schedule to this Act, as is applicable to the case or to the like effect.

Where an Act of Parliament gives the form of conviction for an offence prohibited by the Act, that form must be followed, and a warrant granted on a conviction drawn up in any other form is illegal, and the Justice and those acting under it are trespas-

sers. *Dawson* v. *Gill*, 1 East, 64; *Goss* v. *Jackson*, 3 Esp., 198. It is in general sufficient if a conviction follows the forms set out in the statutes for the forms are intended as guides to Justices, and otherwise they would prove only snares to entrap persons. *R.* v. *Shaw*, 23 Q.B. (Ont.), 616; *Reid* v. *McWhinnie*, 27 Q.B. (Ont.), 289; *ex parte Eagles*, 2 Hannay, 51; *Moore* v. *Jarron*, 9 Q.B. (Ont.), 233; *R.* v. *Strachan*, 20 C P. (Ont.), 182; *Moffat* v. *Barnard*, 24 Q.B. (Ont.), 498.

In some cases however the form must be altered in order to bring the description of the offence within the statute on which it is founded, for it is a rule that where a statute gives a form of conviction, not fully describing the offence, the conviction nevertheless must fully describe it. In that part, however, which awards the penalty, or the like, the form may be followed, even although it does not strictly comply with the requirements of the Act. *R.* v. *Johnson*, 8 Q.B., 102.

Such alterations also as are requisite to render the form applicable to the special circumstances of the case may be made, and indeed in all cases if the form is substantially pursued or if equivalent language be used, it is no objection that it has not been followed verbatim. *Re Boothroyd*, 15 M. & W. 1.

This section does not render the use of the forms compulsory, and if the conviction contains everything required by the form given, it will not be vitiated by unnecessarily stating more than is required. Thus, if in addition to the form, it set out the information, summons, appearance and names of witnesses. *R.* v. *Jeffries*, 4 T.R., 768.

Any defect in the manner of stating that which is in itself surplusage, does not vitiate the rest which is sound (*Ib.*)

In the use of the forms of conviction given by this Act, it must be remembered that they are applicable to all previous penal statutes, whether they contain particular forms of convictions or orders or not, and to all subsequent statutes not containing particular forms of convictions or orders. *Ex parte Allison*, 10 Ex., 551. If by any subsequent statute a particular form be prescribed as indispensably necessary, such provision must be strictly complied with. *R.* v. *Jefferies*, 4 T.R., 169.

The blanks in the form of a conviction for a penalty and costs to be levied by distress, and in default of sufficient distress by imprisonment, are to be filled up as follows :—

1. The name of the Province and Territorial Division within which the conviction was rendered.

2. The date of the conviction, giving the day, month, and year in full, without using figures.

3. The place where the conviction was so rendered, showing also the Territorial Division within which the said place is situate.

4. The name, residence and occupation of each of the defendants. If there are two or more offenders they cannot be described as A and company. *R.* v. *Harrison*, 8 T.R., 508.

5. The number of the Justices convicting.

6. The statement of the offence.

The place for which the Justice acts must be shown, and it must be alleged that the offence was committed within the limits of his jurisdiction, or facts must be stated which give jurisdiction beyond those limits. See *R.* v. *Young*, 5 Ont. R., 400.

But alleging the act to be done at a certain place in the Township of A is sufficient, if a public statute shows that that township is within the County for which the Justice is appointed. *R.* v. *Shaw*, 23 Q.B. (Ont.), 616. See also *R.* v. *Edwards*, 1 East, 278 ; *R.* v. *Hazell*, 13 East, 139 ; *R.* v. *Young*, 7 Ont. R., 88.

When by special statute jurisdiction is given to Justices of the Territorial Division within which an offender is found, the offence having been committed in another Territorial Division, in addition to setting out the place where the offence is committed, it is necessary to set out the fact of his having been found at some place within the Territorial Division of the convicting Justice. *Re Peerless*, 1 Q.B., 143.

An information described the parties as of the Township of East Whitby, and it had " County of Ontario " in the margin. It alleged that they kept a house of ill-fame, but it did not in so many words allege that they did so in the Township of East Whitby or in the County of Ontario in which the Township was. The evidence however showed that the house was in East Whitby,

in which the Justices had jurisdiction, and this was held sufficient. *R.* v. *Williams*, 37 Q.B. (Ont.), 540.

A conviction for keeping a house of ill-fame must name a place at which the offence was committed, and it is not sufficient to allege that the offence was committed at the City of Toronto, without further description of the particular locality, for the defendant might be keeping more than one house in the city at the same time, and the conviction should describe the place in such a way as by street and number, that the particular house could be easily identified. *R.* v. *Cyr*, 12 P.R. (Ont.), 24.

The general rule of law, respecting Summary Proceedings before Justices of the Peace, is that jurisdiction should be shewn on the face of the proceedings, and it matters not whether the question of jurisdiction turns upon the territorial authority of the Magistrate or his power to investigate the particular offence. *R.* v. *Walsh*, 2 Ont. R., 206. See also *ex parte Bradlaugh*, L.R. 3, Q.B.D., 509.

The conviction must shew that the party convicted has brought himself within the terms of the law, in other words it must show the offence.

If only licensed tavern keepers are liable to a penalty for selling liquor without license, the conviction should show that the offender is licensed. *McGilvery* v. *Gault*, 1 Pugsley & Burbidge, 641.

So where a by-law required "all hay sold at the market or elsewhere in the Town of Cornwall, which is required to be weighed by the vendor or purchaser, to be weighed with public weigh scales," a conviction under this by-law was that defendant in controvention of said by-law, brought hay into said town and had same weighed on scales other than the public scales. The conviction was held bad in not stating that the hay was sold at the market or elsewhere in said town and costs were awarded to be paid by the complainant, the weigh-master who had instituted the proceeding for his own benefit after warning instead of bringing an action in the Division Court. *R.* v. *Hollister*, 8 Ont. R., 750.

The description of the offence must include in express terms every ingredient required by the statute to constitute the offence, nothing being left to intendment, inference or argument. *R.* v. *Turner*, 4 B. & Ald., 510; *Charles* v. *Greene*, 13 Q.B., 216.

Where knowledge is made a material component in the offence it must be distinctly alleged. *R.* v. *Jukes*, 8 T.R., 536. *Chaney* v. *Payne*, 2 Q.B., 712.

Where written instruments form the gist of the offence, the conviction must set them out, that it may clearly appear that the instrument is one of the description contemplated by the statute.

When the statute under which the information is laid in describing the offence contains the words "maliciously," "wilfully," "knowingly," or words of similar import, the defendant should be stated, in the description of the offence, to have committed it maliciously, &c., as the case may be. Paley 143.

The day on which the act was committed should be stated, but a conviction for selling liquor without a license on a certain day between the 31st July and the 1st September, in the same year, to wit, on the first day of August is sufficient, and it is not necessary to prove the exact day of sale. *R.* v. *Justices*, 2 Pugsley, 485.

So a conviction under the Canada Temperance Act alleging that the offence was committed between the 30th June and the 31st July, was held a sufficiently certain statement of the time. *R.* v. *Wallace*, 4 Ont. R., 127.

A conviction for keeping a house of ill-fame on the 11th of October, and on other days and times before that day, was held sufficiently certain as to time, for the only offence charged by these words was keeping and maintaining a bawdy-house, or house of ill-fame; and the fact that they kept such a house on the 11th of October, and other days and times before that, did not constitute a distinct offence against the parties upon each of those days. *R.* v. *Williams*, 37 Q.B. (Ont.), 540.

A person was convicted of being drunk in a public street, contrary to law, and adjudged to pay a fine of $50 and costs, or to be imprisoned for six months at hard labour. There was power

given by by-law 478, of the City of Toronto, to imprison an offender for the above offence; but in the warrant of commitment no reference whatever was made to the by-law. It was held that as there was no common law right to imprison any one for being drunk on a public street, and the by-law not being referred to, the conviction was bad. *Re Livingstone*, 6 P.R. (Ont.), 17.

In Ontario under the Rev. Stat., chap. 184, s. 427, a conviction under a by-law need not set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, but such conviction may be in the form given in such section. It seems however that the conviction should show by what municipality the by-law was passed. *R.* v. *Osler*, 32 Q.B. (Ont.), 324.

Where a form of conviction is not sanctioned by any statute, it must be legal according to the principles of the common law, and a conviction which did not express that the party had been summoned, nor that he appeared, nor that the evidence was given in his presence, cannot be supported. *Moore* v. *Jarron*, 9 Q.B. (Ont.), 233. But where the general form of conviction prescribed by this section is used, it is clearly not necessary to shew that the defendant was summoned or heard or any evidence given. *R.* v, *Caister*, 30 Q.B. (Ont.), 247.

The charge in a conviction must be certain, and so stated as to be pleadable in the event of a second prosecution for the same offence. *R.* v. *Hoggard*, 30 Q.B. (Ont.), 152.

A Magistrate, in order to have a good justification under a conviction and warrant, must give in evidence a conviction not illegal on the face of it, and a warrant of distress supported by that conviction, and not on the face of it, an illegal warrant. *Eastman* v. *Reid*, 6 Q.B. (Ont.), 611.

In describing the offence in convictions, it is not sufficient to state as the offence that which is only the legal result of certain facts, but the facts themselves must be specified, for instance, a conviction that the defendant used blasphemous language is not good, the exact words used should be set out in the conviction. *Re Donelly*, 20 C.P. (Ont.), 165.

In framing a conviction where it is immaterial by what means the act prohibited has been effected, it is in general sufficient to follow the words of the statute where it gives a particular description of the offence. But there are exceptions to this rule. Thus under the Rev. Stat. Can., chap. 157, s. 8, respecting Vaggrants, a conviction of a common prostitute in the very words of the statute was holden insufficient, and that it should also shew a request made on the woman to give a satisfactory account of herself. *R.* v. *Levecque*, 30 Q.B. (Ont.), 509. And where an Act, describing the offence, makes use of general terms which embrace a variety of circumstances, it is not enough to follow the words of the statute, but it is necessary to state what particular fact prohibited has been committed or the circumstances under which the act is an offence. *Re Donelly*, 20 C.P. (Ont.), 167 ; *R.* v. *Scott* 4 B. & S., 368. When circumstances explanatory of the words of the statute are necessary to be shewn in order to bring the case within the statute, such circumstances must be plainly and distinctly averred. *R.* v. *Wield*, 6 East, 417 ; *Fletcher* v. *Calthrop*, 6 Q.B., 880. See also *R.* v. *Pearham*, 5 H. & N., 30.

One of several persons in partnership may be convicted of an offence committed by the firm, for all wrongs are several as well as joint. *Mullins* v. *Bellamere*, 7 L.C.J., 228. For a statutory illustration of this principle, see Rev. Stat. Can., chap. 164, s. 76, as to frauds by millers, factors, warehousemen, etc.

At common law a conviction cannot be amended. *R.* v. *Jukes*, 8 T.R., 625. The Magistrate, however, before he returns it to the sessions or upon a *certiorari* may draw it up in a more formal manner than he had at first drawn it. *Chaney* v. *Payne*, 1 Q.B., 712 ; *Charter* v. *Greame*, 13 Q.B., 216.

If the commitment be bad upon the face of it, the party may apply for a *habeas corpus*, and thereupon be discharged. But a good commitment may be substituted for a bad one, on the return to the writ. *R.* v. *Smith*, 3 H. & N., 227. But if, instead of convicting the defendant, the Justice refuse to convict him and dismiss the case, there is no mode of reviewing his decision ; the Court will neither grant a *mandamus* requiring the Magistrate to rehear

the case nor award a *certiorari* to bring up the proceedings. *Ex parte B. & F. P. I. Co.*, 7 Dowl., 614.

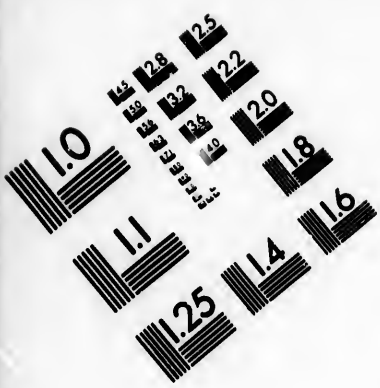
It may be observed that although a conviction may be drawn up in regular form, at any time before it is returned to sessions, an order or warrant of commitment cannot. *R.* v. *Barker*, 1 East, 186; *R.* v. *Cheshire*, 5 B. & Ad., 439; *Hutchinson* v. *Lowndes*, 4 B. & Ad., 118. Although a Magistrate may draw up a conviction in a more formal manner than was done in the first instance, and may return the amended form, as his conviction, to the sessions or the Court of Queen's Bench upon a *certiorari*, or probably he may return an amended conviction to the sessions even after having returned an erroneous one. *Selwood* v. *Mount*, 9 C. & P., 75, yet he cannot do this after the first conviction has been quashed, either upon appeal or by the Court of Queen's Bench, or after the defendant has been discharged by the Court of Queen's Bench, by reason of a bad conviction being recited in the warrant of commitment. *Chaney* v. *Payne*, 10 L.J.M.C., 114.

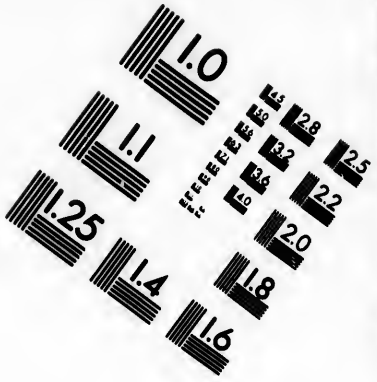
After a first conviction has been returned to the sessions and filed, the Justices may, if they think it defective, make out and file a second. *Wilson* v. *Graybiel*, 5 Q.B. (Ont.), 227.

A conviction will be quashed if the summons states no place where the offence was committed, although the place appear on the face of the conviction. *Ex parte Leonard*, 6 L.C.R., 480.

A conviction for two several and distinct offences, but imposing one penalty only, is bad where it does not appear for which offence the penalty is inflicted. *R.* v. *Gravelle*, 10 Ont. R., 735.

A conviction for two offences is bad; thus a conviction "for creating a disturbance and acting in a disorderly manner by fighting on the street, and breaking the peace contrary to the by-law and statute in that behalf," is defective, so, if it impose imprisonment with hard labour in default of payment, it being uncertain whether it is made under the statute or by-law, and if the latter, hard labour being unauthorized. *R.* v. *Washington*, 46 Q.B. (Ont.), 221. And where a defendant was convicted before a Magistrate for that he "did in or about the month of June, 1880, on various occasions," commit the offence charged in the informa-





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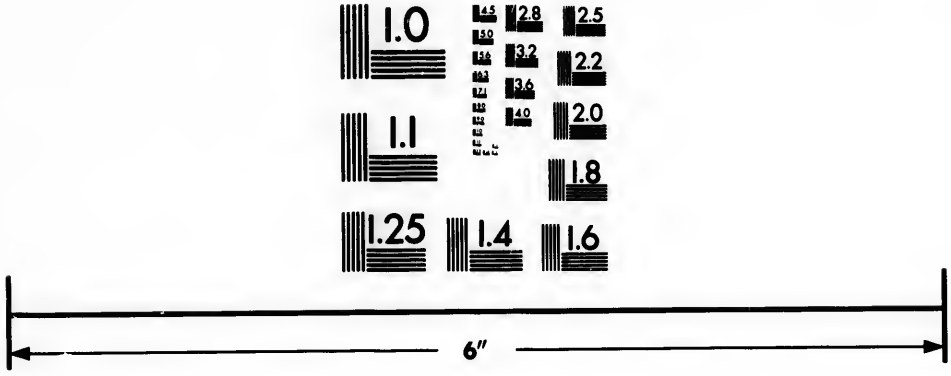

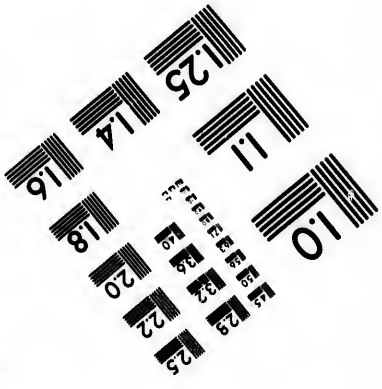

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tion, and a fine was inflicted "for his said offence," the conviction was held bad as showing the commission of more than one offence. *R.* v. *Clennan*, 8 P.R. (Ont.), 418.

The 26th section of the statute, in limiting the information or complaint, to one offence or matter of complaint, also limits the conviction to one offence, save where the contrary is provided by a subsequent statute. In all cases then, the wording of the statute creating the offence is to be carefully considered, in order to determine whether distinct penalties are incurred for each of the several acts charged, or whether they form but one aggregate offence, and require but one penalty. See *Collins* v. *Hopwood*, 15 M. & W., 459; Paley, 218, 221. But of late years the distinction formerly recognized as existing between joint and several offences has been done away with, and the Courts treat all persons committing an offence together, as liable each to the full penalty imposed by the statute on the person committing such offence, so that in all such cases it is the better plan to have an information and summary case for each person charged. *Mayhew* v. *Wordley*, 14 C.B., N.S., 550; Kerr's Acts, 197.

The name of the informant or complainant must in some form or other appear on the face of the conviction. *Re Hennesy*, 8 U.C.L.J., 299. The costs are generally directed to be paid to him by name.

The offence of which the defendant is convicted must be stated with certainty, otherwise the conviction will be quashed. *Eastman* v. *Reid*, 6 Q.B. (Ont.), 611.

A conviction must not be in the alternative. *R.* v. *Craig*, 21 Q.B. (Ont.), 552. A conviction adjudging the defendant to be imprisoned for twenty-five days, *or* payment of $5, and costs, in the alternative is bad. *R.* v. *Sadler*, 2 Chit., 519; *R.* v. *Wortman*, 4 Allen, 73; *R.* v. *Pain*, 7 D. & R., 678.

To sustain a conviction, the evidence must be reasonably sufficient to show that the offence existed, and was committed at the time of the information, and the facts necessary to support the charge must be stated expressly and not left to be gathered from inference or intendment. Therefore where a conviction, under the

Canada Temperance Act, made on the 4th of August, stated that the defendant had sold spirituous liquors "within three months now last past," referring to the date of the conviction, and the evidence of one witness proved a sale in May previous to the information which was laid on the 25th July, and another witness proved a sale "since the 22nd June," which sale might have been after the date of the information, the conviction was held to be uncertain as it was consistent with the evidence that the Magistrate might have convicted, on the testimony of the witness who proved a sale "since the 22nd June," which sale might have been after the date of the information. *R.* v. *Blair*, 24 Sup. Ct., N.B., 72-4.

Before conviction the Justice should have reasonable evidence. In a prosecution under the Canada Temperance Act, the defendant swore that he did not sell any intoxicating liquor on the day charged. The recipient of some liquor sold on that day named it in his evidence for the defence, but there was no evidence that it was intoxicating drink, the evidence for the Crown only showing that it resembled intoxicating liquor, and it was held that there was no reasonable evidence on which to found a conviction for selling intoxicating liquor. *R.* v. *Bennett*, 1 Ont. R., 445.

In the adjudication the Justice should measure the penalty he inflicts by his authority under the statute inflicting the penalty for the offence of which he convicts the defendant. If the penalty is a sum certain, the defendant should be adjudged to forfeit and pay that sum certain. *Ex parte Wilson*, 1 Pugsley & Burbidge,

If on the other hand the statute in such case gives the Justice the power of inflicting a penalty, of not more, for instance, than ten dollars and not less than one dollar, the Justice, if he convicts, should impose a penalty of either of these sums, or of any sum between them. But if he imposes a penalty either greater than the higher or less than the lower limit, the conviction is bad. *R.* v. *Patchett*, 5 East, 341. See also *Brophy* v. *Ward*, 32 L.J., Q.B., 292.

But a conviction cannot be quashed on the ground merely that

the punishment imposed is less than the punishment by law assigned to the offence. See section 88, (b).

Where the statute on which the conviction is made only authorizes imprisonment on default of payment of the fine, the conviction will be invalid if it awards a distress on non-payment and in default of sufficient distress imprisonment. The specific punishment for non-payment of the penalty being imprisonment, the award of distress is in excess of that which might have been lawfully imposed, and sections 87 and 88 of this Act do not cure the defect. *R.* v. *Lynch*, 12 Ont. R., 372.

In such a case as the above, the form J. 2 should be used instead of the form J. 1. Under "The Public Works Act," Rev. Stat. Can., chap. 36, s. 30, all pecuniary penalties imposed by the Act shall be recoverable with costs before any Justice of the Peace for the district in which the offence was committed, under "The Summary Convictions Act" (Rev. Stat. Can., chap. 178), and in default of payment of the penalty and sufficient distress, the party may be imprisoned for such term as the Justice directs, not exceeding thirty days. There is a similar provision in the Act respecting the Department of Railways and Canals (Rev. Stat. Can., chap. 37, s. 20), in respect to penalties imposed by the latter Act. Convictions under these Acts should therefore be in the form J. 1.

The minute of adjudication required to be drawn up by this section is in order that the adjudication and conviction should correspond, and when the Act or law in that behalf gives no mode of raising or levying the penalty the procedure must, under the 62nd section be by warrant of distress and in default of sufficient distress, imprisonment. In a case under the Canada Temperance Act, which provides no means of enforcing payment of the penalty for the first offence, the adjudication found the defendant guilty of keeping intoxicating liquors contrary to the provisions of the second part of the Act, and that a fine of fifty dollars should be paid, and in default the defendant be imprisoned in the Common Gaol for thirty days, and the conviction following the adjudication directed distress in the event of non-payment of the penalty, and in default of sufficient distress, imprisonment, the

Court held that the conviction could not be supported, but that the Magistrate might have amended the adjudication in the presence of the defendant; but it appearing that the offence was one against the provisions of the Act and was within the jurisdiction of the Magistrate, and that there was evidence to prove it, and that no greater penalty was imposed than authorized by the Act, the Court under the 117th and 118th sections of the Canada Temperance Act amended the minutes of conviction by striking out the award of imprisonment in default of payment of the penalty, and by inserting an award of distress on non-payment, and on default of sufficient distress, imprisonment. *R.* v. *Brady*, 12 Ont. R., 358.

There is no form given in the Act for such minute or memorandum, but the entire adjudication both as to fine, costs and mode of enforcing payment thereof must take place while the Justice is sitting in Court on the case, and the minute of conviction made under this section, should state the adjudication of the Justice both as to the amount of fine and the mode of enforcing it, whether by distress or imprisonment, so as to be a complete judgment in substance. *R.* v. *Perley*, 25 Sup. Ct., N.B., 43. It will not do for the Justice while sitting to fix the penalty only, and after delivery of judgment and departure from the Court in the absence of the defendant, to direct distress, imprisonment, etc. Immediately after conviction the defendant has a right to the minute of adjudication. The statute requires that it shall then be made. A record should be kept of this and signed by the Justice. If the conviction is for a penalty, the adjudication may be thus stated: "Convicted to pay penalty, $5; damage (or value), $1; and costs, $3; forthwith (or on or before the instant), to be recovered by distress, and in default, one month's imprisonment at hard labour unless sooner paid with costs of distress and conveyance to gaol." Although the conviction itself may afterwards be drawn up, the minute or memorandum with full particulars must be drawn up and signed before the Justice leaves the Bench. This is necessary so that any other Justice, in and for the same Territorial Division, may be able properly to issue a warrant of

distress, which he is authorized to do under section 62 of the Act.

In a recent unreported case a conviction was set aside because judgment was given and sentence of imprisonment pronounced in the absence of the defendant.

The conviction must adjudge a forfeiture of the penalty. See *R.* v. *Newton*, 11 P.R., (Ont.), 98.

A conviction for keeping a house of ill-fame is defective if it does not contain an adjudication of forfeiture of the fine imposed, and it is not sufficient to adjudge the payment of a sum of money without adjudging a forfeiture thereof. *R.* v. *Cyr*, 12 P.R. (Ont.), 24.

It would seem that a conviction by a Justice may be quashed unless it is sealed. *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201; *McDonald* v. *Stuckey*, 31 Q.B. (Ont.), 577. See section 108.

All exceptions contained in the enacting clause of a statute should be negatived in the conviction. For instance, if a statute imposes a penalty for selling liquor without license except upon a requisition for medicinal purposes, the absence of such requisition should be shewn. *R.* v. *White*, 21 C.P. (Ont.), 354.

This rule, however, applies only where the exception is contained in the same section of the statute as that constituting the offence, and where the exception is in a different subsequent section it need not be negatived in the conviction. *R.* v. *Breen*, 36 Q.B. (Ont.), 84, even where the exception in such subsequent section is incorporated by reference with the enacting clause, for the reference must be in the enacting clause itself and not to it. See also *R.* v. *Strachan*, 20 C.P. (Ont.), 182.

Where the exception is not in the enacting clause it need not be negatived. A by-law declared that "no person shall in any of the streets, or in the market-place of the City of London, blow any horn, ring any bell, beat any drum, play any flute, pipe or other musical instrument, or shout or make or assist in making any unusual noise or noise calculated to disturb the inhabitants of the said city, provided always that nothing herein contained shall prevent the playing of musical instruments, by any military band of Her Majesty's regular army, or of any militia corps law-

fully organized under the laws of Canada." On application to quash a conviction for beating a drum, it was held not necessary that either the conviction or commitment should shew that the defendant did not come within the exception in the proviso. *R.* v. *Nunn*, 10 P.R. (Ont.), 395.

And these rules are not of the same importance as formerly, for the conviction cannot be quashed for non-observance of them. See section 88 (c).

This section of the Act relates to orders generally, and is not confined to orders for the payment of money and those of a like kind. See *Morant* v. *Taylor*, L.R. 1, Ex. D., 188.

It is not necessary that an order of Justices should be sealed with wax; an impression made in ink with a wooden block, in the usual place of a seal, is sufficient, when the document purports to be given under the hands and seals of the Justices, and is in fact signed and delivered by them. *R.* v. *St. Paul*, 7 Q.B., 232.

The Court will make every reasonable intendment in favour of an order of Justices. *R.* v. *Aire*, 2 T.R., 666. But an order is void if it does not appear in the order itself that the Justice had jurisdiction to make it. *R.* v. *Hulcott*, 6 T.R., 587.

Justices may supersede their own order when improvidently made. *R.* v. *Norfolk*, 1 D. & R., 69. If two orders are made by mistake at the sitting of Magistrates, it is competent to them to declare at the time which is the right one. *Wilkins* v. *Hemsworth*, 7 A. & E., 807.

No order can be made in the absence of the party whose interests are affected by it. *R.* v. *Totness*, 14 L.J.M.C., 148.

An order may be good in part and void for the residue. *R.* v. *Fox*, 6 T.R., 148. An order of Justices bad in part may be enforced as to the good part, provided that on the face of the order the two parts are clearly separable, and it is not necessary in such case to quash the bad part of the order before enforcing the residue. *R.* v. *Green*, 20 L.J.M.C., 168.

The signature is an essential part of the order, and the order cannot be considered as made until it is reduced into writing and signed by the Justice. *R.* v. *Flintshire*, 10 Jur., 475.

Justices out of sessions are in many cases required to make orders in matters not criminal, but this jurisdiction must be given either by the express words of some statute, or by necessary implication from them. An order of Justices consists of three parts; the first recites the facts which, according to the statute on which the order is framed, give the Justice jurisdiction to make it; the second states the appearance, hearing and finding; and the last, the adjudication and order. Great care must be taken with the part of the order reciting the facts which give the jurisdiction, for it is essential that the order show upon the face of it that the Justices had jurisdiction to make it, otherwise it will be bad (*R.* v. *Spackman*, 2 Q.B., 301); or if in fact the Justices had not jurisdiction, although it be represented on the face of the order that they had—the order may be impugned upon affidavit and quashed, although it appear good on the face of it. *R.* v. *Bolton*, 1 Q.B., 66. An order may be good in part and bad in the rest. *R.* v. *Ovcr*, 14 Q.B., 425. It must appear also that the person upon whom the order was made, either was present at the hearing, or was summoned in order to show that he had an opportunity of resisting the order if he objected to it, unless indeed the order be intended by the statute to be *ex parte*, and be made upon the application of the party to whom it is to be directed.

In the last part the only care requisite is, that the matter of complaint be adjudged to be true (*R.* v. *Williams*, 21 L.J.M.C., 150); and that the order be strictly such as is warranted by the statute. Where an order of a Justice or Justices legally made, requires a person to do any certain act, and, upon being personally served with the order and required to do the act, he refuse or neglect to do it, this is a misdemeanor at common law, punishable upon indictment by fine or imprisonment or both. *R.* v. *Bidwell*, 17 L.J.M.C., 99; *R.* v. *Ferrall*, 20 L.J.M.C., 39; *R.* v. *Walker*, L.R., 10 Q.B., 355.

A defendant who has been convicted is not entitled of right to a copy of the conviction, to enable him to appeal against it. *R.* v. *Huntingdon*, 5 D. & R., 588. He is, however, under this section, entitled to a minute, or memorandum of the conviction, without any

fee, and if he wants the copy of conviction for purposes of defence in any action, a Justice who refuses it may have to pay the costs of a *certiorari* to obtain it. *R.* v. *Huntingdon*, *supra*. A copy given to the defendant will not be binding, since the Justices may draw it up in an amended form any time before a return to a *certiorari*, though after a commitment or distress, and after return to the sessions. *R.* v. *Richards*, 5 Q.B., 926; *R.* v. *Johnson*, 3 B. & S., 947.

A Justice is liable to an action if he prevent, by undue delay and after notice, the defendant from prosecuting his appeal. *Prosser* v. *Hyde*, 1 T.R., 414. See *McKenzie* v. *McKay*, 3 Russell & Geldert, 122.

The blanks in the conviction should be filled up before signature. *Bott* v. *Ackroyd*, 28 L.J.M.C., 207. But if not so filled up it will be a mere irregularity.

54. When several persons join in the commission of the same offence, and, upon conviction thereof, each is adjudged to pay a penalty, which includes the value of the property, or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value, and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a Justice are directed to be applied.

A conviction of two persons in partnership for an offence, several in its nature, and adjudging that they should forfeit and pay, etc., is bad, for a joint conviction in such case is bad; the penalty ought to be imposed on the parties severally. *Ex parte Howard*, 25 Sup. Ct., N.B., 191.

55. Whenever any person is summarily convicted before a Justice of any offence against "*The Larceny Act*," or the "*Act respecting Malicious Injuries to Property*," or the "*Act respecting the Protection of the Property of Seamen in the Navy*," and it is a first conviction, the Justice may, if he thinks fit, discharge the offender from his conviction, upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the Justice.

56. If the Justice dismisses the information or complaint, he may, when required so to do, make an order of dismissal of the same (L), and shall give the defendant a certificate thereof (M),—which certificate, upon being after-

wards produced, shall, without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant.

It would seem this section relates to the proof of the previous dismissal, for independently of the certificate, the dismissal would be a bar if properly proved. *R.* v. *Brakenridge*, 48 J.P., 293.

Owing to the special wording of form L, this certificate would be a bar, even when the order of dismissal is made, because the informant does not appear, or, appearing, declines to give evidence, and it is not necessary that there should be an actual hearing and dismissal on the merits. See *Ex parte Phillips*, 24 Sup. Ct., N.B., 119.

In the case under consideration, the majority of the Court held that the Magistrate, before whom an information for an offence is being heard, if a certificate of dismissal of a prosecution for the same alleged offence is relied on, as a bar to his proceeding, has a right to enquire whether the previous prosecution was real and *bona fide*, or was instituted fraudulently and collusively.

Independently of this provision, a former conviction or acquittal, whether on a criminal summary proceeding or an indictment, will be an answer to an information of a criminal nature before Justices, founded on the same facts. The true test to shew that such previous conviction or acquittal is a bar, is whether the evidence necessary to support the second proceeding would have been sufficient to procure a legal conviction on the first. See *Wemyss* v. *Hopkins*, L.R. 10, Q.B., 378.

If, however, by reason of some defect in the record, either in the indictment, place of trial, process, or the like, the accused was not lawfully liable to suffer judgment for the offence charged, the former proceeding will be no bar. The previous proceeding, if used as an answer, should have been a decision on the merits, and not in the nature of a mere non-suit. *R.* v. *Herrington*, 12 W.R., 420; *R.* v. *Machen*, 14 Q.B., 74.

The objection of *res judicata* must be taken at the hearing before the Magistrate, and not reserved as a ground for quashing the conviction or order after it is made. (*Ib.*)

57. Whenever, by any Act or law, authority is given to commit a person to prison or to levy any sum upon his goods or chattels by distress, for not obeying an order of a Justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf; and the order or minute shall not form any part of the warrant of commitment or of distress.

This section only requires that a minute should be served in case of an order. The defendant must take notice of a conviction at his peril, and the costs directed to be paid in a conviction are really part of the conviction, where there is a conviction, or of the order, where there is an order; for the 58th section of the Act empowers the Justice to award costs on either convictions or orders. *R.* v. *Sanderson*, 12 Ont. R., 178.

As the 57th section applies to orders, and not convictions, on conviction of a party for unlawful assault, under section 73 of the Act, it is not necessary that he should be served with a copy of the minutes of the conviction before he is imprisoned. *R.* v. *O'Leary*, 3 Pugsley, 264. See also *McLellan* v. *McKinnon*, 1 Ont. R., 219.

COSTS.

58. In every case of a summary conviction, or of an order made by a Justice, such Justice may, in his discretion, award and order in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said Justice seems reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before Justices.

A conviction adjudging the defendant to pay a sum for costs, without saying to whom the costs are to be paid, is void under this section. The conviction should order the costs to be paid to the complainant. *R.* v. *Mabey*, 37 Q.B. (Ont.), 248.

A conviction is bad which makes the costs payable in the alternative to the prosecutor or the Magistrate. *R.* v. *Washington*, 46 Q.B. (Ont.), 221.

59. Whenever the Justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall

pay to the defendant such costs as to the said Justice seems reasonable and consistent with law.

A Justice had power to grant costs on dismissing an information heard before him under the Summary Convictions Act. Con. Stat. Can., chap. 62, s. 16; *ex parte Ross*, 2 Pugsley & Burbidge, 337; *ex parte Beattie*, 5 Allen, 377, overruled.

Before this enactment the party could not be punished for non-payment of costs in the same way as for non-payment of penalty. *R.* v. *Burton*, 13 Q.B., 389,

A warrant of commitment for non-payment of penalty and costs, where the conviction did not mention costs, would be illegal. *Leary* v. *Patrick*, 15 Q.B., 206.

60. The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered.

In a conviction for a penalty to be levied by distress, and in default of sufficient distress, imprisonment, it is no objection that the conviction specifies the amount of costs of conveying the party to gaol in default of sufficient distress; specifying the amount is only a notification to the defendant what he shall have to pay in the event of no distress and he is arrested. *Reid* v. *McWhinnie*, 27 Q.B. (Ont), 289.

61. Whenever there is no such penalty to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labor, for any term not exceeding one month.

WARRANTS OF DISTRESS AND COMMITMENT.

62. Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, and by the Act or law authorizing such conviction or order, the penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant, by distress and sale thereof,—and whenever, by the Act or law in that behalf, no mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the Justice or any one of the Justices making such conviction or order, or any Justice in

and for the same Territorial Division, may issue his warrant of distress (N 1, N 2) for the purpose of levying the same,—which warrant of distress shall be in writing, under the hand and seal of the Justice making the same.

This section does not apply where, by the Act authorizing the conviction, a mode of enforcing the payment is stated or provided. Thus, where a conviction, under the "Ontario Medical Act" (Rev. Stat. Ont., chap. 148), for practising without being registered, awarded distress in default of payment of the fine imposed, the conviction was quashed, as section 51 of the Act gives power to commit to the Common Gaol in default of payment of fine. *R.* v. *Sparham*, 8 Ont. R., 570.

63. If, after delivery of the warrant of distress to the Constable or Constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the Justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the Justice, granting the warrant, before any Justice of any other Territorial Division, such Justice shall thereupon make an indorsement (N 3) on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction,—by virtue of which warrant and indorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any Constable or other Peace Officer of the last mentioned Territorial Division, by distress and sale of the goods and chattels of the defendant therein.

64. Whenever it appears to any Justice to whom application is made for any warrant of distress, that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the Justice by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the Justice, if he deems it fit, instead of issuing a warrant of distress, may (C 1, O 2) commit the defendant to the Common Gaol or other prison in the Territorial Division, there to be imprisoned, with or without hard labor, for the time and in the manner the defendant could by law be committed, in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy the penalty or sum and costs.

The Justice should take steps to ascertain whether the defendant has goods or not, and if the latter has property, the distress

warrant must be issued before the warrant of commitment. *McLellan* v. *McKinnon*, 1 Ont. R., 219.

Under the Fisheries Act (Rev. Stat. Can., chap. 95, s. 18), a warrant of commitment may issue in the first instance, without previous issue of a warrant of distress—the statute not requiring that a distress warrant should first issue. *Arnott* v. *Bradly*, 23 C.P. (Ont.), 1.

So a conviction for an unlawful assault under the Rev. Stat. Can., chap. 162, s. 34, may adjudge the defendant to be imprisoned in the first instance. *R.* v. *O'Leary*, 3 Pugsley, 264.

Where by an Act, power is conferred upon Justices to issue a distress warrant, "if they shall think fit," they must not refuse to issue it, merely because they think the Act of Parliament does an injustice in giving such power in the particular case. *R.* v. *Boteler*, 4 B. & S., 959.

If the warrant is specially directed to the person who is to execute it, or generally to all other Constables or Peace Officers of the Division, any person coming within this description may lawfully execute it, but where it is directed to the Constable of A, that is the Constable of such Division, it cannot lawfully be executed by any other person. *R.* v. *Sanders*, L.R., 1 C.C.R., 75.

65. Whenever a Justice issues any warrant of distress, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the Justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other Justice for the same Territorial Division as shall then be there.

After conviction, and pending the return of a warrant of distress, a remand warrant, committing the defendant to the gaoler of the Common Gaol of the County in which the defendant was convicted, is proper. *R.* v. *Collier*, 12 P.R. (Ont.), 316.

66. If, at the time and place appointed for the return of any warrant of distress, the Constable, who has had the execution of the same, returns, (N 4) that he could find no goods or chattels whereon he could levy the sum

or sums therein mentioned, together with the costs of or occasioned by the levy of the same, the Justice before whom the same is returned may issue his warrant of commitment (N 5), directed to the same or any other Constable, reciting the conviction or order shortly, the issuing of the warrant of distress and the return thereto, and requiring the Constable to convey the defendant to the Common Gaol or other prison of the Territorial Division for which the Justice is then acting, and there to deliver him to the keeper thereof,—and requiring the keeper to receive the defendant into such gaol or prison, and there to imprison him ; or to imprison him and keep him at hard labor, in the manner and for the time directed by the Act or law, on which the conviction or order mentioned in the warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment, and conveying of the defendant to prison, if such Justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment), are sooner paid.

It is no objection to a warrant of commitment in default of distress, that it was issued prior to the expiration of a warrant of remand, provided that it is issued after the return of the distress warrant. *R.* v. *Collier*, 12 P.R. (Ont.), 316 ; *R.* v. *Sanderson*, 12 Ont. R., 178.

A warrant of commitment must contain mandatory words, directing the gaoler to receive and retain the prisoner, otherwise it will be quashed. *R.* v. *Barnes*, 4 Manitoba L.R., 448

A warrant of commitment for non-payment of penalty cannot be executed on a Sunday. *Egginton* v. *Lichfield*, 2 E. & B., 717.

But warrants for arrest for any indictable offence, or any search warrant, may be issued on Sunday. Rev. Stat. Can., chap. 174, s. 37.

It would seem that after conviction no warrant of commitment can issue until the return (N 4) is made. See *McLellan* v. *McKinnon*, 1 Ont. R., 219, unless, of course, in the cases mentioned in the 64th section, and a Justice so committing would be liable in trespass.

Where the conviction is bad the warrant of commitment issued thereon also fails. *R.* v. *Richardson*, 11 P.R. (Ont.), 95.

It is essential to imprisonment, under this section, in default of distress, that such imprisonment should be provided for in the Act or law upon which the conviction or order is founded. If

such imprisonment is so provided, and the time of it is specified in the Act or law, it can be awarded under this section. *R.* v. *Dunning*, 14 Ont. R., 52.

But, though not provided in the Act or law, it would seem that imprisonment can be awarded in default of distress under the 67th section of this Act. But where the special Act does not give the right of imprisonment, it should not be awarded in the conviction as an alternative punishment. (*Ib.*)

Where the warrant of commitment can only be issued in default of sufficient distress, no doubt it may be shown by affidavit that no distress warrant has been issued or returned, but where the distress warrant has been issued and has been duly returned by the Bailiff, the Court cannot try the truth of the return on affidavits. It is not necessary that the Bailiff should actually go to the defendant's premises and search for goods on which to distrain, if he is otherwise satisfied that it would be useless to do so. If the Bailiff makes an untrue return he may be liable to an action, but the Magistrate is justified in acting upon it, and issuing a warrant of commitment in default of sufficient distress. *R.* v. *Sanderson*, 12 Ont. R., 178. A Bailiff, executing a warrant of commitment, is not authorized to accept payment of the penalty and costs, or to give the defendant time to procure the amount. His duty is to execute the warrant. (*Ib.*) Where the warrant of commitment is not, in fact, given to the Bailiff or executed until after the return of the distress warrant, it is immaterial that the former bears date before the latter, for the warrant of commitment need not be dated at all, and so long as it is not issued too soon, it is not material that it bears too early a date. Where the date of the distress warrant is wrongly recited in the warrant of commitment, the defect is clearly amendable under the 118th section of the Canada Temperance Act. (*Ib.*)

A warrant of commitment for non-payment of the costs of an appeal to the Sessions, unless such sum and all the costs of distress and commitment, and conveying the party to gaol, be sooner paid, should show the amount of the costs of distress, commit-

ment and conveyance to gaol. *Dickson* v. *Crabb*, 24 Q.B. (Ont.), 494; see also *Dawson* v. *Fraser*, 7 Q.B. (Ont), 391; *re Bright*, 1 U.C.L.J., N.S., 246; *re Smith* (*Ib.*), 241.

A Magistrate may, by the warrant of commitment, order that the defendant shall pay the costs of the warrant and of conveying him to gaol and fix the amount of such costs, *ex parte Jones*, 1 D.R., 100.

The warrant of commitment under this section should order payment of the fine to the gaoler, not to the Magistrate. *R.* v. *Newton*, 11 P.R. (Ont.), 98. See the Form N 5.

Where the defendant is summarily convicted at one time of several offences, the Justice has power under this section to award that the imprisonment under one or more of the convictions, shall commence at the expiration of the sentence previously pronounced. *R.* v. *Cutbush*, L.R. 2, Q.B., 379. See section 69.

This section refers solely to those cases in which the defendant is already in the gaol of the Territorial Division, for which the Magistrate acts. Should the defendant be in prison, however, in another division on another conviction, this section does not apply, and on his liberation therefrom, he should be arrested on the commitment endorsed, as provided by section 22 of this Act, and committed to the custody of the gaoler of the division within which the conviction or order was made. When a Justice convicts a defendant, on the same day, of two or more offences, the conviction and commitment in one of the cases, should adjudge and order the imprisonment to commence at the expiration of the imprisonment adjudged and ordered in the other case. *R.* v. *Wilkes*, 4 Burr., 2577; *R.* v. *Cutbush*, L.R. 2, Q.B., 379.

67. Whenever, by the Act or law on which the conviction or order is founded, the Justice is authorized to issue a warrant of distress, to levy penalties or other sums recovered before him by distress and sale of the defendant's goods, but no further remedy is thereby provided, in case no sufficient distress is found whereon to levy such penalties or other sums,—and whenever the Act or law on which the conviction or order is founded provides no remedy, in case it shall be returned to a warrant of distress thereon, that no sufficient goods of the defendant can be found, the Justice to whom such return is made, or any other Justice in and for the same Territorial

Division, may, if he thinks fit, by his warrant, as aforesaid, commit the defendant to the Common Gaol or other prison of the Territorial Division for which such Justice is acting, for any term not exceeding three months.

68. In every case of a summary conviction for an offence under "*The Larceny Act*," the "*Act respecting Malicious Injuries to Property*," or the "*Act respecting the Protection of the Property of Seamen in the Navy*," when the penalty imposed by the Justice is not paid, either immediately after the conviction, or within such period as the Justice, at the time of the conviction, appoints, such Justice, unless where otherwise specially directed, may commit the offender to the Common Gaol or other place of confinement, there to be imprisoned only, or to be imprisoned and kept at hard labour, in the discretion of the Justice, for any term not exceeding two months, if the amount of the penalty imposed, together with the costs, does not exceed twenty-five dollars, and for any term not exceeding three months if such amount, with costs, exceeds twenty-five dollars.

69. Whenever a Justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed, and the Justice, who issued the same, if he thinks fit, may award and order therein that the imprisonment, for the subsequent offence, shall commence at the expiration of the imprisonment to which the defendant was previously sentenced.

70. When any information or complaint is dismissed with costs, the sum awarded for costs in the order for dismissal may be levied by distress (P 1), on the goods and chattels of the prosecutor or complainant, in the manner aforesaid ; and in default of distress or payment, the prosecutor or complainant may be committed (P 2) to the Common Gaol or other prison, in manner aforesaid, for any term not exceeding one month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of the prosecutor or complainant to prison (the amount thereof being ascertained and stated in the commitment), are sooner paid.

RECOGNIZANCES.

71. Whenever a defendant gives security by or is discharged upon recognizance, and does not afterwards appear at the time and place mentioned in the recognizance, the Justice who took the recognizance, or any Justice who is then present, having certified (Q), upon the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the proper officer in the Province, appointed by law to receive the same, to be

proceeded upon in like manner as other recognizances ; and such certificate shall be *primâ facie* evidence of the non-appearance of the said defendant.

72. Whenever a person who has entered into any recognizance under this Act, has failed to appear, according to the condition of such recognizance, and his default has been certified by the Justice, the proper officer to whom the recognizance and certificate of default are to be transmitted, in the Province of Ontario, shall be the Clerk of the Peace of the County for which such Justice is acting ; and the Court of General Sessions of the Peace for such County shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be onforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such Court ; and in the other Provinces of Canada, the proper officer to whom any such recognizance and certificate shall be transmitted, shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of this Act ; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected.

ASSAULTS.

73. Whenever any person unlawfully assaults or beats any other person, any Justice, upon complaint by or on behalf of the person aggrieved, praying him to proceed summarily on the complaint, may hear and determine such offence :

2. If such Justice finds the assault or battery complained of to have been accompanied by an attempt to commit felony, or is of opinion that the same is, from any other circumstance, a fit subject for prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner, as if he had no authority finally to hear and determine the same :

3. No Justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice.

74. If the Justice, upon the hearing of any case of assault or battery upon the merits, where the complaint is preferred by or on behalf of the person aggrieved, under the next preceding section, deems the offence not to be proved, or finds the assault or battery to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred.

75. If any person, against whom any such complaint has been preferred, by or on behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with hard labour awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause.

It would seem that it is only the Justice, who issues the summons, who has jurisdiction to dispose of the matter, the words "such Justice" referring to the Justice before whom the information is laid. See *R.* v. *Bernard*, 4 Ont. R, 603.

A Justice of the Peace has no jurisdiction to try an assault summarily, unless it is given him by statute (*R.* v. *O'Leary*, 3 Pugsley, 264; *Re Switzer*, 9 U.C.L.J., 266); and he must strictly pursue the authority given, and in order to give him jurisdiction under this section it is necessary that the complainant should request him to proceed summarily, and this request should be made at the time of the complaint, but the request need not appear on the face of the conviction. (*Ib.*) See also *R.* v. *Shaw*, 23 Q.B. (Ont.), 616.

Where the proceedings did not show whether such request was made or not, but it was proved that the complainant was present at the return of the summons, and gave evidence against defendant; if any "intendment" could be made, it might be presumed complainant had made such request.

A conviction for an unlawful assault may adjudge defendant to be imprisoned in the first instance, under this statute. It is not necessary, before a defendant convicted of an assault is imprisoned that he should be served with a copy of the minutes of the conviction. *R.* v. *O'Leary*, 13 C.L.J., N.S., 133; 3 Pugsley, 264.

It is probable that the statute only applies to common assaults. At all events, the opinion of Mr. Justice Wilson, in reference to the Con. Stat. Can., chap. 91, s. 37, was that this statute only applied to common assaults; and the only substantial difference between the statutes is, that the 44th section of the consolidated statute spoke of a common assault. *Re McKinnon*, 2 U.C.L.J., N.S., 324.

A certificate of dismissal of a charge of assault will bar an

action founded on the same facts, for tearing the plaintiff's clothes on the same occasion. *Julien* v. *King*, 17 L.C.R., 268.

A conviction for an assault on the wife, and a certificate under this section, has been held in England to bar a civil action for damages by husband and wife, in respect of the same assault, though the complaint before the Magistrate was by the wife alone. *Masper* v. *Brown*, L.R. 1, C.P.D., 97.

Though a party is convicted of an assault on a charge of assault, under the 73rd section of the Act, and obtains a certificate under the 74th section, he may afterwards be indicted for manslaughter, should the party die from the effects of the assault. *R.* v. *Morris* L.R., 1 C.C.R., 90. But a charge of assault and battery accompanied by a malicious cutting and wounding, so as to cause grievous bodily harm, would be barred by a certificate of acquittal of assault and battery on the same facts. *Re Conklin*, 31 Q.B. (Ont.), 165. So the conviction would bar an indictment for felonious stabbing (*R.* v. *Walker*, 2 M. & Rob., 446); or an assault with intent to commit a rape. *Re Thompson*, 6 H. & N., 193.

It has been held that a complaint under the 73rd section cannot be withdrawn by the complainant, even with the consent of the Justice. *Re Conklin*, 31 Q.B. (Ont.), 160.

Under the statute the Justice has a discretion to abstain from adjudicating, and he may exercise this discretion and abstain from adjudicating, though the defendant pleads guilty. *Re Conklin*, *supra*.

It would seem that the certificate under this section must be obtained from the convicting Justice, on the first hearing of the case, and that it cannot be granted by the Sessions on quashing a conviction for an assault after an appeal to them. *Westbrook* v. *Calaghan*, 12 C.P. (Ont.), 616.

The granting of the certificate is a ministerial, not a judicial act, and it is therefore imperative on the Justice who has dismissed the cause on the grounds stated, to grant this certificate if applied for, and he has no discretion to refuse it, and the certificate has been held to be properly granted after the lapse of seven days. *Hancock* v. *Somes*, 28 L.J.M.C., 278.

The word "forthwith" means a reasonable time, and five days though not two months will suffice. (*Ib.*) *R.* v. *Robinson*, 12 A. & E., 672.

"Forthwith" means after the application for the certificate and not after the dismissal of the complaint. *Costar* v. *Hetherington*, 8 Cox C.C., 175.

It seems however that the Justice is not bound to grant the certificate unless there is a hearing on the merits. *Re Conklin*, 31 Q.B., (Ont.), 160.

An information was laid and summons issued and served, but afterwards and before the day for hearing, the informant by his agent gave notice to the defendant that the summons was withdrawn and that he need not attend, and the informant also gave notice to the Magistrate's clerk that he would not attend. The defendant, however, attended in obedience to the summons, and claimed to have the information dismissed, and a certificate of dismissal granted, although the informant was absent, the Magistrate having dismissed the complaint and granted a certificate showing the facts, this was held to be a "hearing" within the meaning of the statute. *Bradshaw* v. *Vaughton*, 30 L.J.C.P., 93.

It is probable that the form of certificate M, given in the schedule to this Act would apply to this case.

The following form is in use in England:—

Whereas A. B., of , in the County of , laborer, heretofore on the day of , in the year of our Lord , came before me, one of her Majesty's Justices of the Peace for the said County of , and complained to and informed me that C. D. of , in the County aforesaid, laborer, on at , did unlawfully assault and beat him, the said A. B., and whereas the said C. D., being duly summoned to answer the said charge, appeared before me, one of her Majesty's Justices of the Peace for the County aforesaid, at , and the said A. B., also then and there attended before me for the purpose of proving the offence charged upon the said C. D., in and by the said complaint; and I, the said Justice, do hereby certify that having heard the said case upon the merits, and it manifestly appearing to me ("that the said offence was not proved" *or* "that the said C. D. was lawfully justified in the committing of the assault and battery charged upon him in and by the said com-

.plaint," *or* "that the assault and battery proved was so trifling as not to merit any punishment,") I thereupon then and there dismissed the said complaint.

Given under my hand, the of in the year of our Lord .

E. F.

A conviction before a Magistrate can only be proved by the production of the record of conviction, or an examined copy of it. Therefore, where a magistrate, in a case of common assault ordered the accused to enter into recognizances and pay the fee, but did not order him to be imprisoned or to pay any fine, and an action having been subsequently brought, it was held that the above was not a conviction within the meaning of the 75th section, and was not a bar to the action, and also that the conviction, if any, was not proved. *Hartley* v. *Hindmarsh*, L.R., 1 C.P., 553.

Where an assault charged in an indictment, and that referred to in a certificate of dismissal, appear to have been on the same day, it is *prima facie* evidence that they are one and the same assault, and it is incumbent on the prosecutor to shew that a second assault occurred on the same day, if he alleges it.

The recital in the certificate of the fact of a complaint having been made, and of a summons having been issued, is sufficient evidence of those facts. *R.* v. *Westley*, 11 Cox C.C., 139.

On the hearing of a charge of assault, under the 73rd section, if it be shewn that a *bona fide* question as to the title to land is involved, the jurisdiction of the Justice is at once ousted and the Justice cannot proceed to enquire into and determine by summary conviction any excess of force alleged to have been used in the assertion of title. *R.* v. *Pearson*, L.R. 5, Q.B., 237.

APPEALS.

76. Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a Justice, or unless some other Court of Appeal having jurisdiction in the premises is provided by an Act of the Legislature of the Province within which such conviction takes place or such order is made, any person who thinks himself aggrieved by any such conviction or order may appeal, in the Province of Ontario, to the Court of General Sessions of the Peace; in the Province of Quebec, to the Court of Queen's

Bench, Crown side; in the Provinces of Nova Scotia, New Brunswick and Manitoba, to the County Court of the District or County where the cause of the information or complaint arose; in the Province of Prince Edward Island, to the Supreme Court; in the Province of British Columbia, to the County or District Court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose; and in the North-West-Territories, to a Judge of the Supreme Court of the said territories sitting without a jury; and if any other Court of Appeal is provided in any Province as aforesaid, the appeal shall be to such Court:

2. In the districts of Muskoka and Parry Sound, in the Province of Ontario, such person may appeal to the Court of General Sessions of the Peace for the County of Simcoe; in the Provisional County of Haliburton, to the Court of General Sessions of the Peace for the County of Victoria, in the said Province; in the District of Thunder Bay, to the Court of General Sessions of the Peace for the District of Algoma; and in the District of Nipissing, to the Court of General Sessions of the Peace for the County of Renfrew.

The Court of Appeal for Ontario has no jurisdiction to entertain an appeal from an order of the Court quashing a summary conviction. *R.* v. *Eli*, 13 Appeal (Ont.), 526.

Where an order quashing a conviction is made upon default of any one appearing to support it, the effect of quashing it, not only involving the restoration of the fine paid by the defendant, but exposing the convicting Magistrate to an action, there is inherent jurisdiction in the Court to open up such order so made.

The jurisdiction of the full Court to rehear motions to quash convictions, has not been taken away by the Judicature Act, but still exists in the Divisional Courts. *R.* v. *Fee*, 13 Ont. R., 590.

Under the Customs Act (Rev. Stat. Can., chap. 32, s. 241), an appeal lies from a conviction by a Justice of the Peace under the Act in the manner provided by law, from convictions in cases of summary conviction in that Province, in which the conviction was had, on the appellant furnishing security by bond or recognizance, with two sureties, to the satisfaction of such Justice, to abide the event of such appeal.

By the Seamen's Act (Rev. Stat. Can., chap. 74, s. 118), there is no appeal from any conviction or order adjudged or made under the Act, nor is such appeal allowed under the Inland Waters Seamen's Act (Rev. Stat. Can., chap. 75, s. 41).

The record of conviction may be said generally to consist of two adjudications, the one the adjudication of guilt or conviction, properly so called, and the other the adjudication of punishment or sentence, properly so called. From the conviction, properly so called, there is an appeal to the Sessions, but from the sentence there is no appeal to the Sessions. *McLellan* v. *McKinnon*, 1 Ont. R., 238, per Armour (J).

Two Justices appointed in 1880, for the temporary Judicial District of Nipissing, made a conviction in the said District of one M, for an assault committed there. It was held that no appeal would lie under 9 Vic., chap. 41, to the General Sessions of the County of Renfrew, being the nearest to the place of conviction, for the Justices were not appointed under that Act, but under the Rev. Stat. Ont., chap. 71, and the place of conviction was not in any part of Canada defined and declared by proclamation under that Act. *Gibson* v. *McDonald*, 7 Ont. R., 401.

Under sub-section 2 of this section, the appeal is to be to the Court of General Sessions of the Peace for the County of Renfrew.

The Act gives no appeal to a prosecutor, but only to the defendant. See *re Murphy*, 8 P.R. (Ont.), 420.

An order, as distinguished from a conviction, may be appealed from, but the order meant, is an order made on a *complaint*, in relation to any matter in which the Justice has authority by law to make an order for payment of money or otherwise, and there is also a distinction between a conviction and order and an order of dismissal. (*Ib.*) See sections 43-44, 52-53, 59-60.

In Nova Scotia an appeal will lie to the County Court of the County from a conviction for penalties under "The Fisheries Act" (Rev. Stat. Can., chap. 95, s. 20), providing that the laws relating to summary convictions and orders shall apply to cases under said Act. *R.* v. *Todd*, 1 Russell & Chesley, N.S., 62.

77. Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say :—

(*a.*) If the conviction or order is made more than fourteen days before the sittings of the Court to which the appeal is given, such appeal shall be made to the then next sittings of such Court ; but if the conviction or order is made

within fourteen days of the sittings of such Court, then to the second sittings next after such conviction or order :

(*b.*) The person aggrieved shall give to the prosecutor or complainant, or to the convicting Justice, for him, a notice in writing (R) of such appeal, within ten days after such conviction or order :

(*c.*) The person aggrieved shall either remain in custody until the holding of the Court to which the appeal is given, or shall enter into a recognizance (S) with two sufficient sureties, before a Justice, conditioned personally to appear at the said Court, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as are awarded by the Court ; or, if the appeal is against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the person aggrieved, (although the order directs imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, may deposit with the Justice convicting or making the order, such sum of money as such Justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal ; and upon such recognizance being given, or such deposit being made, the Justice before whom such recognizance is entered into, or deposit made, shall liberate such person, if in custody :

(*d.*) The Court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the Court below, as seems meet to the Court,—and, in case of the dismissal of the appeal or the affirmance of the conviction or order, shall order and adjudge the offender to be punished according to the conviction, or the defendant to pay the amount adjudged by the said order, and to pay such costs as are awarded,—and shall, if necessary, issue process for enforcing the judgment of the Court ; and whenever after any such deposit has been made as aforesaid, the conviction or order is affirmed, the Court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid to the defendant ; and whenever, after any such deposit, the conviction or order is quashed, the Court shall order the money to be repaid to the defendant :

(*e.*) The said Court shall have power, if necessary, from time to time, by order indorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said Court :

(*f.*) Whenever any conviction or order is quashed on appeal, as aforesaid, the Clerk of the Peace or other proper officer shall forthwith indorse on the conviction or order, a memorandum that the same has been quashed ; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under

the hand of the Clerk of the Peace, or of the proper officer having the custody of the same, be sufficient evidence, in all Courts and for all purposes, that the conviction or order has been quashed.

No practice of the Sessions can do away with the notice of appeal. *R.* v *Lincolnshire*, 3 B. & C., 548. Nor can the Sessions diminish the time allowed for the notice of appeal or add a new condition. *R.* v. *Staffordshire*, 4 A. & E., 842. It is not necessary that this notice should be personally served, if it be left for the party at his dwelling house, it will be sufficient. *R.* v. *York*, 7 Q.B., 154. But it is not sufficient service to send the notice by post. *R.* v. *Leominster*, 2 B. & S., 391.

It is sufficient to serve a notice of appeal on the convicting Justice without stating on its face that it is for the prosecutor, as the Justice must be taken to know that it is so. *Ex parte Doherty*, 25 Sup. Ct., N.B., 38. And the form (R) is sufficient, the 111th section of the Act providing that the several forms in the schedule, varied to suit the case, shall be deemed good, valid, and sufficient in law.

The notice should be signed by the party appealing, or his Attorney, but it need not set forth the grounds of appeal. If the notice is otherwise in form it is not absolutely necessary that it should be signed by the appellant. *R.* v. *Nichol*, 40 Q.B. (Ont.), 46.

The notice may be signed by the Attorney's clerk for the appellant. *R.* v. *Kent*, L.R. 8, Q.B., 305.

Where there are several appellants they may either join in one notice or each of them may give a separate notice. *R.* v. *Oxford*, 4 Q.B., 177.

Service of notice of appeal in Court, upon the clerk to Justices, in their presence, is good service. *R.* v. *Eaves*, L.R. 5, Ex. 75.

If the notice is given in time, the recognizance may be entered into at any time before the case is stated and delivered. *Stanhope* v. *Thorsby*, L.R. 1, C.P., 423.

The time of entering into recognizances is when the appellant appears before the Justice, and verbally acknowledges them, though they are not drawn up until afterwards. *R.* v. *St. Albans*, 8 A. & E., 932.

When recognizances are tendered, the Justice is bound to receive them, and cannot refuse them because he thinks the notice bad. *R.* v. *Carter*, 24 L.J., M.C., 72.

One member of a corporation cannot enter into a recognizance to bind the rest. *R.* v. *Manchester*, 7 E. & B., 453.

When, in the recognizance, the appellant, instead of being bound to appear and try the appeal, as required by the Act, was bound to appear at the Sessions to answer any charge that might be made against him, the appeal was dismissed and the recognizance was not allowed to be taken in Court, for although it need not be entered into within ten days, it must be entered into and filed before the sittings of the Court of Quarter Sessions, to which the appeal is made. *Kent* v. *Olds*, 7 U.C.L.J., 21.

It was held under the former statutes that the form of recognizance to try an appeal, given in the schedule to the Con. Stats. Can., chap. 103, p. 1,130, was sufficient, though the condition differed in form from that provided for by chap. 99, section 117. *Re Wilson*, 23 Q.B. (Ont.), 301.

The notice of appeal, given by the statute, was also held sufficiently particular to allow all objections being raised which were apparent on the face of the conviction or order. *Helps and Eno*, 9 U.C.L.J., 302. It is not now necessary to state any grounds of appeal in the notice, so that it is apprehended the appellant is not limited as to his objections.

If the conviction is made within fourteen days of the sittings of the Court, and a notice of appeal is given to the sittings *then next ensuing*, instead of the second sittings next after such conviction, the notice will be void, and will not prevent a proper notice being afterwards given (if given within ten days after the conviction) for the second sittings thereafter. *R.* v. *Caswell*, 33 Q.B. (Ont.), 303.

The words, within ten days after conviction, exclude the day of conviction. *Scott* v. *Dickson*, 1 P.R. (Ont.), 366. If the last of the ten days limited for notice fall on a Sunday or holiday, notice given on the Monday following or next juridical day, is sufficient. Rev. Stat. Can., chap. 1, s. 7 (27).

It appears to be the established practice for the sessions to hear appeals on the first day, but there is no law compelling them to do so. *Re Meyers*, 23 Q.B. (Ont.), 614.

The Court has no power to award costs on discharging an appeal, for want of proper notice of appeal, for the words "shall hear and determine the matter of appeal," mean deciding it upon the merits. *Re Madden*, 31 Q.B. (Ont.), 333, and it seems that the 81st section of the Act would only apply when a proper notice of appeal has been served.

If the appeal is within a time after order made, the making of the order, or verbal decision, and not the service or formal drawing up of it is meant. *R.* v. *Derbyshire*, 7 Q.B., 193; *ex parte Johnson*, 3 B. & S., 947. Sunday is usually included in the number of days. *Ex parte Simkin*, 2 E. & E., 392.

Where the right to appeal is given, under conditions such as entering into recognizance and giving notice, etc., as in the statute, all these conditions must be strictly complied with. *R.* v. *Lincolnshire*, 3 B. & C., 548. The person appealing must not only give notice within the proper time, but he must also either remain in custody or enter into the proper recognizance. *Kent* v. *Olds*, 7 U.C.L.J., 21; Arch., J.P., 37. A failure to comply with these conditions will not be waived by the respondent asking for a postponement after the appellant has proved his notice of appeal on the first day of the Court. *Re Meyers*, 23 Q.B. (Ont.), 611.

If, by the death of the respondent, the giving of notice has become impossible, the appeal may be heard without it. *R.* v. *Lancashire*, 15 Q.B., 88.

The Court of Quarter Sessions has power to adjourn the hearing of a part heard appeal to a subsequent session. *R.* v. *Guardian C. Union*, 7 U.C.L.J., 331. The statute, as we have seen, also expressly confers the power of adjournment. An adjournment of the Sessions is a continuance of the same sessions or sittings. *Rawnsley* v. *Hutchinson*, L.R. 6, Q.B., 305. An appeal dismissed for want of prosecution may, at the instance of the appellant and satisfactorily accounting for his non-appearance, be reinstated. *Re Smith*, 10 U.C.L.J., 20.

There had been a conviction before two Magistrates for a breach of the license law. The Counsel for the defendant then demanded an appeal—one of the Magistrates asked him to prepare the bond and he himself would see the other necessary papers filed. The defendant's Counsel thereupon had the bond prepared, sent it to the defendant and told her that the Magistrates would instruct her what else was necessary. The defendant thereupon got the bond executed and gave it to the Magistrate, who said "it was all right." There was no affidavit filed on the appeal as required by Rev. Stat. N.S., chap. 22, s. 28; on application to set aside the appeal, it was held that the appeal must be allowed, the appellant having been misled by the conduct of the Magistrate. *McKay* v. *McKay*, Thomson, 75.

An appeal under the Con. Stat. U.C., chap. 114, was held not to be waived by the appellant, paying the fine and costs. *Re Justices York*, 13 C.P. (Ont.), 159.

There can be no doubt that, where the notice of appeal and the recognizances are duly given, execution is suspended, for the Justice in the section now under consideration is directed to liberate the appellant if in custody in such case, and the same effect is given to the making of the deposit after notice of appeal; but there is no provision in the section to meet the circumstances, when the would-be appellant elects to remain in custody, in lieu of giving a recognizance or making a deposit. Kerr's Acts, 226-7.

A prisoner was convicted of vagrancy and committed to custody under a warrant issued by the convicting Magistrate. She gave bail and was discharged from custody under this section. On the appeal to the Sessions being heard, the prisoner was found guilty and the conviction affirmed, and the prisoner directed to be punished according to the conviction. No process was issued by the Sessions for enforcing the judgment of the Court, but a new warrant was issued by the convicting Magistrate under which the prisoner was retaken. Writs of *habeas corpus* and *certiorari* were issued, and on the return thereof a motion was made for the discharge of the prisoner. In the margin of the writ of *habeas corpus*. it was marked "per 33 Car. 2," which was signed by the

Judge issuing it. It was held that the prisoner was not in custody or confined under the judgment of the Sessions but under the warrant of the convicting Magistrate, and the Court inclined to the opinion, under the circumstances, the convicting Magistrate was *functus officio* and therefore could not issue the warrant in question, which should have been issued by the Sessions; and possibly they could have directed punishment for the unexpired term; but that if no bail had been given and the prisoner had remained in custody, no further order of commitment would have been necessary, or if no warrant of commitment had been issued prior to appeal, the Magistrate could have issued one thereafter. The Court held also that there was power to act under the Rev. Stat. (Ont.), chap. 70, and so a Judge in Chambers could deal with the motion, that marking the writ as under the statute of Charles, did not prevent the learned Judge so acting under chap. 70, or at common law, and as no offence was declared, the prisoner was directed to be discharged on the *habeas corpus*. It was held also that under a *certiorari* the conviction might be quashed, and as the judgment of the Sessions confirmed the conviction it would probably fall with it. *R.* v. *Arscott*, 9 Ont. R., 541.

78. When an appeal against any summary conviction or decision has been lodged in due form, and in compliance with the requirements of this Act, the Court appealed to may, at the request of either appellant or respondent, empannel a jury to try the facts of the case, and shall administer to such jury an oath in the form following: –

"You shall well and truly try the facts in dispute in the matter of A. B. (*the informant*) against C. D. (*the defendant*), and a true verdict give according to the evidence. So help you God:"

And the Court, on the finding of the jury, shall give such judgment as the law requires; and if a jury is not so demanded, the Court shall try and be the absolute judge, as well of the fact as of the law, in respect to such conviction or decision; and any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the Justice or not.

Under the former statutes the appellant could not of right demand that a jury be empannelled to try the appeal. It was discretionary with the Court to try the appeal or to grant a jury.

Gilchen v. *Eaton*, 13 L.C.R., 471; 10 U.C.L.J., 81. A trial by jury was warranted by the 13th and 14th Vic., chap. 54; *Hespeler* and *Shaw*, 16 Q.B., (Ont.), 104. Under the Act as at present framed, the Court may grant a jury at the request of either the appellant or respondent, and if a jury is not demanded, the Court must try it.

Where neither party demands a jury, the Court has authority to try the appeal without one, and a party who insists upon the trial without a jury, cannot afterwards have a trial by jury. *R.* v. *Bradshaw*, 38 Q.B. (Ont.), 564.

The 36 Vic., chap. 58, s. 2, was not confined to cases under the Acts, mentioned in the preamble and title relating only to the desertion of seamen, but extended to other cases, and on an appeal in Ontario to the Sessions from a conviction by a Magistrate for breach of a Municipal By-law, it was held to be in the discretion of the chairman to grant or refuse a request for a jury, the Act being declaratory of the meaning of the section now under consideration. *R.* v. *Washington*, 46 Q.B. (Ont.), 221.

If the conviction or order has not been returned to the Sessions a *subpœna duces tecum* should be served on the Justice to produce, it, and if the order or conviction has been served upon the respondent it will be advisable also to give him a notice to produce it.

Upon the hearing, the first step after the appeal is called on is that the appellant should prove his notice unless it be admitted. This Act gives the right on appeal to the Sessions to examine witnesses not heard on the trial before the Magistrate. *R.* v. *Washington*, 46 Q.B. (Ont.), 221.

79. No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant, issued upon any such information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant, and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the Court hearing the appeal, that such objection was made before the Justice, before whom the case was tried and by whom such conviction, judgment or decision was given, nor unless it is proved that, notwithstanding it was shewn to such Justice that

by such variance the person summoned and appearing or apprehended had been deceived or misled, such Justice refused to adjourn the hearing of the case to some further day, as herein provided.

80. In every case of appeal from any summary conviction or order had or made before any Justice, the Court to which such appeal is made shall hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, notwithstanding any defect of form or otherwise in such conviction or order; and if the person charged or complained against is found guilty, the conviction or order shall be affirmed and the Court shall amend the same if necessary: and any conviction or order so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions or orders affirmed on appeal.

It seems the Court may alter the conviction to make it agree with the adjudication or minute of conviction, but if both agree and the conviction is wrong, they cannot amend, as there is no power to interfere with the adjudication. *R.* v. *Elliott*, 12 Ont. R., 524; *R.* v. *Walsh*, 2 Ont. R., 206.

It would seem that under this section the Sessions cannot amend the sentence or adjudication of punishment, but only the conviction or adjudication of guilt. They cannot therefore strike out of a conviction the part imposing "hard labour." *McLellan* v. *McKennon*, 1 Ont. R., 219. As a general rule the Sessions cannot alter the sentence or adjudication of the Justice, though they can amend matters of form, (*Ib.*) and there is no power of amendment when the conviction is returned on *certiorari*. See *R.* v. *Allbright*, 9 P.R., (Ont.), 25, 27.

81. The Court to which an appeal is made, upon proof of notice of the appeal to such Court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable and just by the Court, to be paid by the party or parties giving such notice; and such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction.

An indictment will not lie to enforce an order of Sessions

directing payment of the costs of an appeal. *R.* v. *Orr*, 12 Q.B. (Ont.), 57.

Where the notice of appeal has been given and might have been acted on, the Court to which the notice referred can give costs (*R.* v. *Leeds*, 3 E. & E., 561; *R.* v. *Liverpool*, 15 Q.B., 1070); and a notice for the wrong Sessions cannot be treated as a notice for the right Sessions. *R.* v. *Salop*, 4 E. & B., 257.

The Court must exercise its discretion in each case as to costs, and cannot lay down a general rule applicable to all cases. *R.* v. *Merioneth*, 6 Q.B., 163.

The order for costs should direct payment to the Clerk of the Peace. *Gay* v. *Mathews*, 4 B. & S., 425. See sec. 95 of the Act.

The taxation of costs is a judicial act and must either be done by the Court or they must adopt the act of the Clerk of the Peace, and insert the amount of costs in the order (*Selwood* v. *Mount*, 1 Q.B., 726) during the sitting of the Court. *Freeman* v. *Reid*, 9 C.B., N.S., 301. If the Sessions is adjourned to a future day the costs may be finally settled at the adjourned Sessions. *R.* v. *Hants*, 33 L.J.M.C., 184. If there has been no adjournment, and nothing said about costs, they cannot be granted at the next subsequent Sessions. *R.* v. *Staffordshire*, 7 E. & B., 935. If, however, the parties consent to have the costs taxed out of Court this may be done, and the party enter the judgment *nunc pro tunc*. *Freeman* v. *Reid*, *supra*. Or the objection may be waived. *Ex parte Watkins*, 26 J.P., 71.

82. If any appeal against any conviction or order is decided in favor of the respondents, the Justice who made the conviction or order, or any other Justice for the same Territorial Division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought.

83. No conviction or order affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any Superior Court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same.

This section takes away the right to a *certiorari* where there has been jurisdiction to make the conviction, even though the

decision arrived at be erroneous. *R.* v. *Dunning*, 14 Ont. R., 52.

Where the Magistrate has jurisdiction over the offence charged, the Court cannot examine the evidence to see if the Magistrate had jurisdiction to convict, but it seems where the Magistrate had no jurisdiction over the offence, the right to a *certiorari* is not taken away. *R.* v. *Scott*, 10 P.R. (Ont.), 517.

Nor is it so taken away when there is a plain excess of jurisdiction by the Justice. *Hespeler & Shaw*, 16 Q.B. (Ont.), 104. So a *certiorari* will lie where there is an absence of jurisdiction in the convicting Justice, or a conviction on its face defective in substance. *Re Watts*, 5 P.R. (Ont.), 267; see also *re Holland*, 37 Q.B. (Ont.), 214.

Under The Canada Temperance Act, the right to a *certiorari* is taken away in all cases in which the Magistrate has jurisdiction. *Ex parte Orr*, 4 Pugsley & Burbidge, 67.

Where there was a proper information upon oath before the Police Magistrate of the Town of Portland (N.B.), charging an offence within his jurisdiction, it was held that a party desiring to impugn the correctness of the Magistrate's decision should proceed under the (N.B.) 11 Vic., chap. 12, s. 37, the remedy by *certiorari* being taken away. *Ex parte Abell*, 2 Pugsley & Burbidge, 600.

It would seem that the High Court of Justice has the power to quash a conviction for an illegal adjudication of punishment, notwithstanding such conviction has been appealed against in respect of the adjudication of guilt, and has been affirmed or affirmed and amended in appeal, and that this 83rd section does not take away the right of *certiorari* in the case of an illegal adjudication of punishment, because no appeal lies against such adjudication to the Court of General Sessions of the Peace. *McLellan* v *McKinnon*, 1 Ont. R., 241. Per Armour (J.)

Where a defendant has been committed for trial, but afterwards admitted to bail, and discharged from custody, a Superior Court of Law has still power to remove the proceedings on *certiorari*, but in its discretion it will not do so where there is no

reason to apprehend that he will not be fairly tried. *R.* v. *Adams*, 8 P.R. (Ont.), 462.

A *certiorari* can only issue to remove judicial acts, and it does not extend to ministerial acts or writs of execution. *R.* v. *Simpson*, 4 Pugsley & Burbidge, 472.

A defendant is not entitled to remove proceedings by *certiorari* to a Superior Court from a Police Magistrate or Justice of the Peace, after conviction, or at any time for the purpose of moving for a new trial for the rejection of evidence, or because the conviction is against evidence, the conviction not being before the Court, and no motion made to quash it. Even if a motion is made to quash, and an order *nisi* applied for upon the Magistrate and prosecutor, for a *mandamus* to the former to hear further evidence which he had refused, both motions would be discharged if the Magistrate appeared to have acted to the best of his judgment and not wrongfully, and his decision as to the further evidence involved a matter of discretion with which the Court would not interfere. *R.* v. *Richardson*, 8 Ont. R., 651.

Where the conviction is for a penalty, the complainant cannot free himself from his liability to costs on *certiorari* by renouncing the conviction, especially if he contest the *certiorari*. A complainant, having obtained a conviction against minors, cannot set up their minority against them when they seek redress from that conviction by means of *certiorari*. *Herbert* v. *Paquet*, 11 Quebec L.R., 19.

A Magistrate may amend his conviction at any time before the return of a *certiorari*, and the Court refused to quash because of the previous return of a bad conviction, especially where this had not been filed. *R.* v. *McCarthy*, 11 Ont. R., 657.

As to filing an amended conviction, the practice in moving to quash a conviction is this : when the conviction is returned it is filed. Up to the time of return and filing, the Justice may amend the conviction ; but after the filing of the papers no amendment can be made. By analogy to this practice, after notice of appeal is given, and the time for hearing the appeal has arrived, no amendment can be made to the conviction after the proceedings

in appeal have been entered on before the Court. *R.* v. *Smith*, 35 Q.B. (Ont.), 518.

After a conviction is returned to the Court on a *certiorari* there is no power of amendment. *R.* v. *Mackenzie*, 6 Ont. R., 165; *R.* v. *Allbright*, 9 P.R. (Ont.), 25. Where, therefore, two defendants were jointly convicted for keeping liquor for sale without a license, contrary to the Rev. Stat. (Ont.), chap. 194, s. 50, and a penalty awarded against them jointly, it was held that the Court could not amend the conviction so as to make separate convictions against each defendant, with an award of a separate penalty. *R.* v. *Sutton*, 14 C.L.J., N.S., 17.

The affidavit of service of notice of motion for a *certiorari* to remove a conviction, must identify the Magistrate served as the convicting Magistrate. But if the affidavit is defective in this respect, it may be amended, provided the six calendar months, fixed by the statute (13 Geo. 2, chap. 18, s. 5), within which the writ may be sued out after conviction, have not elapsed when the motion is made. The objection that the affidavit of service does not identify the convicting Justices, is not waived by their Attorney accepting service for them and undertaking to shew cause. The notice need not be served on the private prosecutor. If the writ is granted he should then be served with a rule to shew cause why the conviction should not be quashed. *Re Lake*, 42 Q.B. (Ont.), 206.

A conviction once regularly brought into and put upon the files of the Court, is there for all purposes, and a defendant may move to quash it, no matter how or at whose instance it was brought there; as long as it was brought there regularly, the right remains. Where, therefore, on an application for a *habeas corpus*, under the Rev. Stat. Ont., chap. 70, a *certiorari* had issued under section 5, and in obedience to the *certiorari*, the conviction had been returned, the conviction was quashed on motion, though there had been no notice to the Magistrate or recognizance as required by the 13 Geo. 2, chap. 18, s. 5. *R.* v. *Wehlan*, 45 Q.B. (Ont.), 396. The rule is different if the *certiorari* is not regularly and properly before the Court. *R.* v. *McAllan*, 45 Q.B. (Ont.), 402.

This section, it would seem, does not prevent the issue of the writ at the suit of the prosecutor. *R.* v. Allen, 15 East, 333.

The section does not prevent the issue of a *certiorari* when the notice of appeal to the Sessions is void, and the appeal is dismissed. For instance, if the notice is for the next sittings of the Court, where the conviction is *within* fourteen days of such sittings. In such case it cannot be said that there is an appeal, or that the conviction is "affirmed or affirmed and amended in appeal" under the statute. *R.* v. *Caswell*, 33 Q.B. (Ont.), 303.

The section not only applies to cases where an adjudication has taken place, but even where the appeal has gone off on a preliminary objection to the right of entering it, and consequently a *certiorari* will not be granted by the Superior Court, even when the appeal to the Sessions has not been decided on the merits. *R.* v. *Firmin*, 6 P.R. (Ont.), 67.

84. No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any Justice of the Peace, if the defendant has appealed from such conviction or order to any Court, to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal.

This section is retrospective in its operation and applies to convictions, whether made before or after the passing of the Act, and the right to a *certiorari* is taken away upon service of notice of appeal to the Sessions that bring the first proceeding on an appeal from the conviction. *R.* v. *Lynch*, 12 Ont. R., 372.

85. Every Justice before whom any person is summarily convicted of any offence, shall transmit the conviction to the Court to which the appeal is herein given in and for the District, County, or Place, wherein the offence has been committed, before the time when an appeal from such conviction may be heard, there to be kept by the proper officer, among the records of the Court, and if such conviction has been appealed against, and a deposit of money made, such Justice shall return the deposit into the said Court, and the conviction shall be presumed not to have been appealed against until the contrary is shown.

86. And upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of

the Court or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence.

Although this section does not mention orders, but appears to relate to convictions only, it is conceived the Justice should deal with orders in the same manner as convictions. Kerr's Acts, 228.

Where a party is sought to be convicted as for a second offence, he must be charged in the information with the commission of a second offence, and it must also be proved that at the time of the information he had been previously convicted. *R.* v. *Justices, etc.*, 2 Pugsley, 485.

87. No conviction or order made by any Justice of the Peace, and no warrant for enforcing the same shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein, provided that the Court or Judge before which or whom the question is raised, is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant has been committed over which such Justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence, and any statement, which under this Act, or otherwise, would be sufficient if contained in a conviction shall also be sufficient if contained in an information, summons order or warrant.

88. The following matters amongst others shall be held to be within the provisions of the next preceding section :—

(*a.*) The statement of the adjudication or of any other matter or thing in the past tense, instead of in the present.

(*b.*) The punishment imposed being less than the punishment by law assigned to the offence, stated in the conviction or order, or to the offence which appears by the depositions to have been committed.

(*c.*) The omission to negative circumstances, the existence of which would make the Act complained of lawful whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section. But nothing in this section contained, shall be construed to restrict the generality of the wording of the next preceding section.

An information for an offence against the Canada Temperance Act, charged that it was committed "within the space of three months last past," and did not state that the Act was in force in the place where the defendant was alleged to have committed the

offence. No objection to the jurisdiction was taken before the Police Magistrate who tried the defendant. The defendant appeared, submitted to the jurisdiction, was called as a witness for the prosecution, gave evidence as to the offence alleged against him and was convicted. The depositions showed that an offence of the nature described had been committed. It was held no objection to the information that it did not state the particular date of the offence, or that the Act was in force in the place where it was alleged to have been committed, and in any case that these defects were cured by the above section. *R.* v. *Collier*, 12 P.R. (Ont.), 316.

This section cannot be invoked if the punishment imposed is in excess of that which might have been lawfully imposed for the offence. *R.* v. *Wright*, 14 Ont. R., 668.

89. If an application is made to quash a conviction or order made by a Justice of the Peace, on the ground that such Justice has exceeded his jurisdiction, the Court or Judge to which or whom the application is made, may, as a condition of quashing the same, if the Court or Judge thinks fit so to do, provide that no action shall be brought against the Justice of the Peace who made the conviction, or against any officer acting under any warrant issued to enforce such conviction or order.

90. The Court, having authority to quash any conviction, order or other proceeding by or before a Justice of the Peace, may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before such Justice and brought before any Court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a Justice or Justices of the County or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and, if ordered so to do, to pay the person in whose favor the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the Court where such conviction, order or proceeding is affirmed.

91. The second section of the Act of the Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, shall no longer apply to any conviction,

order or other proceeding by or before a Justice of the Peace in Canada, but the next preceding section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance, taken under the said section, as might be had for enforcing the condition of a recognizance taken under the said Act of the Parliament of the United Kingdom.

In the absence of a general order a defendant is not required, on removal by *certiorari* of a conviction against him, to enter into the recognizance as to the costs formerly required under the Imperial Act, 5 Geo. 2, chap. 19. See *R.* v. *Swalwell*, 12 Ont. R., 391. The Act takes effect from its passing, whether the general order is then promulgated or not. In Ontario the Judges of the High Court of Justice passed the following order, under the authority of the Act:—"No motion shall be entertained by this Court, or by any division of the same, or by any Judge of a division sitting for the Court, or in Chambers, to quash a conviction, order, or other proceeding which has been made by or before a Justice of the Peace (as defined by the Act) and brought before the Court by *certiorari*, unless the defendant is shown to have entered into a recognizance, with one or more sufficient sureties, in the sum of $100, before a Justice or Justices of the County or place within which such conviction or order has been made, or before a Judge of the County Court of the said County, or before a Judge of the Superior Court, and which recognizance, with an affidavit of the due execution thereof, shall be filed with the registrar of the Court in which such motion is made or pending, or unless the defendant is shown to have made a deposit of the like sum of $100 with the registrar of the Court in which such motion is made, with or upon the condition that he will prosecute such *certiorari* at his own costs and charges, and without any wilful or affected delay, and that he will pay the person in whose favour the conviction, order, or other proceeding is affirmed his full costs and charges, to be taxed according to the course of the Court, in case such conviction, order, or proceeding is affirmed."

92. No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence

has not been given of a proclamation or order of the Governor General in Council, but such proclamation or order of the Governor General in Council shall be judicially noticed.

93. If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the Court refusing or discharging the application shall be a sufficient authority for the Registrar or other officer of the Court, forthwith to return the conviction, order and proceedings to the Court or Justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof as if a *procedendo* had issued, which shall forthwith be done.

94. Whenever it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the Justice of the case.

95. If, upon any appeal, the Court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the Clerk of the Peace or other proper officer of the Court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid.

It seems doubtful whether under this section an order of Sessions, simply ordering costs of an appeal to be paid, without directing them to be paid to the Clerk of the Peace as required by the Act, is regular. *Re Delaney* v. *MacNab* 21 C.P. (Ont.), 563.

96. If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the Clerk of the Peace or his deputy on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying a certificate (T), that the costs have not been paid, and upon production of the certificate to any Justice in and for the same Territorial Division, such Justice may enforce the payment of the costs by warrant of distress, (U, 1) in manner aforesaid, and in default of distress may commit (U, 2) the person against whom the warrant has issued in manner hereinbefore mentioned, for any term not exceeding two months, unless the amount of the costs and all costs and charges of the distress, and also the costs of the commitment and conveying

of the party to prison, if the Justice thinks fit so to order (the amount thereof being ascertaind and stated in the commitment), are sooner paid.

The issuing of a warrant of commitment under this section is discretionary, not compulsory, upon a Justice of the Peace, and the Court will therefore, on this ground, as well as upon the ground that the party sought to be committed has not been made a party to the application, refuse a *mandamus* against the Justice to compel the issue of the warrant. The proper course, where Justices refuse to act according to the duties of their office, is to proceed under the Rev. Stat. (Ont.), chap. 73, s. 6. *Re Delaney* v. *MacNab*, 21 C.P. (Ont.), 563.

A Justice of the Peace who convicts, and issues a warrant regularly by virtue of a statute then in force, cannot be held liable by reason of the *execution* of the Warrant after the Act is disallowed by Her Majesty and has ceased to be in force. *Clapp* v. *Lawrason*, 6 O.S., 319. The statute law would seem to protect a Justice in a case of this kind. See Rev. Stat. Can., chap. 1, s. 7, (49), (52), (53).

TENDER AND PAYMENT.

97. Whenever a warrant of distress has issued against any person, and such person pays or tenders to the Constable, having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the Constable shall cease to execute the same.

98. Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges and expenses therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter.

RETURNS RESPECTING CONVICTIONS AND MONEYS RECEIVED.

99. Every Justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the Clerk of the Peace or other proper officer of the Court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants,—which return shall include all convic-

tions and other matters not included in some previous return, and shall be in the form (V) in the schedule to this Act :

2. If two or more Justices are present, and join in the conviction, they shall make a joint return :

3. In the Province of Prince Edward Island, such return shall be made to the Clerk of the Court of Assize of the County in which the convictions are made, and up to the fourteenth day next before the sitting of the said Court next after such convictions are so made :

4. Every such return shall be made, in the Districts of Muskoka and Parry Sound, in the Province of Ontario, to the Clerk of the Peace for the County of Simcoe, in the said Province ; in the Provisional County of Haliburton, in the said Province, to the Clerk of the Peace for the County of Victoria, in the said Province ; in the District of Thunder Bay, in the said Province, to the Clerk of the Peace for the District of Algoma, in the said Province ; and in the District of Nipissing, in the said Province, to the Clerk of the Peace for the County of Renfrew, in the said Province.

100. Every Justice, to whom any such moneys are afterwards paid, shall make a return of the receipts and application thereof, to the Court having jurisdiction in appeal as hereinbefore provided,—which return shall be filed by the Clerk of the Peace with the records of his office.

101. Every Justice, before whom any such conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of eighty dollars, together with full costs of suit, which may be recovered by any person who sues for the same by action of debt or information in any Court of Record in the Province, in which such return ought to have been or is made :

2. One moiety of such penalty shall belong to the person suing, and the other moiety to Her Majesty, for the public uses of Canada.

102. All prosecutions for penalties arising under the provisions of the next preceding section, shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the District, County or place wherein such penalties have been incurred ; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall recover his full costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases.

103. The Clerk of the Peace of the District or County in which any such

returns are made, or the proper officer, other than the Clerk of the Peace, to whom such returns are made, shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other Court as aforesaid, cause the said returns to be published in one newspaper in the District or County, or if there is no such newspaper, then in a newspaper of an adjoining District or County, and shall also post up in the Court House of the District or County, and also in a conspicuous place in the office of such Clerk of the Peace, or other proper officer, for public inspection, a schedule of the returns so made by such Justices; and the same shall continue to be so posted up and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace, or of the term or sitting of such other Court as aforesaid; and for every schedule so made and exhibited by such clerk or officer, he shall be allowed the expense of publication, and such fee as is fixed by competent authority.

104. Such Clerk of the Peace or other officer of each District or County, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such Court as aforesaid, shall transmit to the Minister of Finance and Receiver General a true copy of all such returns made within his District or County.

105. Nothing in the six sections next preceding shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any Justice, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act.

The return is to be to the Court to which the appeal is herein given. The seventy-sixth section shows what courts have jurisdiction in each Province and the return must be to that Court. Thus in Quebec, the return is to the Court of Queen's Bench, Crown side; in Ontario, to the Court of General Sessions of the Peace; in Nova Scotia, New Brunswick, and Manitoba, to the County Court. *Ward* v. *Reed*, 22 Sup. Ct., N.B., 279.

If the conviction as returned is defective in form, the Justice may make out another according to the evidence adduced before him and return it to the Sessions. *R.* v. *Bennett*, 3 Ont. R., 45.

The Clerk of the Peace is the Clerk of all Magistrates, and it is no objection that a conviction is not in the Magistrate's office, but in that of the Clerk of the Peace. *R.* v. *Yeomans*, 6 P.R. (Ont.), 66.

The fact of the conviction being appealed from, does not relieve

the Justices from the penalty on non-return of the conviction, under the Rev. Stat. (Ont.), chap. 76. *Murphy* q.t. v. *Harvey*, 9 C.P. (Ont.), 528; see also *Kelly* q.t. v. *Cowan*, 18 Q.B. (Ont.), 104.

And it seems that notice of appeal against the conviction or subsequent notice of abandonment thereof, given by the defendant, does not affect the duty of the Justice in making the return. *McLennan* q.t. v. *McIntyre*, 12 C.P. (Ont.), 546.

So the question as to the conviction being right or wrong is immaterial, and where a Magistrate has actually convicted and imposed a fine, it is no defence that he had no jurisdiction to convict. *Bagley* q.t. v. *Curtis*, 15 C.P. (Ont.), 366; *O'Reilly* q.t. v. *Allan*, 11 Q.B. (Ont.), 411.

The illegality of a conviction is no excuse for not returning it, but if on that account the fine has not been levied, a return should be made explaining the circumstances (*O'Reilly* q.t. v. *Allan*, 11 Q.B. (Ont.), 411); see, however, *Spillane* v. *Wilton*, 4 C.P. (Ont.), 236, 242. Under the former statute, a Justice of the Peace was liable to a separate penalty of £20, for each conviction of which a return was not properly made to the Sessions, and an action for the penalty would lie on proof of the conviction and fine imposed although no record thereof had been made by the Justice. *Donogh* q.t. v. *Longworth*, 8 C.P. (Ont.), 437.

So as the law now stands, the neglect of the Justice to return the convictions made by him as prescribed, renders him liable under this statute to a separate penalty for *each* coviction not returned, and not merely to one penalty for not making a general return of such convictions. *Darragh* q.t. v. *Paterson*, 25 C.P. (Ont.), 529.

Justices of the Peace must therefore now return all conviction made by them to the Clerk of the Peace, on or before the second Tuesday in March, June, September and December respectively following the date of the conviction. *Corsant* q.t. v. *Taylor*, 23 C.P. (Ont.), 507; see also *Ollard* q.t. v. *Owens*, 29 Q.B. (Ont.), 515.

The Rev. Stat. (Ont.), chap. 76, are now in force as to all con-

victions over which Ontario has jurisdiction. Under the former statute in Ontario, the penalty attached on *each* Justice making default in the return. *Metcalf* q.t. v. *Reeve*, 9 Q.B. (Ont.), 263.

And the effect of the Act in Ontario is to require Justices of the Peace where more than one take part in a conviction to make an immediate return and sign it before separating and if this is not done it is not sufficient to make the return before action brought. *Atwood* q.t. v. *Rosser*, 30 C.P. (Ont.), 628.

The Dominion Legislature has made a single penalty of $80, the maximum fine for any default, whether it be committed by a single Justice or by two or more, and if two or more Justices act and are in default, the penalty on all is single, only $80, and it seems that all the Justices might be sued together, or any one of them, at the election of the plaintiff. *Drake* q.t. v. *Preston*, 34 Q.B. (Ont.), 257.

It is conceived that the Rev. Stat. (Ont.), chap. 76, s. 3, assimilates the law in Ontario, to that prevailing under the Dominion Act, and that there is not now in Ontario a separate penalty on *each* of several Justices joining in a conviction.

An action brought against a Justice for non-return by fraud and collusion, in order to prevent the Justice being liable to pay the penalty to others, will not bar a subsequent action brought in good faith for the penalty. *Kelly* q.t. v. *Cowan*, 18 Q.B. (Ont.), 104.

A Justice committed and fined the plaintiff for carrying away some cordwood. After notice of appeal, the prosecutor, finding that the conviction was improper, went to the Justice who drew for him a notice of discontinuance which was served on the person, acting as Attorney for the plaintiff, before the meeting of the next Quarter Sessions. The Justice sent a general return to that Court including this and another conviction, but ran his pen through the entry of this conviction, leaving the writing, however, quite legible, and wrote at the end of it "this case withdrawn by the plaintiff." This was held a sufficient return within the 4 & 5 Vic., chap. 12; *Ball* q.t. v. *Fraser*, 18 Q.B. (Ont.), 100.

It has been held that if one Justice, of several who convict

makes the return and signs the name of the other convicting Justices to it by their direction, or express authority, it is sufficient. *McLellan* q.t. v. *Brown*, 12 C.P. (Ont.), 542.

It seems that there must be a return of the conviction in the form given by the Statute, and transmitting the conviction itself is not the same thing as making a return of it, though one return may include several convictions. The conviction and the return of it are separate instruments and both should be returned by the Justice. See *McLennan* q.t. v. *McIntyre*, 12 C.P. (Ont.), 546; *Donogh* q.t. v. *Longworth*, 8 C.P. (Ont.), 437.

In an action for the penalty the plaintiff may sue for himself only, and need not sue *qui tam*, (*Drake* q.t. v. *Preston*, 34 Q.B. (Ont.), 257); but the statement of claim must allege the defendant's neglect to have been contrary to the statutes, not merely the statute, there being two statutes upon the subject, each requiring a different return. (*Ib.*)

In an action against a Justice of the Peace, for a penalty in not returning a conviction, it is no objection to the statement of claim that the plaintiff sues for the Receiver-General, and not for Her Majesty the Queen; inasmuch as suing for a penalty for the Receiver-General for the public uses of the Province, is in fact suing for the Queen. *Bagley* q.t. v. *Curtis*, 15 C.P. (Ont.), 366.

A conviction made by an Alderman in a city, must be returned to the next ensuing General Sessions of the Peace for the County, and not to the Recorder's Court for such city. *Keenahan* q.t. v. *Egleson*, 22 Q.B. (Ont.), 626; see *Metcalfe* q.t. v. *Reeve*, 9 Q.B. (Ont.), 263.

An order for the payment of money under the Master and Servants Act (Rev. Stat. Ont., chap. 139), is not a conviction which it is necessary to return to the Sessions. *Ranney* q.t. v. *Jones*, 21 Q B. (Ont.), 370.

The County Courts have now jurisdiction to try an action for a penalty against a Justice of the Peace, where the penalty claimed does not exceed $80. *Brash* q.t. v. *Taggart*, 16 C.P. (Ont.), 415. This case does not over-rule (*O'Reilly* q.t. v. *Allan*, 11 Q.B. (Ont.), 526), there having been changes in the jurisdiction of the County

Courts since it was decided. See also *Medcalfe* v. *Widdefield*, 12 C.P. (Ont.), 411.

A plaintiff suing a Justice of the Peace for the penalty of $80 under the Rev. Stat. Ont., chap. 76, s. 3, for not returning a conviction, is entitled to full costs without a certificate. *Stinson* q.t. v. *Guess*, 1 U.C.L.J., N.S., 19, following *O'Reilly* q.t. v. *Allan*, 11 Q.B. (Ont.), 526.

A penal action for not returning a conviction is founded on tort and for that reason cannot be brought in a Division Court. *Corsant* q.t. v. *Taylor*, 10 C.L.J., N.S., 320.

It would seem that the right to legislate on returns of convictions and fines for criminal offences, belongs to the Dominion and not the Provincial Legislature. *Clemens* q.t. v. *Bemer*, 7 C.L.J., N.S., 126.

The Inland Revenue Act (Rev. Stat. Can., chap. 34, s. 113), prescribes that "the penalty or forfeiture incurred for any offence against the provisions of the Act, may be sued for and recovered before any two Justices of the Peace * * and any such penalty may, if not forthwith paid, be levied by distress, * * or the said Justices may in their discretion commit the offender to the Common Gaol until the penalty be paid. The plaintiff, who was tried under the above Act for distilling spirits without a license before the defendant and three other Justices of the Peace, and was ordered to pay $200, sued the defendant for not making a return under the Rev. Stat. Ont., chap. 76. The Court held that the defendant was liable, as the adjudication in question was a conviction within the meaning of the statute, and not a mere order for the payment of money. *May* q.t. v. *Middleton*, 3 Appeal (Ont.), 207.

This section is not *ultra vires*, the penalty may be recovered in the County Court, and no notice of action is required. *Ward* v. *Reed*, 22 Sup. Ct., N.B. 279.

GENERAL PROVISIONS.

106. No return purporting to be made by any Justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature

has exclusive jurisdiction, or with respect to which he acted under the authority of any Provincial Law.

107. No information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively; for example, in charging an offence under section twenty-four of the "*Act respecting Malicious Injuries to Property*," it may be alleged that "the defendant unlawfully and maliciously did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub;" and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done, in respect of a tree, or a sapling, or a shrub.

108. If it is stated in any summons, warrant, document or other instrument issued at any time in any Province of Canada, by any Justice, that the same is given under the hand and seal of the Justice signing it, such seal shall be presumed to have been affixed by him, and its absence shall not invalidate the instrument; or such Justice may at any time thereafter affix such seal with the same effect as if it had been affixed when such instrument was signed.

109. Every Judge of Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate, shall have such and like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any Court in Canada, or by the Judges thereof, during the sittings thereof.

110. Every Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other Courts in like cases.

111. The several forms in the schedule to this Act contained, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in law.

SCHEDULE.

(A.)

FORM OF INFORMATION OR OF COMPLAINT ON OATH.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be),
of ,

The information (*or* complaint) of C. D. of the Township of ,in said District (*or* County, United Counties, *or as the case may be*), of (*laborer*). (*If preferred by an attorney or agent, say*—by D. E., his duly authorized Agent or Attorney), in this behalf, taken upon oath before me, the undersigned, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , at N., in the said District (*or* County, *as the case may be*), of , this day of , in the year ' who says that he has just cause to suspect and believe, and does suspect and believe that A. B., of the (township) of , in the said District (*or* County, *as the case may be*) of , within the space of , (*the time within which the information* (*or* complaint) *should be laid*), last past, to wit, on the day of , at the (township) of , in the District (County, *or as the case may be*) aforesaid, did (*here set out the offence, &c.*), contrary to the form of the statute in such case made and provided.

C. D. (*or* D. E.)

Taken and sworn before me, the day and year and at the place above mentioned.

J. S.

(B.)

SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR COMPLAINT.

Canada,
Province of
District (*or* County, United Counties, *or*, *as the case may be*), of

To A. B., of , (*laborer*):

Whereas information has this day been laid (*or* complaint has this day been made) before the undersigned, a Justice of the Peace in and for the said District (*or* County, United Counties, City, Town, &c., *as the case may be*) of for that you (*here state shortly the matter of the information or complaint*): These are, therefore, to command you, in Her Majesty's name, to be and appear on , at o'clock in the (fore) noon, at , before me, or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*,) as shall then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(C.)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas on last past, information was laid (*or* complaint was made) before , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that A. B. (*&c., as in the summons*); And whereas (I) the said Justice of the Peace then issued (my) summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on , at o'clock in the (fore) noon, at , before (*me*) or such Justice or Justices of the Peace as should then be there, to answer unto the said information (*or* complaint), and to be further dealt with according to law; And whereas the said A. B. has neglected to be and appear at the time and place so appointed in and by the said summons, although it has now been proved to me upon oath that the said summons was duly served upon the said A. B.: These are, therefore, to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (me) or some one or more Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(D.)

WARRANT IN THE FIRST INSTANCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or Other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas information has this day been laid before the undersigned, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information: These are, therefore, to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (me) or some one or more Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), to answer to the said information, and to be futher dealt with according to law.

Given under (my) hand and seal, this day of , in the year , at , in the District (County, *&c.*, *as the case may be*), aforesaid.

J. S. [L.S.]

(E, 1.)

SUMMONS TO A WITNESS

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To E. F., of , in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas information was laid (*or* complaint was made) before , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of , for that (*&c., as in the summons*), and it has been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the prosecutor (*or* complainant *or* defendant), in this behalf: These are, therefore, to require you to be and appear on at o'clock in the (fore) noon, at , before me or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as shall then be there, to testify what you know concerning the matter of the said information (*or* complaint).

Given under (my) hand and seal this day of in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

..... J. S. [L.S.]

(E, 2.)

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of .

Whereas information was laid (*or* complaint was made) before , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the summons*), and it having been made to appear to (me) upon oath that E. F., of , in the said District (*or* County, United Counties, *or as the case may be*), (*laborer*) was likely to give material evidence on behalf of the (prosecutor, *or as the case may be*), (I) did duly issue (my) summons to the said E. F., requiring him to be and appear on , at o'clock in the (fore) noon of the same day, at , before me or such Justice or Justices of the Peace for the said District, (*or* County, United Counties, *or as the case may be*), as should then be there, to testify to what he knew concerning the said A. B., or the matter of the said information (*or* complaint); And whereas proof has this day been made before me, upon oath, of such

summons having been duly served upon the said E. F.; And whereas the said E. F. has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are, therefore, to command you to take the said E. F., and to bring and have him on , at o'clock in the (fore) noon, at , before me or such Justice or Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*), as shall then be there, to testify what he knows concerning the said information (*or* complaint).

Given under (my) hand and seal this day of in the year , at in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(E, 3.)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of
District, (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of .

Whereas information was laid (*or* complaint was made) before the undersigned, , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the summons*), and it being made to appear before me upon oath, that E. F., of , (laborer), is likely to give material evidence on behalf of the (prosecutor, *or as the case may be*), in this matter, and it is probable that the said E. F., will not attend to give evidence without being compelled so to do: These are, therefore, to command you to bring and have the said E. F., on , at o'clock in the (fore) noon, at , before me or such other Justice or Justices of the Peace, for the District (*or* County, United Counties, *or as the case may be*), as shall then be there, to testify what he knows concerning the matter of the said information (*or* complaint).

Given under (*my*) hand and seal, this day of in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(E, 4.)

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR GIVE EVIDENCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of .

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at

Whereas information was laid (*or* complaint was made) before (me) , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the summons*), and one E. F., now appearing before me, such Justice as aforesaid, on , at , and being required by me to make oath (*or* affirmation) as a witness in that behalf, refuses so to do (*or* being now here duly sworn as a witness in the matter of the said information, (*or* complaint) refuses to answer certain questions concerning the premises, which are now here put to him, and more particularly the following question *here insert the exact words of the question*), without offering any just excuse for such his refusal: These are, therefore, to command you, or any one of the said Constables or Peace Officers, to take the said E. F., and him safely to convey to the Common Gaol at , aforesaid, and there deliver him to the said keeper thereof, together with this precept; And I do hereby command you, the said keeper of the said Common Gaol, to receive the said E. F. into your custody in the said Common Gaol and there imprison him, for such his contempt, for the term of days, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year , at , in the district (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(F.)

WARRANT TO REMAND A DEFENDANT WHEN APPREHENDED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol (*or* lock-up house) at :

Whereas information was laid (*or* complaint was made) before , a Justice of the Peace in and for the District (*or* County, United Counties, *or as the case may be*), of , for that *&c.*, (*as in the summons or warrant*); And whereas the said A. B. has been apprehended, under and by virtue of a warrant, upon such information (*or* complaint), and is now brought before me as such Justice as aforesaid: These are, therefore, to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name, forthwith to convey the said A. B., to the Common Gaol (*or* lock-up house), at , and there to deliver him to the said keeper thereof, together with this precept; And I do hereby command you, the said keeper, to receive the said A. B, into your custody in the said Common Gaol, (*or* lock-up house), and there safely keep him until next, the day of (*instant*), when you are hereby commanded to convey and have him at , at . o'clock in the noon of the same day, before me or such Justice or Justices of the Peace, for the said District (*or* County, United Counties, *or as the case may be*), as shall then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of in the year , at in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(G.)

WARRANT OF COMMITMENT FOR SAFE CUSTODY DURING AN ADJOURNMENT OF THE HEARING.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or Peace Officers, in the District (*or* County, United Counties, *or as the case may be*), of and to the Keeper of the Common Gaol (*or* lock-up house) at

Whereas on last past, information was laid (*or* complaint made) before , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that *&c.*, *as in the summons*); And whereas the hearing of the same is adjourned to the of (*instant*) at o'clock in the (fore) noon, at , and it is necessary that the said A. B. should, in the meantime, be kept in safe custody: These are, therefore, to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name forthwith to convey the said A. B., to the Common Gaol (*or* lock-up house) at , and there deliver him into the custody of the keeper thereof, together with this precept; And I do hereby require you, the said keeper, to receive the said A. B., into your custody in the said Common Gaol (*or* lock-up house), and there safely keep him until the day of , (*instant*) when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as shall then be there, to answer further to the said information (*or* complaint) and to be further dealt with according to law.

Given under my hand and seal, this day of in the year , at , in the District (*or* County, *&c.*) *as the case may be*) aforesaid.

J. S. [L.S.]

(H.)

RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT WHEN THE CASE IS ADJOURNED, OR NOT AT ONCE PROCEEDED WITH.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be),
of

Be it remembered that on , A. B., (*lawyer*), and L. M., of (*grocer*), and O. P., of (*yeoman*), personally came and appeared before the undersigned, , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say: the said A. B., the sum of , and the said L. M. and O. P., the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition indorsed (*or* hereunder written).

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

J. S. [L.S.]

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears on the day of , (*instant*) at o'clock in the (fore) noon, at , before me or such Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as shall then be there, to answer further to the information (*or* complaint) of C. D., exhibited against the said A. B., and to be further dealt with according to law, then the said recognizance to be void, otherwise to remain in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETIES.

Take notice that you, A. B., are bound in the sum of , and you, L. M. and O. P., in the sum of , each, that you, A. B., ap-

pear personally on at o'clock in the (fore) noon, at , before me or such Justice of the Peace, for the District (*or* County, United Counties, *or as the case may be*), of , as shall then be there, to answer further to a certain information (*or* complaint) of C. D., the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. and O. P. as your sureties, will forthwith be levied on you and them.

Dated this day of , one thousand eight hundred and .

J. S. [L.S.]

(J, 1.)

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on the day of in the year , at , in the said District (*or* County, United Counties, *or as the case may be*), A. B. is convicted before the undersigned , a Justice of the Peace, for the said District (*or* County, United Counties, *or as the case may be*), for that the said A.B, (*&c., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty, and also the compensation, if any*), to be paid and applied according to law, and also to pay to the said C. D., the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next),* I order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress,* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of , (there to be kept at hard labor, *if such is the sentence*) for the term of , unless the said several sums and all costs and charges

of the said distress (and of the commitment and conveying of the said A. B. to the said Gaol) are sooner paid.

Given under (my) hand and seal, the day and year first above mentioned, at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

* *Or when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks* * * *say*, "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. has no goods or chattels whereon to levy the said sums by distress"), I adjudge, &c., (*as above, to the end*).

(J, 2.)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on the day of , in the year , at , in the said District (*or* County, United Counties, *or as the case may be*), A. B. is convicted before the undersigned, , a Justice of the Peace for the said District (*or* County, United Counties, *or as the case may be*), for that he the said A. B., (*&c., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B., for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*), to be paid and applied according to law ; and also to pay to the said C. D. the sum of , for his costs in this behalf ; and if the said several sums are not paid forthwith (*or* on or before next), I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of (and there to be kept at hard labor) for the term of , unless

the said sums and the costs and charges of conveying the said A. B. to the said Common Gaol, are sooner paid.

Given under (my) hand and seal, the day and year first above mentioned, at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(J, 3.)

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on the day of , in the year , in the said District (*or* County, United Counties, *or as the case may be*), A. B., is convicted before the undersigned, , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), for that he, the said A. B., (*&c., stating the offence, and the time and place when and where it was committed*); and I adjudge the said A. B., for his said offence to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the County of (and there to be kept at hard labor) for the term of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs are not paid forthwith (*or* on or before next), then* I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf,* I adjudge the said A.B., to be imprisoned in the said Common Gaol (and kept there at hard labor) for the term of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under (my) hand and seal, the day and year first above mentioned, at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

**Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress,*

then, instead of the words between the asterisks * *say*, "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or* "that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress") I adjudge, &c.

(K, 1.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on , complaint was made before the undersigned, , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on , at , the parties aforesaid appear before me the said Justice (*or* the said C. D. appears before me the said Justice, but the said A. B., although duly called, does not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such Justice or Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*), as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then,* I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at ,

in the said District (*or* County) of , (and there kept at hard labor) for the term of , unless the said several sums, and all costs and charges of the said distress (and the commitment and conveyance of the said A. B. to the said Common Gaol) are sooner paid.

Given under (my) hand and seal, this day of in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks* * *say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or* "that the said A. B. has no goods or chattels whereon to levy the said sums by distress.")

(K, 2.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of .

Be it remembered, that on , complaint was made before the undersigned , a Justice of the Peace in and for the said District *or* County, United Counties, *or as the case may be)* of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now on this day, to wit, on , at , the parties aforesaid appear before me the said Justice (*or* the said C. D., appears before me the said Justice, but the said A. B., although duly called, does not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me upon oath that the said A. B., was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as should now be here, to answer to the said complaint, and to be further

dealt with according to law, and now having heard the matter of the said complaint, I do adjudge the said A. B., to pay to the said C. D., the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D., the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then I adjudge the said A. B., to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of (there to be kept at hard labor *if the Act or law authorizes this*) for the term of unless the said several sums (and costs and charges of commitment and conveying the said A. B., to the said Common Gaol) are sooner paid.

Given under (my) hand and seal this day of in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S]

(K, 3.)

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on , complaint was made before the undersigned, , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of , for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now on this day, to wit, on , at , the parties aforesaid appear before me the said Justice (*or* the said C. D., appears before me the said Justice, but the said A. B., although duly called, does not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B., was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said

District (*or* County, United Counties, *or as the case may be*), as should now be here, to answer to the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B., to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said County of (there to be kept at hard labor, *if the statute authorizes this*), for the term of unless the said order is sooner obeyed, and I do also adjudge the said A. B., to pay to the said C. D., the sum of , for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B., to be imprisoned in the said Common Gaol (there to be kept at hard labor) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under (my) hand and seal, this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(L.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, that on , information was laid (*or* complaint was made) before the undersigned, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the summons of the defendant*)

and now at this day, to wit, on , at , (*if at any adjournment insert here*: "to which day the hearing of this case was duly adjourned, of which the said C. D. had due notice"), both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) (*or* the said A. B., appears before me, but the said C. D., although duly called, does not appear); (whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and) (*if the informant (or complainant) does not appear, these words may be omitted*), I do therefore dismiss the same, and do adjudge that the said C. D., do pay to the said A. B., the sum of , for his costs incurred by him in defence in his behalf; and if the said sum for costs is not paid forthwith (*or* on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D., to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said (County) of (and there kept at hard labor) for the term of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D., to the said Common Gaol) are sooner paid.

Given under my hand and seal, this day of in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(M.)

FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or* complaint) preferred by C. D., against A. B. for that (*&c., as in the summons*) was this day considered by me, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , and was by me dismissed (with costs).

Dated this day of , one thousand .

J. S.

(N, 1.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas A. B., late of (*laborer*) was on this day (*or* on last past) duly convicted before , a Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., should for such his offence, forfeit and pay (*&c., as in the conviction*), and should also pay to the said C. D., the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said County of (and there kept at hard labor) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B., to the said Common Gaol were sooner paid; *And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*the convicting Justice, or one of the convicting Justices*) that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of in the year, , at in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L.S.]

(N, 2.)

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of
District (*or* County,
United Counties, *or
as the case may be*),
of

To all or any of the Constables or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas on , last past, a complaint was made before , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), for that (*&c., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, and the said A. B., was adjudged (to pay to the said C. D., the sum of , on or before then next), and also to pay to the said C. D., the sum of , for his costs in that behalf; and it was ordered that if the said several sums were not paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B., should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said County of (and there kept at hard labor) for the term of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B., to the said Common Gaol) were sooner paid; *And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B., has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if

within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting Justices, as the case may be*), that I (*or* he) may pay and apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B. ; and if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L.S.]

(N, 3.)

INDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Whereas proof upon oath has this day been made before me , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), that the name of J. S., to the within warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned, I do therefore authorize U. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , to execute the same within the said District (*or* County, United Counties, *or as the case may be*).

Given under (my) hand, this day of , one thousand eight hundred and

O. K.

(N, 4.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., Constable of , in the District (*or* County, United Counties, *or as the case may be*) of , hereby certify to J. S., Esquire, a Justice of the Peace in and for the District (*or* County, United Counties, *or as the case may be*), of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B., whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and .

W. T.

(N, 5.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers in the District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said District (*or* County) of .

Whereas (*&c., as in either of the foregoing distress warrants, N. 1, N. 2, to the asterisks,* and then thus*): And whereas, afterwards on the day of , in the year aforesaid, I, the said Justice, issued a warrant to all or any of the Constables, or other Peace Officers of the District (*or* County, United Counties, *or as the case may be*), of , commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return of the said warrant of distress, by the

Constable who had the execution of the same, as otherwise, that the said Constable has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned, could be found: These are, therefore, to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said Common Gaol, to receive the said A. B., into your custody, in the said Common Gaol, there to imprison him (and keep him at hard labor) for the term of , unless the said several sums, and all the costs and charges of the said distress (and of the commitment and conveying of the said A. B., to the said Common Gaol) amounting to the further sum of , are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under (my) hand and seal, this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(O, 1.)

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said District (*or* County) of .

Whereas A. B., late of (*laborer*), was on this day convicted before the undersigned , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said

A. B., for his offence, should forfeit and pay the sum of (*&c., as in the conviction*), and should pay to the said C. D., the sum of , for his costs in that behalf; and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said A. B. should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of (and there kept at hard labor) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B., to the said Common 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 A. B. has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said Common Gaol, to receive the said A. B., into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the term of , unless the said several sums (and costs and charges of carrying him to the said Common Gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under (my) hand and seal, this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(O, 2.)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the

keeper of the Common Gaol of the District (*or* County, United Counties, *or as the case may be*, of , at , in the said District (*or* County) of

Whereas on last past, complaint was made before the undersigned , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the order*), and afterwards, to wit, on the day of , at , the parties appeared before me, the said Justice (*or as it is in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D., the sum of , on or before the day of then next, and also to pay to the said C. D., the sum of , for his costs in that behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B., should be imprisoned in the Common Gaol of the District (*or* County, United Counties, *or as the case may be*), of , at , in the said County of (and there be kept at hard labor) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B., to the said Common Gaol, *as the case may be*) were sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said Constables and Peace Officers, or any of you, to take the said A. B., and him safely to convey to the said Common Gaol, at 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 Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the term of , unless the said several sums (and the costs and charges of conveying him to the said Common Gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, United Counties *or as the case may be*), aforesaid.

J. S. [L.S.]

(P, 1.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas on last past, information was laid (*or* complaint was made) before , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*&c., as in the order of dismissal*) and afterwards, to wit, on at , both parties appearing before , in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf, being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (*or* complaint) was not proved, (I) therefore dismised the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said District or County of (and there kept at hard labor) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B., to the said Common Gaol, were sooner paid; * And whereas the said C. D., being now required to pay to the said A. B., the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to me (*the Justice who made such order or dismissal, as the case may be*) that (I), may pay and apply the same as by law direct-

ed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto me (*or* to any other Justice of the Peace for the same District *or* County, United Counties, *or as the case may be*), that such proceedings may be had therein, as to law appertain.

Given under my hand and seal this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(P, 2.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of
District (*or* County, United Counties, or *as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said District (*or* County) of .

Whereas (*&c., as in the last form, to the asterisk,* * *and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said Justice, issued a warrant to all or any of the Constables or other Peace Officers of the said District (*or* County, United Counties, *or as the case may be*), commanding them, or any one of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me, as well by the return to the said warrant of distress of the Constable (*or* Peace Officer) charged with the execution of the same, as otherwise, that the said Constable has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to command you, the said Constables and Peace Officers, or any one of you, to take the said C. D., and him safely convey to the Common Gaol of the said District, (*or* County, United Counties, *or as the case may be*), at aforesaid, and there deliver him to the keeper thereof, together

with this precept: And I hereby command you, the said keeper of the said Common Gaol, to receive the said C. D., into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the term of , unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D., to the said Common Gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the District, (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L.S.]

(Q.)

CERTIFICATE OF NON-APPEARANCE TO BE INDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B., has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

J. S. [L.S.]
J. P.

(R.)

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of, &c., and ——(*the names and additions of the parties to whom the notice of appeal is required to be given*)

Take notice, that I, the undersigned, A. B., of intend to enter and prosecute an appeal at the next General Sessions of the Peace (*or other Court, as the case may be*), to be holden at , in and for the District (*or* County, United Counties, *or as the case may be*), of , against a certain conviction (*or* order) bearing date on or about the day of , instant, and made by (you) C. D., Esquire, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , whereby I, the said A. B., was convicted of having (*or* was ordered) to pay , (*here state the offence as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible*).

Dated this day of , one thousand eight hundred and .

A. B.

MEMORANDUM.—*If this notice is given by several defendants, or by an Attorney, it may be adapted to the case.*

(S.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Be it remembered, that on , A. B., of (labourer), and L. M., of , (grocer), and N. O., of , (yeoman), personally came before the undersigned , a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said A. B., the sum of , and the said L. M., and N. O., the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B., fails in the condition indorsed (*or* hereunder written).

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

J. S.

The condition of the within (*or* the above) written recognizance is such that if the said A. B., personally appears at the (next) General Sessions of the Peace (*or other Court discharging the functions of the Court of General Sessions as the case may be*), to be holden at , on the day of next, in and for the said District (*or* County, United Counties, *or as the case may be*), of , and tries an appeal against a certain conviction, bearing date the day of instant, and made by (me) the said Justice, whereby he, the said A. B., was convicted, for that he, the said A. B., did, on the day of , at the Township of , in the said District (*or* County, United Counties, *or as the case may be*), of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the Court upon such appeal and pays such costs as are by the Court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT (APPELLANT) AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you L. M., and N. O., in the sum of , each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said District (*or* County, United Counties, *or as the case may be*), of , and try an appeal against a conviction (*or* order) dated the day of (instant) whereby you A. B., were convicted of (*or* ordered, &c.), (*stating offence or the subject of the order shortly*), and abide by the judgment of the Court upon such appeal and pay such costs as are by the Court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated this day of , one thousand eight hundred and

(T.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the Clerk of the Peace for the District (*or* County, United Counties, *or as the case may be*), of

Title of the Appeal.

I hereby certify, that at a Court of General Sessions of the Peace, (*or other Court discharging the functions of the Court of General Sessions, as the case may be*), holden at , in and for the said District (*or* County, United Counties, *or as the case may be*), on last past, an appeal by A. B., against a conviction (*or* order) of J. S., Esquire, a Justice of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), came on to be tried, and was there heard and determined, and the said Court of General Sessions (*or other Court, as the case may be*), thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace for the said District (*or* County, United Counties, *or as the case may be*), on or before the day of instant, to be by him handed over to the said (respondent), and

I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated this day of , one thousand eight hundred and

G. H.,
Clerk of the Peace.

(U, 1.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of .

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas (*&c., as in the warrants of distress, N. 1, N. 2, ante, and to the end of the statement of the conviction or order, and then thus*): And whereas the said A. B., appealed to the Court of General Sessions of the Peace (*or other Court discharging the functions of the Court of General Sessions, as the case may be*), for the said District (*or* County, United Counties, *or as the case may be*), against the said conviction or order,, in which appeal the said A. B., was the appellant, and the said C. D. (*or* J. S., Esquire, the Justice of the Peace who made the said conviction *or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (*or other Court, as the case may be*) for the said District (*or* County, United Counties, *or as the case may be*), holden at , on : and the said Court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the Clerk of the Peace for the said District (*or* County, United Counties, *or as the case may be*), on or before the day of , one thousand eight hundred and , to be by him handed over to the said C. D. ; and whereas the Clerk of the Peace of the said District (*or*

County, United Counties, *or as the case may be*), has, on the day of instant, duly certified that the said sum for costs had not been paid: * These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the Clerk of the Peace for the said District (*or* County, United Counties, *or as the case may be*), of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other Justice of the Peace for the same District (*or* County, United Counties, *or as the case may be*), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, *or as the case may be*), aforesaid.

O. K. [L.S.]

(U, 2.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of .

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said County of ;

Whereas (*&c., as in the last form, to the asterisk,* and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , commanding them, or any of them, to levy the said sum

of , for costs, by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the Constable (*or* Peace Officer) who was charged with the execution of the same, as otherwise, that the said Constable has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of at aforesaid, and there deliver him to the said keeper thereof, together with this precept; And I do hereby command you, the said keeper of the said Common Gaol, to receive the said A. B., into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the term of , unless the said sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B., to the said Common Gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. N. [L.S.]

(V.)

RETURN of convictions made by me (*or* us, *as the case may be*), during the quarter ending 18 .

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justices.	Amount of Penalty, Fine or Damage.	Time when paid or to be paid to the said Justice.	To whom paid over by the said Justice.	If not paid, why not, and general observations, if any.

A. B., Convicting Justice,

or

A. B. and C. D., Convicting Justices (*as the case may be*).

MINUTES OF PROCEEDINGS AT THE HEARING WITH ADJUDICATION.

A. against B.

day of , 18 at ,
before

The defendant appeared on a (*warrant or summons*), granted by . charging him with assaulting and beating at L., on the 3rd instant, one C. Defendant, on being asked what he has to say, pleads not guilty, *or* complainant being sworn says :

E., of , being sworn, says, *or* complainant does not appear and defendant attends with his witnesses.

Adjudication on dismissal. Dismissed with costs, namely, to be paid (forthwith) or levied by distress, or in default, imprisonment for fourteen days.

ABANDONING CHILD.

(*See* CHILD).

ABDUCTION.

This offence is now governed by the Rev. Stat. Can., chap. 162, s. 42, (*a*) (*b*) 2.

The statute applies whether the prisoner's intention is to marry the woman himself or to assist any other person to do so. It is necessary under (*a*) that the woman be possessed of property.

Where the prisoner is charged with abduction "from motives of lucre," it would be necessary to establish the motive, and to do this, some proof of knowledge or belief on his part that the woman had an interest in property, would be necessary. *R.* v. *Kaylor*, 26 L.C.J., 36.

Verbal evidence that the woman has an interest in property generally is insufficient to sustain an indictment which sets out the particular interest which the woman possesses. But an indictment under (*b*) may be sustained without evidence of the prisoner's knowledge that the woman was an heiress, for the offence there is abduction with intent to marry or carnally know. (*Ib.*)

Under (*b*) the woman must be taken out of the possession of her father, etc. This involves a *taking* and also a *possession* by the father.

The expression, "taking out of the possession," means taking the girl to some place where the person in whose charge she is cannot exercise control over her for some purpose inconsistent with the object of such control. A taking for a time only may amount to abduction. If the consent of the person from

whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such person. *R.* v. *Prince*, L.R. 2, C.C.R., 154.

If the girl leaves without any inducement on the part of the defendant, and then goes to him, he is not within the statute. *R.* v. *Olifier*, 10 Cox C.C., 402.

There must be a taking away or allurement out of the possession of the father, and merely cohabiting with the girl after she has left does not constitute the offence. *R.* v. *Miller*, 13 Cox C.C., 179.

The offence is not within the statute if it does not appear that the prisoner knew or had reason to believe that the girl was under the lawful care or charge of her father or mother, or any other person. *R.* v. *Hibbert*, L.R. 1, C.C.R., 184.

But a mere absence for a temporary purpose and with intention of returning, does not interrupt the possession of the father. *R.* v. *Mycock*, 12 Cox C.C., 28., following *R.* v. *Olifier*, 10 Cox C.C., 402.

Under (*b*) it is immaterial whether there be any corrupt motive, whether the girl consents, and whether the defendant be a male or female. *R.* v. *Hawley*, 1 F. & F., 648.

But it is not necessary to shew a trespass or anything of that nature in the taking, other than the act of taking. *R.* v. *Fraser*, 8 Cox C.C., 436.

But if the parents have encouraged the girl in a low course of life, the case does not come within the statute. *R.* v. *Primet*, 1 F. & F., 50.

The 44th section of the Act relates to the abduction of a girl under the age of sixteen years.

An information under this section should show that the unmarried girl is under sixteen years of age, and is taken out of the possession and against the will of the father. *Whittier* v. *Diblee*, 2 Pugsley, 243.

The girl must be in the possession of some person having the lawful care or charge of her, but if such exist, the consent of the girl to go away, will not be a defence for the prisoner. A

guardian is a person having the lawful care, etc., within the meaning of the statute, and it is not necessary to prove a strict guardianship. If the girl leave her guardian's house for a particular purpose with his sanction, and with the intention of returning, she does not cease to be in his possession within the meaning of the statute. There must be proof of the age of the girl, but the girl herself and her father or mother are competent to prove this. A certificate is not necessary, at all events where the prisoner undertakes to establish that the girl was not baptized. *R.* v. *Mondelet*, 21 L.C.J., 154.

When a prisoner is charged with abducting a girl under sixteen, it is a sufficient defence if, at the moment of taking her out of lawful custody he had reasonable cause to believe that she was of the age of eighteen, although he did not inquire of her age until after he had taken her out of custody, but before the abduction was complete. *R.* v. *Packer*, 16 Cox C.C., 57.

But it is no defence that the defendant did not know her to be under sixteen, or might suppose from her appearance that she was older, or even that he believed that he knew she was over that age. *R.* v. *Prince*, L.R. 2, C.C.R., 154.

On a trial for taking an unmarried girl under the age of sixteen out of the possession of her guardian, evidence of cruel treatment of the girl by the guardian is inadmissible. Where a child was taken from motives of benevolence from a barn where she had sought refuge, the barn not being on the property or premises of the guardian, and was then placed by the persons who had come to her relief in the charge of defendant, as secretary of a society for the protection of women and children, it was held that the secretary was not guilty of taking out of the possession of the guardian. *R.* v. *Hollis*, 8 Legal News, 229.

ABORTION.

The Rev. Stat. Can., chap. 162, sections 47 and 48 govern this offence. If A. procures poison and delivers it to B., both intending that B. should take it for the purpose of procuring abortion, and B. afterwards take it with that intent in the absence of A.,

the latter may be convicted of causing it to be taken. *R.* v. *Wilson*, 1 Dears & B., 127.

The prisoner had procured certain drugs and gave them to his wife with intent that she should take them in order to procure abortion. She took them in his absence and died from the effects. The Court held that though he was an accessory before the fact, he might be convicted of manslaughter. *R.* v. *Taylor*, 7 Cox C.C., 253.

A "noxious thing" within these sections of the statute means a thing that will produce the effect mentioned in the statute, and although it is not shown what the drug administered was, yet if it produces a miscarriage, that will be sufficient evidence of its being a "noxious thing" within the statute. *R.* v. *Hollis*, 12 Cox C.C., 463.

A thing may be noxious within the statute if, when taken in a large quantity, it proves injurious, although when taken in a small quantity it is beneficial.

Supplying a noxious thing to a woman with intent that it be used to procure abortion is a misdemeanor, although the woman for whom it was intended was not pregnant. *R.* v. *Titley*, 14 Cox C.C., 502.

ACCESSORIES.

The Act respecting accessories is the Rev. Stat. Can., chap. 145. Under section 8, abettors in offences punishable on summary conviction are punishable as principals. Under the Post Office Act, Rev. Stat. Can., chap. 35, s. 110, s.s. 4, every accessory before or after the fact, if the offence is felony, and every person aiding or abetting the commission of any offence if the same is a misdemeanor, may be dealt with as if he were a principal, and his offence may be laid and charged to have been committed in any place where the principal offender may be tried.

The general definition of a principal in the first degree is one who is the actor or actual perpetrator of the crime. Principals in the second degree are those who were present aiding and abetting the commission of the crime. To constitute an aider or abettor

the party must be actually present, aiding or in some way assisting in the commission of the offence or constructively present for the same purpose, that is in such a convenient situation as readily to come to the assistance of the others, and with the intention of doing so should occasion require. *R.* v. *Curtley*, 27 Q.B. Ont., 617.

On the general principal that a person is liable for what is done under his presumed authority (see *R.* v. *King*, 20 C.P. (Ont.), 248), where there is a combination to effect some unlawful purpose each person is liable for every act of any of the others in prosecution of the common design (*Ib.*), and see *R.* v. *Slavin*, 17 C.P. (Ont.), 205. A felonious act, committed by one person in prosecution of a common unlawful purpose, is the act of all, but where the original purpose is lawful, the person committing the act will alone be liable. A person authorizing the commission of a crime is liable for the act of his agent in the execution of his authority. The agent is also liable for the unlawful act, although he may have the express, or implied, authority of his principal for its commission. See *R.* v. *Brewster*, 8 C.P. (Ont.), 208.

An accessory before the fact is he who, being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit a felony. An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon. It is only in felonies that there can be accessories, for in misdemeanors all are principals. See *R.* v. *Tisdale*, 20 Q.B. (Ont.) 273; *R.* v. *Campbell*, 18 Q.B. (Ont.), 417; *R.* v. *Benjamin*, 4 C.P. (Ont.), 189.

On this point, section 7 of the statute provides that aiders and abettors in misdemeanors may be tried and punished as principals. Those, therefore, who would be accessories in felonies are principals in misdemeanors. The statute renders an accessory before the fact liable to conviction as a principal felon, consequently it is not now a condition precedent to the conviction of an accessory before the fact, that there should be a conviction of the person who, but for the statute, would be the principal felon. *R.* v. *Hughes*, 8 Cox C.C., 278.

Ordinarily there can be no accessories before the fact in man-

slaughter, for the offence is sudden and unpremeditated, but there may be accessories after the fact.

The offence of accessory is distinguishable from that of a principal in the second degree; the latter must be actually or constructively present at the commission of the fact. But it is essential to constitute the offence of accessory that the party should be absent at the time the offence was committed.

Knowledge that a person intends to commit a crime and conduct connected with, and influenced by, such knowledge, is not enough to make the person, who possesses such knowledge or so conducts himself, an accessory before the fact to any such crime, unless he does something to encourage its commission actively. Thus, B and C agree to fight a prize fight for a sum of money. A, knowing their intention, acts as stakeholder. B and C fight, and C is killed. A is not present at the fight, and has no concern with it, except being stakeholder. Even if in such a case there can be an accessory before the fact, A is not accessory before the fact to the manslaughter of C. *R.* v. *Taylor*, L.R., 2 C.C.R., 147.

If an accessory before the fact countermands the execution of the crime before it is executed, he ceases to be an accessory before the fact, if the principal had notice of the countermand before the execution of the crime, but not otherwise. Stephen's Dig., 29.

Every one is an accessory after the fact to felony, who knowing a felony to have been committed by another, receives, comforts, or assists him, in order to enable him to escape from punishment or rescues him from an arrest for the felony, or having him in custody for the felony intentionally and voluntarily suffers him to escape, or opposes his apprehension. Provided that a married woman who receives, comforts, or relieves her husband, knowing him to have committed a felony, does not thereby become an accessory after the fact. Stephen's Dig., 31.

A person charged as accessory to murder may be convicted as accessory to manslaughter, if the principal is acquitted of the murder and found guilty of manslaughter. Where the principals commit a joint crime, the person harbouring them is guilty of a

separate offence for each person whom he harbours. *R.* v. *Richards*, L.R. 2, Q.B.D., 311.

In the following imaginary cases examples of each of the four kinds of participation in a crime will be found. A incites B and C to murder a person. B enters the house and cuts the man's throat, while C waits outside to give warning in case any one should approach. B and C flee to D, who knowing the murder has been completed, lends horses to facilitate their escape. Here B is principal in the first degree, C in the second degree; A is accessory before the fact, D after the fact.

Where a false warehouse receipt is given in the name of a firm, company, or copartnership, or any other misdemeanor mentioned in sections 73, 74 and 75 of the Rev. Stat. Can., chap. 164, is so committed, the person by whom such thing is actually done, or who connives at the doing thereof, is guilty of the misdemeanor, and not any other person. *Ib.* s. 75.

ACCIDENTS ON SHIPS.

The Act respecting the safety of ships and the prevention of accidents on board thereof (Rev. Stat. Can., chap. 77), makes it a misdemeanor to send an unseaworthy ship to sea, (*Ib.* s. 6), and disorderly persons attempting to board a ship, or refusing to leave, or molesting passengers, or refusing to pay fare, are liable to penalties, (*Ib.* s. 10); so penalties are imposed for sending or attempting to send dangerous goods without notifying their character (*Ib.* s. 14), and by section 20, every penalty imposed by the Act may be recovered with costs before any two Justices of the Peace.

ACCOMPLICE.

A Justice has no power to make a promise of pardon, and it is his duty to commit an accomplice for trial, notwithstanding it is intended that he should give evidence for the prosecution.

Where the evidence would be too weak to justify a commitment, independent of the testimony of the accomplice, the proper course seems to be to take the deposition of the accomplice

in the usual way, cautioning him at the same time that he is not bound to say anything which may criminate himself. In this case the accomplice would be bound over as a witness, and the circumstances explained to the Judge before the indictment against the prisoner is presented to the Grand Jury. Stone's Jus. Man., 48.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

The Rev. Stat. Can., chap. 185, provide that actions against any person for anything done in pursuance of an act relating to criminal law, shall be laid and tried in the District, County, or other Judicial Division where the act was committed and not elsewhere, and shall not be commenced except within six months next after the act is committed.

In Ontario, the Rev. Stat. chap. 73, protects Justices of the Peace and others from vexatious actions.

Section 1 of the Act provides that in case an action is brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction, it shall be expressly alleged in the statement of claim that the act was done maliciously and without reasonable and probable cause.

When the Justice has jurisdiction over the subject matter of complaint and over the person of the party, an action of trespass will not lie against the Justice unless there is malice or want of reasonable and probable cause (*Hallett* v. *Wilmot*, 40 Q.B. (Ont.), 263; *Birch* v. *Perkins*, 2 Pugsley, 327); but if the matter was one in which the Magistrate had no jurisdiction at all, then he is a trespasser. *West* v. *Smallwood*, 3 M. & W., 418.

Whenever there is an arrest, and it can be said there was no jurisdiction, trespass is the proper form of action. See *Hunt* v. *McArthur*, 24 Q.B. (Ont.), 254. Whenever it can be said that there was jurisdiction, the remedy is an action on the case as for a tort, and it must be expressly alleged and proved that the act was done maliciously and without reasonable or probable cause. *Caudle* v. *Seymour*, 1 Q.B., 889; *Appleton* v. *Lepper*, 20 C.P.

(Ont.), 138; *Crawford* v. *Beattie*, 39 Q.B., (Ont.), 13; *Stoness* v. *Lake*, 40 Q.B., (Ont.), 326.

When a Magistrate has jurisdiction he never can be made liable in an action of trespass for an irregularity in procedure, mistake of law or erroneous conclusion from facts. *Mills* v. *Collett*, 6 Bing., 85; *Sprung* v. *Anderson*, 23 C.P. (Ont.), 152; *Col. Bk. of A.* v. *Willan*, L.R. 5, P.C. App., 417. See also *Dobbyn* v. *Decow*, 25 C.P. (Ont.), 18; *Gardner* v. *Burwell*, Taylor, 189.

When a Justice acts within his jurisdiction and without malice, he is free from damages. *Cartier* v. *Burland*, 2 Revue Critique, 475.

After a conviction by a Magistrate is quashed, an action on the case will not lie against him unless the acts complained of be proved to have been committed by him without any reasonable or probable cause and maliciously, and the question of malice must be left to the Jury. *Burney* v. *Gorham*, 1 C.P. (Ont.), 358.

One A, went before the defendants, two Justices, and swore that from circumstances mentioned he was afraid that the plaintiff would destroy his property, and he, therefore, prayed that he might be bound over to keep the peace. Defendants thereupon, on plaintiff's refusal to find sureties, committed him to gaol. It was held that this Act clearly applied, and that, therefore, only a special action on the case could be maintained. *Fullerton* v. *Switzer*, 13 Q.B. (Ont.), 575.

The Justice is not deprived of the protection of the Act by some irregularity in drawing up the conviction, such as signing the conviction, leaving blanks for the amount of costs. *Bott* v. *Ackroyd* 28 L.J.M.C., 207; and when, supposing the facts alleged to be true, the Magistrate has jurisdiction, his liability to be sued or his exemption from such liability on the ground of jurisdiction cannot be affected by the truth or falsehood of those facts, or by the sufficiency or insufficiency of the evidence adduced for the purpose of establishing them. *Cave* v. *Mountain*, 1 M. & Gr., 257.

The falsity of the charge in an information cannot give a cause of action against a Magistrate who acts upon the assumption and

belief of its truth. Where an information contained every material averment necessary to give a Magistrate jurisdiction to make an order upon the plaintiff to find sureties to keep the peace, but contained also additional matter which it was contended so qualified and explained these averments as to render them nugatory; it was held that this was a judicial question for the Magistrate to decide, and therefore that in issuing his warrant for the appearance of the accused, he was not acting without jurisdiction, even although a Superior Court might quash his order to find sureties. *Sprung* v. *Anderson*, 23 C.P. (Ont.), 152.

An action of trespass cannot be maintained against an officer, who executes a writ issued upon a judgment, rendered by an inferior Court in a matter over which they had jurisdiction. *Goudie* v. *Langlois*, Stuart, 142; *Ovens* v. *Talyor*, 19 C.P. (Ont.), 49. The Court would not in such case be responsible, and where the officer executing the writ of an inferior Court is sought to be made liable, the want of jurisdiction in the Court from which it issued must be apparent on the face of the writ itself, and unless it be so, the officer cannot be considered as a trespasser. (*Goudie* v. *Langois*, *supra.*)

Section 2 of the Act provides that for any act done by a Justice of the Peace in a matter in which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any conviction, or order made or warrant issued by such Justice, in any such matter, any person injured thereby may maintain an action against such Justice in the same form and in the same case as he might have done before the passing of the Act, without making any allegation in his statement of claim that the act complained of was done maliciously and without reasonable and probable cause.

This section must be read in connection with the first section of the Act, and therefore where, in the course of a matter transacted before a Justice, there has been an excess of jurisdiction, the second section does not apply, unless the action in which it is sought to be applied is brought for an act done in respect of that part of the matter, or some part of it which was beyond the jurisdiction. *Barton* v. *Bricknell*, 13 Q.B., 393.

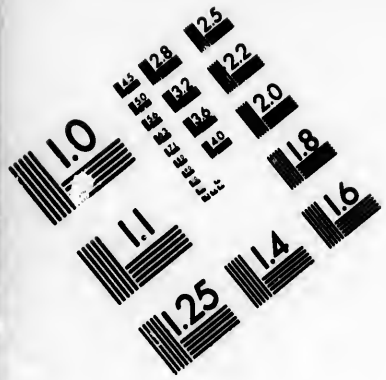
Where a conviction contained no adjudication as to costs, but the Justices issued a warrant of distress reciting the conviction as adjudicating costs, and the party's goods were seized as well for the costs as the penalty, this was holden to be an excess of jurisdiction, within the meaning of the above section, and that trespass lay for it. *Leary* v. *Patrick*, 19 L.J.M.C., 211. The meaning of the words "exceeded his jurisdiction," in the above section, means assuming to do something which the statute, under which the Justice is proceeding, could by no possibility justify. *Ratt* v. *Parkinson*, 20 L.J.M.C., 208. And they apply only to cases where the act, in respect of which the action is brought against the Justices, is itself an excess of jurisdiction. *Barton* v. *Bricknell*, 13 Q.B., 393; *Somerville* v. *Mirehouse*, 1 B. & S., 652 So if an order be good in part and bad in part, a Justice may issue a warrant of distress to enforce so much of it as is good, without subjecting himself to an action. *R.* v. *Green*, 20 L.J.M.C. 168.

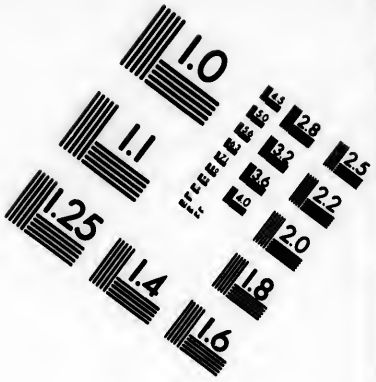
When Magistrates commit a person upon a general charge of felony given upon oath, they will not be liable to an action of trespass, although the facts sworn to, in order to substantiate that charge, may not, in point of law, support it. *Gardner* v. *Burwell*, Taylor, 189.

If a Magistrate cause a party to be wrongfully imprisoned without any reasonable cause until he gives his note to obtain a discharge, the Magistrate is liable in trespass. *Brennan* v. *Hatelie*, 6 O.S., 308.

A Magistrate sued in trespass for an alleged illegal proceeding under the 4 & 5 Vic., chap. 26, may give in evidence a tender of amends, under the plea of the general issue. *Moore* v. *Holditch*, 7 Q.B. (Ont.), 207.

A Justice of the Peace who issues a warrant without jurisdiction, as on an insufficient information, is liable to an action of trespass for assault and false imprisonment, and the question of reasonable and probable cause cannot arise in such a case as this but only in a case where the Justice has jurisdiction. *Whittier* v. *Diblee*, 2 Pugsley, 243.





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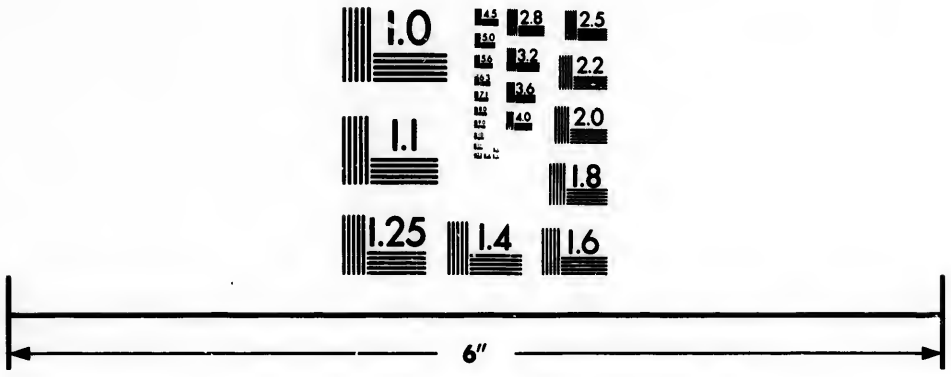

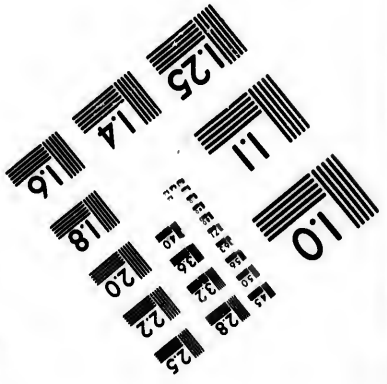

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In an action for malicious prosecution, it appeared that the defendant was a Justice of the Peace, and as such acquired his knowledge of the circumstances on which he preferred the charge against the defendant. The Court, however, held that this was clearly no ground for requiring that express malice should be proved against him. *Orr* v. *Spooner*, 19 Q.B. (Ont.), 601.

Defendant as a Justice issued a warrant against the plaintiff upon a complaint for detaining the clothes of one K. The plaintiff on being told by the Constable that he had the warrant, went alone to defendant, heard the evidence, was allowed to go away without giving bail, and returned the next day when he was discharged. It was held that no imprisonment was proved, and that defendant, having jurisdiction over the subject matter of the complaint, was not liable in trespass, even if the information were insufficient in point of form. *Thorpe* v. *Oliver*, 20 Q.B. (Ont.), 264.

A Magistrate has no jurisdiction to administer an oath and take examinations within the limits of a foreign country, and a commitment founded on such proceedings is void and affords no justification in an action of trespass against the Magistrate. *Nary* v. *Owen*, Berton, N.B. Reps., 377.

It was laid down in a suit before a Justice for wages, in the Vice-Admiralty Court of Quebec, that although Justices of the Peace exercising summary jurisdiction are the sole judges of the weight of the evidence given before them, and no other Court will examine whether they have formed the right conclusion from it, yet other Courts may and ought to examine whether the premises stated by the Justices are such as will warrant the conclusion in point of law. *The Scotia*, 1 Stuart, V.A. Reps., 160.

Justices cannot give themselves jurisdiction by finding that as a fact which is not a fact, and their warrant in such case will be no protection to the officer who acts under it. *The Haidee*, 2 Stuart, V.A. Reps., 25 ; 10 L.C.R., 101.

An action for false imprisonment was brought against the informant, the bailiff making the arrest, and the two committing Justices, and judgment was rendered against the four, jointly, but

it was held that the two committing Magistrates were alone liable in damages, and the judgment against the other two was set aside. *Bissonette* v. *Bornais*, 2 L.C.L.J., 18.

Omitting to state the conviction of a defendant, in his warrant of commitment, will not subject a Justice of the Peace to an action for false imprisonment, provided the actual conviction is proved upon his defence. *Whelan* v. *Stevens*, Taylor, 245.

The 4th section prevents an action being brought for anything done under a conviction, so long as the conviction remains unquashed and in force. *Arscott* v. *Lilley*, 11 Ont. R., 285.

It makes no matter whether the Magistrate acted within or without his jurisdiction, while the conviction stands, an action of trespass will not lie against the Magistrate, for the statute limits the form of action to case so long as the Magistrate had jurisdiction over the matter adjudicated upon. *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201. *Sprung* v. *Anderson*, 23 C.P. (Ont.), 152.

But this section only protects the Magistrate in acts which are justified by the conviction. If the conviction does not justify what has been done under it, neither the conviction nor the section in question will avail the Magistrate. *Arscott* v. *Lilley*, 14 Appeal (Ont.), 283.

On the return to a writ of *habeas corpus*, the Judge has nothing before him but the commitment and a discharge granted on a *habeas corpus* is not equivalent to quashing the conviction on which the commitment was drawn up. *Hunter* v. *Gilkison*, 7 Ont. R., 735.

Where an appeal was brought from a conviction imposing imprisonment with hard labour, which the Magistrate had no power to award, and the Sessions amended the record by striking out "hard labour," the Court held that such amendment was not a quashing of the conviction, and therefore trespass would not lie against the Justice. *McLellan* v. *McKinnon*, 1 Ont. R., 219.

It makes no difference that there is no appeal from such conviction. *Basébé* v. *Matthews*, 36 L.J.C.P., 296.

A conviction not set aside protects a Magistrate against an action of trespass. *Gates* v. *Devenish*, 6 Q.B. (Ont.), 260.

A conviction bad on the face of it, though not quashed, is no defence to an action of trespass. *Briggs* v. *Spilsburg*, Taylor, 245.

Where a conviction exists *de facto*, though it is unsustainable, it is necessary that the same be quashed before an action of trespass or trover is brought against the Magistrate for the property disposed of by the conviction (*Jones* v. *Holden*, 13 C.L.J., N.S., 19; *Graham* v. *McArthur*, 25 Q.B. (Ont.), 478).

But an order or conviction not under seal need not be quashed before action, *McDonald* v. *Stuckey*, 31 Q.B. (Ont.), 577; following *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201; see further *Huard* v. *Dunn*, 1 Revue Critique, 247.

A conviction made by one Magistrate, in a matter in which jurisdiction was given to two only, must be quashed though wholly void. *Graham* v. *McArthur*, 25 Q.B. (Ont.), 478.

The 6th section of the Act provides for an application to the Court for an order *nisi*, requiring a Justice to do any act relating to the duties of his office.

Under this section, if a Justice refuse to do any act, either of the Superior Courts of common law may order him to do it. Although the Court will thus interfere in cases where they think that the Justice ought to do the act, yet if they think that the Justice has acted rightly in refusing to do it, they will not compel him to do it (*R.* v. *Hartley*, 31 L.J.M.C., 232; *R.* v. *Deverell*, 3 E. & B., 372); and the Court will not grant a rule merely to set the Justices in motion. *R.* v. *Kesteren*, 13 L.J.M.C., 78. The main object of the section is to protect the Justice and not the parties from an action (*R.* v. *Cotton*, 15 A. & E., 574); and it is not to settle points of jurisdiction generally, except where the ministerial act depends on it. *R.* v. *Collins*, 21 L.J.M.C.; 73 *R.* v. *Dayman*, 7 E. & B., 328; *R.* v. *Brown*, 13 Q.B., 654.

As such a rule is a substitute for a *mandamus*, the Court w l not grant it if the proper remedy was by appeal to the Quarter Sessions. *R.* v. *Oxfordshire*, 18 L.J.M.C., 222.

Where the Magistrate has heard and adjudicated, the section does not apply. *R.* v. *Dayman*, *supra*.

So there must be a refusal to adjudicate before the Act can be

invoked (*R.* v. *Paynter*, 26 L.J.M.C., 102); and this section does not apply at all where Justices have acted, though perhaps erroneously. *Re Clee*, 21 L.J.M.C., 112; *R.* v. *Blanshard*, 18 L.J. M.C., 110. Under the section, the unsuccessful party pays the costs. *R.* v. *Ingham*, 17 Q.B., 884. But the rule should ask for the costs. *Leamington* v. *Moultrie*, 7 D. & L., 311. See also *re Delaney* v. *MacNab*, 21 C.P. (Ont.), 563, (*ante*, p. 31).

Section 12, of the Act provides that in case any action is brought, where by this Act it is enacted that no such action shall be brought under the particular circumstances, a Judge of the Court in which the action is pending shall, upon application of the defendant, and upon an affidavit of facts, set aside the proceedings in such action, with or without costs, as to him seems meet.

A gold watch having been taken upon a search-warrant from a person who absconded, the plaintiff claimed title to it, and brought replevin therefor against a city Police Magistrate who applied to stay proceedings under this section.

It was held that replevin was not within the Act, and the application was dismissed. *Mason* v. *Gurnett*, 2 P.R. (Ont.), 389.

Section 13, provides that no action shall be brought against any Justice of the Peace for anything done by him in the execution of his office, unless the same is commenced within six months next after the act complained of was committed.

The day on which the act was done is not to be included in these six months, and therefore where a person committed by a Justice was discharged out of custody on the 14th December, and he commenced his action on the 14th of June, it was holden that the action was commenced in time. *Hardy* v. *Ryle*, 9 B. & C., 603.

Where the cause of action is a continued one by imprisonment, the action may be brought within six calendar months after the last day of imprisonment (*Ib. Massey* v. *Johnson*, 12 East, 67), provided that it be within six months after the service of notice of action. *Watson* v. *Fournier*, 14 East, 491.

There may be a series of acts connected together, and yet each

giving rise to a cause of action. *Collins* v. *Rose*, 5 M & W., 194.

The word "month" in this section means a calendar month. Rev. Stat. (Ont.), chap. 1 s. 8, s.s. 15.

The 14th section of the Act, prevents the bringing of an action against a Justice, until one month at least after a notice in writing of the intended action has been served upon him.

It would appear that the words, "one month at least," mean a clear month's notice, exclusive of the first and last days, or the day of giving notice and suing out the writ. *Dempsey* v. *Dougherty*, 7 Q.B. (Ont.), 313; *Young* v. *Higgon*, 9 L.J.M.C., 29; *R.* v. *Shropshire*, 8 A. & E., 173.

Where the notice was served on the 28th of March, and the writ sued out on the 29th of April, this was held sufficient as being at least one month's notice. *McIntosh* v. *Vansteenburgh*, 8 Q.B. (Ont.), 248.

A notice of action for false imprisonment was served on defendant, a Justice of the Peace, on the 19th of March, and a writ issued on 17th April. The plaintiff took out a rule to discontinue that suit and got an appointment to tax the costs on the 9th July. On the 7th of July a second notice of action was served on defendant, and a writ issued on Monday, the 9th of August. It was held that if the second notice was bad, the plaintiff could avail himself of the first notice, notwithstanding the discontinuance of the suit commenced thereon, the object of the notice being to enable the party to tender amends, and the discontinuance of the first writ or giving the second notice in no way prevented this. It was also held that though the last day of the month's notice expired on Sunday, the defendant had not the whole of the following day to tender amends, and, therefore, the action was not commenced too soon. *Hatch* v. *Taylor*, 1 Pugsley, 39.

Where a Justice acts either wholly without jurisdiction, or entirely in excess of his jurisdiction, the notice of action need not contain an allegation of malice. (*Ib.*)

The effect of this section is to protect persons acting illegally, but in the supposed pursuance and with a *bona fide* intention of

discharging a public duty. If the officer in the supposed discharge of duty had done nothing illegal he would not need the protection of any statute. See *Selmes* v. *Judge*, L.R. 6, Q.B., 724; *McDougall* v. *Peterson*, 40 Q.B. (Ont.), 98. When what is complained of is the negligent omission to do what the defendant was called upon to do in the discharge of the duty of his office, then no notice of action would be required; but where the party neglects to do an act, and in that way carrying out the law according to his erroneous idea of his duty, then he is entitled to notice of action. *McDougall* v. *Peterson*, *supra*, 101; *Moran* v. *Palmer*, 13 C.P. (Ont), 528; *Harrison* v. *Brega*, 20 Q.B. (Ont.), 324; *Harrold* v. *Corporation Simcoe*, 16 C.P. (Ont.), 43.

A Justice of the Peace is entitled to notice of action whenever the act which is complained of is done by him in the honest belief that he was acting in the execution of his duty as a magistrate in the premises. *Sprung* v. *Anderson*, 23 C.P. (Ont.), 159; *Friel* v. *Ferguson*, 15 C.P. (Ont.), 584. See further, *Pacaud* v. *Quesnel*, 10 L.C.J., 207; *Bettersworth* v. *Hough*, 10 L.C.J., 184; *Murphy* v. *Ellis*, 2 Hannay, 345; *Condell* v. *Price*, 1 Hannay, 333; *Pickett* v. *Perkins*, 1 Hannay, 131.

In an action for wrongful arrest, though the conviction made by defendant is void, he is entitled to notice of action if he was acting in his official capacity as a Magistrate and had jurisdiction over the plaintiff and the subject matter. *Hoacke* v. *Adamson*, 14 C.P. (Ont.), 201.

If it be doubtful whether defendant was acting in the execution of his duty, it should be left to the jury to say whether they believed he was acting as a Magistrate or not, and if they find in his favour on that point, notice must be proved. *Carswell* v. *Huffman*, 1 Q.B. (Ont.), 381.

In Ontario, proceedings under the Master and Servant's Act (Rev. Stat. Ont., chap. 139), must be taken within one month after the engagement has ceased. A Magistrate having entertained a case under the Act, notwithstanding more than a month had elapsed since the termination of the engagement, and although he was told that he had no jurisdiction and was shown

a professional opinion to that effect and referred to the statute, the Court held in an action against the Magistrate that the jury were warranted in finding that he did not *bona fide* believe that he was acting in the execution of his duty in a matter within his jurisdiction, and that he was, therefore, not entitled to notice of action. *Cummins* v. *Moore*, 37 Q.B. (Ont.), 130.

Defendant, a Justice of the Peace, commenced a trial, but being required as a witness in the cause, another Justice took up the trial during the examination, after which the defendant resumed it, and during the latter stage of the trial committed an assault on the plaintiff. It was held that, though the defendant, when he committed the assault, was acting without jurisdiction, having no right to resume the trial under the Rev. Stat. N.B., chap. 137, s. 28, still, if he had reasonable grounds to believe that he had jurisdiction to do so, he was entitled to notice of action, and that this question should have been left to the jury. *Sumner* v. *McMonagle*, Stephen's Dig., N.B., 10.

Where the plaintiff's evidence shows that the defendant sued in trespass was acting *bona fide*, as a Justice of the Peace, and the jury so find, the plaintiff must prove notice of action, and this though defendant has pleaded only the general issue without adding "by Statute" in the margin. *Marsh* v. *Boulton*, 4 Q.B. (Ont.), 354.

A Magistrate is entitled to notice though he has acted without jurisdiction. Where it was clear that defendant had acted as a Justice and there was no evidence of malice, except the want of jurisdiction, it was held not necessary to entitle him to notice to leave it to the jury to say whether he had acted in good faith. *Bross* v. *Huber*, 18 Q.B. (Ont.), 282.

Where a Magistrate acts in direct contravention of the statute in issuing a warrant, without the proper information under the statute, or without even a verbal charge having been laid against the plaintiff, and there is no evidence of *bona fides* on his part, he is not entitled to notice of action. *Friel* v. *Ferguson*, 15 C.P. (Ont.), 584.

The Justice must honestly believe that he was acting in the

execution of his duty as a Magistrate with respect to some matter within his jurisdiction, or he must honestly believe he was acting in the execution of his office. He must believe in the existence of those facts, which, if they had existed, would have afforded him a justification under the statute, and honestly intended to put the law in force. (*Ib.*)

In the above case the Court expressed an opinion that the fact of a Magistrate issuing a warrant without the limits of the County for which he acts, does not necessarily disentitle him to notice of action.

Where a Magistrate acts clearly in excess of, or without jurisdiction, he is nevertheless entitled to notice, unless the *bona fides* of his conduct be disproved; but the plaintiff may require that question to be left to the jury, and if they find that he did not honestly believe he was acting as a Magistrate, he has no claim to notice. *Neill* v. *McMillan*, 25 Q.B. (Ont.), 485; followed in *Allan* v. *McQuarrie*, 44 Q.B. (Ont.), 62.

A notice of action against a Magistrate for false imprisonment, alleged both that the defendant did the acts complained of maliciously, and without any reasonable and probable cause, and also that he acted without jurisdiction, it was held that proof of either one or the other ground would be sufficient, provided there was a count in the declaration to which such proof would be applicable. *Robinson* v. *Tapley*, 4 Pugsley & Burbidge, 361.

The following notice of action:—"And also for that you on" etc., "at" etc., did cause the horse upon which the said J. U., was then riding, to be seized, taken, and led away, and the said J. U. to be obliged to dismount and give up the said horse, and converted and disposed of the said horse to your own use, and also, for that you caused the saddle and bridle and halter then on the said horse to be seized, taken, and carried away, and to be converted and disposed of to your own use, and other wrongs to the said J. U., then and there did" etc., was held sufficient to enable the plaintiff to recover the value of the horse as being his property. *Upper* v. *McFarland*, 5 Q.B. (Ont.), 101.

So the following notice was held sufficient: "For that you (the

defendant), on " etc., " at " etc., seized and took away divers goods and chattels of the plaintiff," stating the value, " and converted and disposed thereof to your own use, and other wrongs to the said (the plaintiff), did to his great damage of £50, and against the peace of our Lady the Queen." *Gillespie* v. *Wright*, 14 Q.B. (Ont.), 52. See as to form of action, *Connolly* v. *Adams*, 11 Q.B. (Ont.), 327.

A notice of action was given to a Justice of the Peace in the following words:—" To John G. Bowes, of the City of Toronto, Esquire, I, Annie Armstrong, of the City of Toronto, in the Province of Canada, spinster, residing with my father, James Armstrong, at No. 148 Duchess Street, in the said City of Toronto, etc.," and was signed by the plaintiff, and endorsed " C. P., *Armstrong* v. *Bowes*. Notice of Annie Armstrong to John G. Bowes. The within named Annie Armstrong resides at No. 148 Duchess Street, in the City of Toronto, Cameron & McMichael for the plaintiff." It was held that this notice did not conform to the provisions of the statute, not having the place of abode or business of the Attorney endorsed, nor the Court in which the action was to be brought, stated. *Armstrong* v. *Bowes*, 12 C.P. (Ont.), 539. The place of abode or business of the Attorney or Agent is necessary if the notice is served by the Attorney or Agent, or the Clerk of the Attorney for him. A person who serves it as agent for the plaintiff, must endorse his name and place of abode, or business, and the notice must also be endorsed with the name and place of abode of the plaintiff. *Moran* v. *Palmer*, 13 C.P. (Ont.), 528.

The notice must declare the place of residence of the Attorney. The subscription, therefore, of the Attorney at the bottom of the notice, " A. B., Attorney for the said C. D., Simcoe, Talbot District," was held insufficient. *Bates* v. *Walsh*, 6 Q.B. (Ont.), 498; see also *Gillespie* v. *Wright*, 14 Q.B. (Ont.), 52.

Where the name and place of residence of the plaintiff's Attorney were not endorsed on the notice but added inside at the foot of it, this was held sufficient. *Bross* v. *Huber*, 15 Q.B. (Ont.), 625.

The name and place of abode of the plaintiff's Attorney need not be endorsed on the back of the notice; it is sufficient if it appears on any part of it. *McGilvery* v. *Gault*, 1 Pugsley & Burbidge, 641; *Baxter* v. *Hallett*, Stephen's Dig., N.B., 11. As on the face of it (*De Gondouin* v. *Lewis* 10 A. & E., 117), if he describes his residence as of Birmingham generally, it will be sufficient (*Osborn* v. *Gough*, 3 B. & P., 551); but merely "given under my hand at Durham," was holden insufficient, for it was not descriptive at all of the Attorney's place of abode. *Taylor* v. *Fenwick*, 7 T.R., 635.

The notice must state the cause of action explicitly, and in a case where the Justice issued a void warrant, directing the Constable to take the plaintiff's goods, and in default of goods, to take his body, under which the Constable arrested the plaintiff, although there were goods on which he might have levied, a notice alleging a joint trespass against the Justice and Constable, was held defective in that it did not clearly set forth the grounds of the Justice's liability. *McGilvery* v. *Gault*, 1 Pugsley & Burbidge, 641. But if, in case of arrest, as aforesaid, the party arrested applied to a Judge for a discharge, and the Magistrate appeared before the Judge and opposed the application, he would thereby adopt the act of the Constable in arresting the plaintiff, and the arrest and imprisonment would be in law, the joint act of the Justice and Constable, and a notice so alleging it, would be sufficient. *McGilvery* v. *Gault*, 3 Pugsley & Burbidge, 217.

A notice describing plaintiff's place of abode, as "of the Township of Garafraxa, in the County of Wellington, labourer," without giving the lot and concession, was held sufficient. *Neill* v. *McMillan*, 25 Q.B. (Ont.), 485.

A notice of action describing the plaintiff's residence, as of the Township of B., in the County of P., is sufficient. *McDonald* v. *Stuckey*, 31 Q.B. (Ont.), 577; see also *Neill* v. *McMillan*, 25 Q.B. (Ont.), 485.

This notice may be served before the conviction, order or warrant complained of has been quashed, under the fourth section of the Act. *Haylock* v. *Sparke*, 22 L.J.M.C., 67.

A notice of action charging a Justice with an arrest and imprisonment, must state the time at which the grievance was committed, or otherwise it will be defective. *Sprung* v. *Anderson*, 23 C.P. (Ont.), 152.

A notice of action in trespass under "The Division Courts Act," Rev. Stat. (Ont.), chap. 51, s. 290, which is substantially the same as the Rev. Stat. (Ont.), chap. 73, was held insufficient for not stating the time and place of the alleged trespass. *Moore* v. *Gidley*, 32 Q.B. (Ont.), 233.

And it seems in an action against a Justice for arrest and imprisonment, a notice of action must allege a time and place. In an action against a Justice, the notice of action stated that the defendant assaulted plaintiff, imprisoned and kept him in prison for a long time, to wit, four days, and caused him to be illegally arrested, and gave him into the custody of a Constable, and illegally committed and sent him in such custody to the gaol at the Town of Lindsay, and caused him to be there confined for a long time. The notice was held insufficient, as omitting to state where and when the assault took place, and the evdience not being confined to the imprisonment at Lindsay. *Parkyn* v. *Staples*, 19 C.P. (Ont.), 240.

A notice of action to a person acting as a Constable under the Con. Stat. L.C., chap. 101, stated the cause of action to the effect following: "For that you on the 20th day of September, 1864, unlawfully did apprehend and seize A. B., and unlawfully did keep him prisoner for a long space of time, to wit, for the space of four days, and other wrongs to the said A. B., then did," it was held that this notice was defective in not shewing the place where the injury complained of was sustained. *Bettersworth* v. *Hough*, 16 L.C.R., 419.

The notice of action must contain a statement of the place where the trespass or injury was committed. *Kemble* v. *McGarry*, 6 O.S., 570. A notice of action against a Magistrate must distinctly specify the place where the act complained of was done. *Madden* v. *Shewer*, 2 Q.B. (Ont.), 115.

The place where the plaintiff was imprisoned must be correctly

stated. *Cronkhite* v. *Somerville*, 3 Q.B. (Ont.), 129. The notice stated a trespass on the 18th October, and on divers other days. The goods were seized on that day, but returned and seized on the 18th of November and sold; the notice was held sufficient. *Oliphant* v. *Leslie*, 24 Q.B. (Ont.), 398.

The notice need not describe the form of action (*Sabin* v *Deburg*, 2 Camp., 196); but if it do, and state it incorrectly, the variance will be fatal. *Strickland* v. *Ward*, 7 T.R. 631, (n.)

A notice that the suit will be brought in the Court of Queen's Bench or Common Pleas is insufficient; the particular Court intended must be specified. *Bross* v. *Huber* 18 Q.B. (Ont.), 282; *Neville* v. *Corporation Ross*, 22 C.P. (Ont.), 487; see also *Armstrong* v. *Bowes*, 12 C.P. (Ont.), 539.

The forms prescribed by this statute must be strictly followed in the notice of action, and where the notice stated that the writ would be issued in one of the superior Courts, but it was by mistake issued in the other Court, it was held that the notice could not be amended. *M'Crum* v. *Foley*, 6 P.R. (Ont.), 164; 10 C.L.J.N.S., 105.

It is no objection that the plaintiff declares by a different Attorney from the one by whom the notice was given and process issued. *McKenzie* v. *Mewburn*, 6 O.S., 486.

Where a defendant, after accepting service of an informal notice, added "and agree to accept the same as a sufficient notice of action to me under the statute," it was held that he could not afterwards rely on a defect in the notice. *Donaldson* v. *Haley*, 13 C.P. (Ont.), 87.

No particular addition or description of the Magistrate need be given in the notice. *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201.

It is not necessary to give notice of an action for a penalty against a Justice of the Peace for acting without proper property qualification; a Justice acting without qualification is not entitled to such notice. *Crabb* q.t. v *Longworth*, 4 C.P. (Ont.), 283.

Neither is notice of action necessary in an action for not returning a conviction. *Grant* q.t, v. *McFadden*, 11 C.P. (Ont.), 122.

By section 17 the Justice, after notice of action and before suit, may tender amends, and after the commencement of the action he may pay money into Court in addition to the tender or independently thereof.

Where a Justice, on receiving notice of action, makes a tender, which is not paid into Court, and the jury find the tender sufficient, the plaintiff is not entitled to have a verdict for the amount tendered; in other words the tender without payment into Court entitles the defendant to a verdict. *Gidney* v. *Dibblee*, 2 Pugsley, 388.

In New Brunswick the Rev. Stat., chap. 129, s. 11, provides that where the plaintiff shall be entitled to recover in any action against a Justice, he shall not have a verdict for any damages beyond two pence, or any costs of suit, if it shall be proved that he was guilty of the offence of which he was convicted or was liable for the sum he was ordered to pay, and had undergone no greater punishment than that assigned by law.

The plaintiff having been convicted before defendants, two Justices of the Peace, of selling spirituous liquors without a license, was fined a certain sum to be levied by distress, and if not paid within a limited time plaintiff to be imprisoned. At the expiration of the time limited for payment, defendants issued a warrant of commitment without previous issue of distress warrant. In an action against the Justices for false imprisonment, the Court held that as the plaintiff was guilty of the offence of which she was convicted and her imprisonment did not exceed that assigned by law to the offence, the defendants were entitled to the protection of the statute. *Smith* v. *Simmons*, 2 Pugsley, 203.

This statute is substantially the same as the 21st section of the Rev. Stat. (Ont.), chap. 73. See *Campbell* v. *Flewelling*, 2 Pugsley, 402. But the statute will not apply if the Justice had no right to issue the warrant, and the plaintiff was not liable to pay the amount, which by the warrant he was ordered to pay, and he has suffered a greater punishment than that assigned by law to the offence. *Campbell* v. *Flewelling*, *supra*.

But it seems a conviction, though defective, is admissible in

evidence, in order to repel any inference of malice and want of probable cause, and also to entitle the Justice to the benefit of this section. *McGilvery* v. *Gault*, 3 Pugsley & Burbidge, 217.

This section of the statute is not confined to actions in which the Justices had jurisdiction. *Bross* v. *Haber*, 15 Q.B. (Ont.), 625. It extends as well to trespass as to case. *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201.

The damages must be reduced where the defendant is proved guilty of the offence of which he was convicted. *Haacke* v. *Adamson*, 14 C.P. (Ont.), 201.

A warrant of commitment directed the plaintiff to be kept at hard labour, which the Act under which the conviction took place did not authorize. The turnkey swore that the plaintiff "did no hard work in gaol." It was held, however, that this was not sufficient to show that he was not put to compulsory work, so as to bring the defendant within that part of the section which requires it to be proved that the defendant had undergone no greater punishment than that assigned by law to the offence. *Graham* v. *McArthur*, 25 Q.B. (Ont.), 478.

The 23rd section of the Act provides for the payment of costs where malice and want of probable cause are alleged. This section has not been repealed in Ontario by any of the provisions of the Judicature Act, and when an action against a Magistrate is dismissed, it should be with costs to the defendant, between Solicitor and client. *Arscott* v. *Lilley*, 14 Appeal (Ont.), 283; overruling, S.C., 11 Ont. R., 285.

ADMINISTERING DRUGS.

The Rev. Stat. Can., chap. 162, s. 18, makes it a misdemeanor to administer or cause to be administered any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy any person.

The prisoner, unknown to the prosecutrix, put cantharides into her tea with the intent to excite her sexual passion and desire, in order that he might have connection with her. She drank the tea, suffered much pain, and was very ill in consequence, and it

was held that he might be convicted under this section. *R.* v. *Wilkins*, 9 Co. C.C., 20.

Though the administration of "any poison or other destructive or noxious thing" with intent to annoy is only a misdemeanor, yet if the effects are such as to cause grievous bodily harm, it will amount to felony, on the principle that a person must be taken to intend the natural consequence of his acts. *Tully* v. *Corrie*, 10 Cox C.C., 584.

To constitute the offence of unlawfully and maliciously administering "any poison or other destructive or noxious thing" under these sections, the thing administered must be noxious in itself, and not merely when taken in excess, and that although it may have been administered with intent to injure or annoy. *R.* v. *Hannah*, 13 Cox C.C., 547.

ADULTERATION OF FOOD, DRUGS AND AGRICULTURAL FERTILIZERS.

The law on this subject is contained chiefly in the Rev. Stat. Can., chap. 107. Under section 22, every person who wilfully adulterates any article of food or any drug, or orders any other person so to do, or sells or exposes the same for sale, incurs a penalty, varying in amount according to whether it is injurious to health or not injurious, or is a first or second offence. Under section 23, s.s. 2, if the person accused proves to the Court that he did not know of the article being adulterated, and shows that he could not with reasonable diligence have obtained that knowledge, he shall be liable only to the forfeiture of the article to the Crown.

It has been held that where a purchaser asks only for "milk," no offence is committed by selling skimmed milk, under section 6 of the Imp. 38 & 39, Vic., chap. 63. *Lane* v. *Collins*, 8 Legal News, 4. But under section 15 of the Canadian Act, cans in which skimmed milk is sold must bear on their exterior the word "skimmed," in letters of not less than two inches in length, and any person supplying such milk, unless asked for by the purchaser, shall not be entitled to plead the provisions of the Act as a defence.

Where a person sold as butter a composition of butter, lard, dripping tallow, palm oil and the fat of certain seeds, it was held that, unless the seller said that the butter was adulterated, he represented it to be butter and not anything else, and that no hardship was imposed on the seller by this construction, as he could easily ascertain whether the article was pure or not. *Fitzpatrick* v. *Kelly*, L.R. 8, Q.B., 337.

The appellant, a tea dealer, was convicted for selling as unadulterated, "green tea" which was adulterated. A person asked for two ounces of "green tea," at the appellant's shop, for which he paid 5½d., the shopman stating that he was authorized by his employers to gurantee all their green teas, of the value of 3s. per pound and upwards, as genuine green teas. On analysis the tea was proved to be painted, or faced with gypsum and Prussian blue, for the purpose of colouring it. The tea was sold in the same state in which it comes from abroad. The tea which is imported from China, as green tea, and generally known as such in the tea trade, is painted and faced in this manner, but this practice is not known to the public. Pure green tea, though not known generally in the trade as "green tea," is imported from Japan. It was held that the conviction was right. *Roberts* v. *Egerton*, L.R. 9, Q.B., 494.

A person who sells mustard admixed with flour and turmeric, substances not injurious to health, declaring at the time of such sale that he did not sell the article as pure mustard, is not guilty of any offence under the Act, and it is not necessary to declare the nature and proportion of the substances admixed. *Pope and Tearle*, L.R. 9, C.P., 499.

Under section 24 of the Act, every compounder or dealer in, and every manufacturer of, intoxicating liquor, who has in his possession or in any part of the premises occupied by him as such, any adulterated liquor, knowing it be adulterated, for the possession of which he is unable to account to the satisfaction of the Court before which the case is tried, shall be deemed knowingly to have exposed for sale adulterated food, and shall incur for the first offence a penalty not exceeding one

hundred dollars, and for each subsequent offence a penalty not exceeding four hundred dollars. See *White* v. *Bywater*, 19 Q.B.D., 582.

AFFRAY.

Two or more persons who fight together in a public place in a manner calculated to create terror and alarm, are guilty of an affray, and liable on summary conviction to three months imprisonment. Rev. Stat. Can., chap. 147, s. 14. If the fight is in private it will be an assault. It differs from a riot inasmuch as there must be three persons to constitute the latter, and also in not being premeditated.

AGENTS, BANKERS, FACTORS, ATTORNEYS.

The Rev. Stat. Can., chap 164, sections 59 to 76, relate to frauds by persons of this class. Although section 60 uses the words "or other agent," they do not extend the meaning of the previous words, but only signify persons, the nature of whose occupation is such that chattels, valuable securities, etc., belonging to third persons, would in the usual course of their business be entrusted to them. *R.* v. *Hynes*, 13 Q.B. (Ont.), 194; *R.* v. *Armstrong*, 20 Q.B. (Ont.), 245; *De Portugal*, 34 W. R., 42.

Under section 60 (*a*) there must be a direction in writing to apply the money in a specific manner. Where there is no such direction in writing the prisoner cannot be convicted. *R.* v. *Cooper*, L.R. 2, C.C.R., 123; as to what constitutes such direction see *R.* v. *Brownlow*, 14 Cox C.C., 216.

Where goods are sold and delivery orders given, the vendee becomes not an agent but the owner of the goods, and an undertaking given by him in writing to the vendor to hand over to the latter the proceeds of the sale, is not a direction in writing, nor is the vendee liable under this statute. *R.* v. *Bredin*, 15 Cox C.C., 412.

A stockbroker who receives money with a direction in writing to purchase certain stock on account of the prosecutor, is the agent of the latter to apply the money for a specific purpose

and a conversion of the money to his own use renders such stock-broker liable to conviction under this section. *R.* v. *Cronmire*, 16 Cox C.C., 42.

Section 60 (*b*) seems to apply to cases where the party deals with the securities without authority and contrary to the purpose for which they were entrusted, and where the security is used for the purpose for which it is entrusted, the charge cannot be sustained unless, perhaps, in a case where it is shown that the prisoner at the time of receiving the security intended to convert it to his own use. *R.* v. *Tatlock*, L.R. 2, Q.B.D., 157; see also on the construction of this section, *R.* v. *Christian*, L.R. 2, C.C.R., 94.

A solicitor entrusted with his client's money to invest on mortgage is not entrusted for "safe custody," under (*b*), and his fraudulent appropriation will not render him liable. *R.* v. *Newman*, 8 Q.B.D., 706.

T., a fruit broker, applied to his bankers for an advance as against certain goods which had been consigned to him and were then at sea, he depositing with them the endorsed bills of lading. Before making the advance the bankers required him to sign a letter of hypothecation, by which he undertook to hold the goods in trust for the bankers, and to hand over to them the proceeds "as and when received," to the amount of the advance. It was held that this letter contained a declaration of an express trust, such as would make the giver of it a trustee of the proceeds within the meaning of the 65th section of the Act, and his appropriation of them to his own use, an offence against this section. *R.* v. *Townshend*, 15 Cox C.C., 466.

Offences against the provisions of this Act from sections 60 to 76 are not triable at any Court of General or Quarter Sessions of the Peace. Rev. Stat. Can., chap. 174, s. 6.

AGENCY.

In regard to agency, a man is in general liable for what he authorizes another person to do. Thus where several persons combine for an unlawful purpose, any act by one of such persons, in prosecution of such purpose, renders all liable. *R.* v. *Curtley*,

27 Q.B. (Ont.), 613; *R.* v. *Slavin*, 17 C.P. (Ont.), 205; (see accessories, *post*, indictable offences.

So the owner of a shop is criminally liable for any unlawful act done therein in his absence by a clerk or assistant, as for instance for the sale of liquor without license by a female attendant. *R.* v. *King*, 20 C.P. (Ont.), 246.

AGGRAVATED ASSAULTS.

As to this, see Rev. Stat. Can., chap. 176, s. 3 (*c.*). See also assaults.

AGGRESSIONS BY SUBJECTS OF FOREIGN STATES.

The Rev. Stat. Can., chap. 146, now govern this subject. The sixth section of the statute does not apply to a British subject, but only to a citizen or subject of any foreign state or country. See *R.* v. *McMahon*, 26 Q.B. (Ont.), 195.

The seventh section of the statute applies to the case of a British subject. *R.* v. *Lynch*, 26 Q.B. (Ont.), 208.

Where the prisoner is proved to have said he was an American citizen, and had been in the American army, and there is no evidenee offered to contradict this, it is evidence against the prisoner as his own admissions and declarations of the country to which he belonged. *R.* v. *Slavin*, 17 C.P. (Ont.), 205.

Where a large body of armed men enter Canada, with intent to levy war, any person joining them *in any character*, though in itself peaceable, such as reporter merely, is equally liable with the others, for there is a common unlawful purpose, and any act in pursuance of it involves a share of the common guilt. *R.* v. *Lynch*, 26 Q.B. (Ont.), 208.

It is not necessary in order to render a party amenable to the statute, that he should actually have arms upon his person, it is quite sufficient that he is present and concerned with those who are armed, for all who are present at the commission of the offence are principals, and are alike culpable in law. *R.* v. *Slavin*, 17 C.P. (Ont.), 205.

Under the eighth section of the Act, the offence in the case of

a foreigner, and a subject is substantially different. In the case of a British subject, the Act in the second section requires proof, not only of the *status* as such subject, but also of joining with foreigners in the commission of it. See *R.* v. *Magrath*, 26 Q.B. (Ont.), 385.

ALLEGIANCE.

(*See* OATHS OF ALLEGIANCE).

ANIMALS, CRUELTY TO.

(*See* CRUELTY TO ANIMALS).

APPEALS TO THE JUDGE OF THE COUNTY COURT.

(*See* ONTARIO).

APPEALS TO THE SESSIONS.

(*See* ONTARIO, *See* also *ante*, p. 278).

APOSTACY.

The Imperial Statute 9 & 10 Wm. III., chap. 32, s. 1, provides that if any one educated in or having made profession of the Christian Religion, by writing, printing, teaching or advised speaking, maintains that there are more Gods than one, or denies the Christian Religion to be true or the Holy Scripture to be of Divine authority, for the second offence, besides being incapable of bringing an action, or being guardian, executor, legatee or grantee, must suffer imprisonment for three years without bail. There shall be no prosecution for such words spoken, unless information of such words be given on oath before a Justice, within four days after they are spoken, and the prosecution be within three months after such information. The offender is to be discharged, if within four months after his first conviction he renounces his error.

APPRENTICE.

The Rev. Stat. (Ont.), chap. 142, contains provisions respecting apprentices and minors.

When the defendant, a Justice of the Peace, convicted one Q., an apprentice, for having absented himself from his master's service without leave, and adjudged that he should give sufficient security to make satisfaction to his master, according to the statute, and in default of such satisfaction to be imprisoned in the Common Gaol for two months, unless the said satisfaction be sooner given, the conviction was quashed—first, because the articles of apprenticeship were not within the Act, for it appeared that the apprentice was a minor, and the articles were not executed by any one on his behalf, and secondly, because imprisonment for two months was not authorized by the statute. *R.* v. *Robertson*, 11 Q.B. (Ont.), 621.

ARMS KEPT FOR DANGEROUS PURPOSES.

The Rev. Stat. Can. chap. 149, empowers any Justice of the Peace on information on oath of one or more credible witnesses, that any arms are, for any purpose dangerous to the public peace, in the possession of any person, may issue his warrant to any Constable to search for and seize such arms, and to arrest the person in whose possession they are.

In the North-West Territories, the sale of improved arms is only allowed to certain persons and on certain conditions. Rev. Stat. Can. chap. 50, s. 101.

ARSON.

This offence is regulated by the Rev. Stat. Can., chap. 168. It arises where a person unlawfully and maliciously sets fire to the house of another, or to any building described in the Act as the subject of arson. The setting fire must be to such an extent that some part of the house is actually burnt, and a bare intent or attempt to set fire to the house is not sufficient. Arch. Crim. Pldg., 509; see, however, section 10. The offence may also be committed when a party sets fire to a house whether it is then in his possession, or the possession of any other person, but in such case there must be an intent to injure or defraud some third person, as for instance when a man sets fire to his own house to defraud an

Insurance Company. *R.* v. *Bryans*, 12 C.P. (Ont.), 161 ; sections 4 & 61. The burning must be malicious, but the malice need not be directed against the owner of the property. Section 60. The burning must also be wilful and no negligence or mischance will amount to such a burning. 2 Russ Cr., 1025.

The 8th section of the Act, extends the meaning of the term building. Under this section, the building need not necessarily be a completed or finished structure, it is sufficient if it is a connected and entire structure. *R.* v. *Manning*, L.R. 1, C.C.R., 338.

Under the 4th section of this Act, the intent to injure or defraud is made a part of the crime, and must be proved at the trial. *R.* v. *Cronin*, 36 Q.B. (Ont.), 342. But if so proved it is not absolutely necessary that it should be alleged in the indictment. *R.* v. *Suncie*, 1 Pugsley & Burbidge, 611.

This intention must be to injure or defraud some person who is not identified with the defendant. Therefore a married woman cannot be indicted for setting fire to the house of her husband with intent to injure him. *R.* v. *March*, 1 Mood, C.C., 182.

But it is not necessary to prove an intent to injure or defraud any particular person. It is sufficient to prove that the party accused did the act charged, with intent to injure or defraud, as the case may be. Rev. Stat. Can., chap. 174, s. 116.

An "unoccupied" building may come within section 4 of the statute, for if no one else is in occupation or possession of the building, the owner is in law in "possession." *R.* v. *Cronin*, 36 Q.B. (Ont.), 342.

Under section 9 of the statute, setting fire to goods in any building under such circumstances, that if the building were thereby set fire to, the offence would amount to felony, is felony. Under this section an intent to injure the owner of the goods is not sufficient, there must also be an intention to injure the owner of the building, and the act must be wilful and malicious as against him. *R.* v *Child*, L.R. 1, C.C.R., 307.

The prisoner wilfully set fire to goods consisting of furniture and stock in trade, being in a house in his occupation, with intent to defraud an insurance company. The house was not set on fire

or burnt, but he was held guilty of felony. *R.* v. *Lyons*, 8 Cox C.C., 84.

Throwing a light into a letter-box with the intention of burning the letters, but not the house, is not a felony within this section. *R.* v. *Batstone*, 10 Cox C.C., 20.

If a person maliciously, with intent to injure another by merely burning his goods, set fire to such goods in his house, that does not amount to felony under the 9th section, even although the house catches fire, unless the circumstances are such as to show that the person setting fire to the goods knew, that by so doing he would probably cause the house also to take fire and was reckless whether it did so or not, in which case there would be abundant evidence that he intended to bring about the probable consequence of his act namely, the burning of the house. *R.* v. *Nattress* 15 Cox C.C., 73.

Where it appeared that the prisoner set fire to a picture-frame in a house, where the probable result was setting fire to the floor of the house but the prisoner did not intend to set fire to the house, and was not aware that what he did would probably set the house on fire and so injure the owner, and the prisoner was not reckless or indifferent in his conduct, he was held not liable under the 9th section. *R.* v. *Harris*, 15 Cox C.C., 75.

Under the 11th section, recklessly and negligently setting fire to forests, etc., is a misdemeanor, and a Magistrate may, when the offence is not serious, dispose of the matter summarily.

Under sections 10 and 20 of the Act, unlawfully and maliciously attempting, by any overt act, to set fire to any property under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is felony.

The prisoner saturated a blanket with coal oil, and placed it so that if the flames were communicated to it, the building would have caught fire. He then lighted a match and held it in his fingers till it was burning well, and then put it down towards the blanket and got it within an inch or two of the blanket when the match went out. The blaze did not touch the blanket, and the prisoner threw away the match and left without making any

second attempt. No fire was actually communicated to the oil or blanket, it was held that these were overt acts immediately and directly tending to the execution of the principal crime, and that the prisoner was properly convicted under this section of an attempt at arson. *R.* v. *Goodman*, 22 C.P. (Ont.), 338.

Setting fire to a quantity of straw on a lorrie is not setting fire to a stack of straw within the meaning of the 19th section, the straw being on the way to market, and it not appearing whether it was being removed to or from a stack. *R.* v. *Satchwell*, L.R. 2, C.C.R., 21.

The general rule that a person intends the natural consequences of his act, applies in arson as well as in other cases. *R.* v. *Cronin*, 36 Q.B. (Ont.), 342.

A party intending the commission of an unlawful act is not in all cases responsible for the consequences which ensue. A sailor on board a ship entered a part of the vessel for the purpose of stealing rum, and while tapping a cask of rum a lighted match held by him, came in contact with the spirits which were flowing from the cask tapped by him, and a conflagration ensued, which destroyed the vessel, and it was held that a conviction for arson of the ship could not be upheld. *R.* v. *Faulkner*, 13 Cox C.C., 550, but this was on the ground that there was no offence unless the act were malicious and wilful. See *R.* v. *Pembliton*, L.R. 2, C.C.R., 119.

ASSAULT AND BATTERY.

An assault is an attempt unlawfully to apply any the least actual force, to the person of another, directly or indirectly. *R.* v. *Shaw*, 23 Q.B. (Ont.), 619.

There need not be an actual touching of the person assaulted, but mere words never amount to an assault. *R.* v. *Langford*, 15 (Ont.) R., 52.

A threat to shoot a person, coupled with the act of presenting a loaded firearm at him, although it is half-cock, is in law an assault. *Osborne* v. *Veitch*, 1 F. & F., 317.

To discharge a pistol loaded with powder and wadding at a

person, within such a distance that he might have been hit, is an assault. *R.* v. *Cronan*, 24 C.P. (Ont.), 102.

There can be no assault where the party consents to the act done. *R.* v. *Guthrie*, L.R. 1, C.C.R., 243; *R.* v. *Connolly*, 26 Q.B. (Ont.), 320.

The defendants were convicted for unlawfully assaulting F., "by standing in front of the horses and carriage, driven by the said F., in a hostile manner, and thereby forcibly detaining him, the said F. on the public highway against his will." The conviction was quashed because it alleged the detention of the driver, as occasioned by standing in front of the horses only, and not in front of the horses and carriage, and it was a question of law whether detaining the horses was also a detention of the driver. *R.* v. *McElligott*, 3 (Ont.) R., 535.

A Magistrate has no right to order an examination of the person of a prisoner. An examination by medical men, in pursuance of such an order, of the person of a female, in custody upon the charge of concealing the birth of her illegitimate child, constitutes an assault. *Agnew* v. *Dobson*, 13 Cox C.C., 625.

Using insulting and abusive language to a person in his own office, and on the public street, and using the fist in a threatening and menacing manner to the face and head of a person, amounts to an assault. *R.* v. *Harmer*, 17 Q.B. (Ont.), 555.

A conductor on a train is not liable for an assault under the Rev. Stat. Can., chap. 109, s. 25 (9), in attempting to put a person off the cars who refuses, after being several times requested, to pay his proper fare. *R.* v. *Faneuf*, 5 L.C.J., 167. No doubt, however, if the conductor used more force than was necessary, it would amount to an assault. Moderate correction of a servant, or scholar, by his master, is not an assault; but wounding, kicking and tearing a person's clothes, do not fall within the scope of moderate correction. *Mitchell* v. *Defries*, 2 Q.B. (Ont.), 430.

Chastisement unnecessary for the maintenance of school discipline, and out of proportion to the nature of the offence, and springing from motives of caprice, anger, or bad temper, cannot be justified by a schoolmaster. *Brisson* v. *Lafontaine*, 8 L.C.J., 173.

The owner of goods which are wrongfully in the possession of another, may justify an assault in order to repossess himself of them, no unnecessary violence being used. *Blades* v. *Higgs*, 10 C.B.N.S., 713.

The offence of assault is a misdemeanor, and is so punishable. *R.* v. *Taylor*, L.R. 1, C.C.R., 194. The punishment usually inflicted is fine, imprisonment, and sureties to keep the peace; and the Court of Quarter Sessions has a general jurisdiction to fine and imprison for an assault. *Ovens* v. *Taylor*, 19 C.P. (Ont.), 49-52.

If, on the hearing of a charge of assault evidence be given of a higher offence, such as rape, the Justices may still convict of the common assault, provided they disbelieve the evidence as to the other point. *Ex parte Thompson*, 6 H. & N., 193; *Wilkinson* v. *Dutton*, 3 B. & S., 821.

A person making a *bona fide* claim of right to be present, as one of the public, in a law Court at the hearing of a suit, is not justified in committing an assault upon a police constable and an official who endeavour to remove him. Such a claim of right does not oust the jurisdiction of the Magistrate who has to try the charge of assault, and he may refuse to allow cross-examination, and to admit evidence in respect of such a claim. *R.* v. *Eardley*, 49 J.P., 551.

The Rev. Stat. Can., chap. 162, s. 41, relates to indecent assaults If a girl, between the ages of ten and twelve, consents to the act, there is no offence. *R.* v. *Johnson*, 10 Cox C.C., 144; and a girl seven years of age may give consent so that there will be no offence. *R.* v. *Roadley*, 14 Cox C.C., 463. There cannot be an indecent assault where there is consent. *R.* v. *Wollaston*, 12 Cox C.C., 180.

But where a child submits to an act, not knowing its nature, it is an assault, though if there were a positive will and consent exercised, it would not be. *R.* v. *Lock*, 2 C.C.R., 10.

It may be observed that indecent assaults fall within the provisions of the Rev. Stat. Can., chap. 174, s. 140.

The Rev. Stat. Can., chap. 162, s. 34, and following sections,

govern the subject of assaults. Various acts of assault are under this statute made misdemeanors.

By section 191 of chap. 174, of the Rev. Stat. Can., in a trial for any felony which includes an assault, there may be an acquittal of the felony and a conviction of the assault, if the evidence warrants such finding. But under this section there cannot be a conviction of an assault unless the assault is included in, and forms parcel of the felony, and the assault must also be committed in attempting to commit the felony, and in pursuance of that object. *R.* v. *Dingman*, 22 Q.B. (Ont.), 283; *R.* v. *Cregan* 1 Hannay, 36; *R.* v. *Ganes*, 22 C.P. (Ont.), 185; *R.* v. *Smith*, 34 Q.B. (Ont.), 552.

So on an indictment for shooting with a felonious intent, the prisoner, if acquitted of the felony, may be convicted of a common assault. *R.* v. *Cronan*, 24 C.P. (Ont.), 106.

So on an indictment for an assault with intent to do grievous bodily harm, if the Jury find the assault committed, but negative the intent, they may convict of a common assault. *R.* v. *Lackey*, 1 Pugsley & Burbidge, 194.

So on a count for assaulting, beating, wounding and occasioning actual bodily harm against the statute, the prisoner may be convicted of a common assault. *R.* v. *Oliver*, 8 Cox C.C., 384.

The prisoner was charged with an assault with intent to commit murder, in that he had opened a railway switch with intent to cause a collision, whereby two trains did come into collision causing a severe injury to a person in one of them, it was held that this was not an assault with intent to commit murder within the meaning of the Extradition Treaty. *Re Lewis*, 6 P.R. (Ont.), 236; though it is felony under section 25 of Rev. Stat. Can., chap. 162.

Under the Rev. Stat. Can., chap. 109, s. 57, s.s. 7, every person who assaults or resists any railway Constable in the execution of his duty, or who incites any person so to do, shall, for every such offence, be liable, on summary conviction, to a penalty not exceeding eighty dollars, or to imprisonment, with or without hard labour, for a term not exceeding two months. The same rule

applies to assaults on Constables employed on Government Railways. Rev. Stat. Can., chap. 38, s. 56.

To support a charge of an assault on a Constable in the execution of his duty, it is not necessary that the defendant should know that he was a Constable then in the execution of his duty; it is sufficient that the Constable should have been acting in the execution of his duty, and then been assaulted. *R.* v. *Forbes*, 10 Cox C.C., 362. If a Constable sees an assault committed, he may, recently after that assault, and before all danger of further violence has ceased, apprehend the offender; and if in so doing he is resisted and assaulted, the person assaulting is liable to be convicted of assaulting a Constable in the execution of his duty. *R.* v. *Light*, 7 Cox C.C., 389.

If a Constable in making an arrest is assaulted, and it appears that the Constable was acting at the time in the due execution of his duty, and had a right to make the arrest, the person committing the assault may be convicted of assaulting the Constable in the execution of his duty. See *R.* v. *Light*, 7 Cox C.C., 389; Rev. Stat. Can., chap. 162, s. 34.

But if the Constable had no right to make the arrest, the person assaulting him cannot be convicted of assaulting a Constable in the execution of his duty. *Galliard* v. *Laxton*, 9 Cox C.C., 127; *R.* v. *Saunders*, L.R. 1, C.C.R., 75.

It must be remembered, however, that if the party used more force and violence than was necessary, he might be convicted of a common assault. *R.* v. *Mabel*, 9 C. & P., 474.

If the apprehension is unlawful, the prisoner cannot be convicted of wounding the Constable with intent to prevent his lawful apprehension. *R.* v. *Marsden*, 11 Cox C.C., 90.

It is submitted, notwithstanding the decision of the majority of the Court, in *R.* v. *Lantz*, 19 Nova Scotia R. 1, that a Constable executing civil process, is not a Peace Officer in the due execution of his duty, so as to be entitled to the protection of this clause, and a party assaulting him under such circumstances would be liable only for a common assault.

Where a Police Officer attempts an arrest, by virtue of a war-

rant, for any offence less than felony, as for instance, an offence punishable on summary conviction, the person resisting such arrest, and assaulting the officer, in so doing, cannot be convicted of such assault, if the officer has not the warrant in his possession at the time of the arrest—a Constable not being authorized to arrest for any offence less than felony, unless he has the warrant in his possession at the time. *Codd* v. *Cabe*, L.R. 1, Ex. D., 352.

If a warrant of commitment, issued by a Justice of the Peace, is good on its face, and the Magistrate had jurisdiction in the case, it is a justification to a Constable to whom it is given to be executed, and a person resisting him is guilty of an assault. But a warrant good on its face, will not protect a Justice, if the warrant has no valid foundation, as if it is issued without any proper information being laid. *Appleton* v. *Lepper*, 20 C.P. (Ont.), 138. Where the warrant was based on a conviction for an unlawful assault, it was held not necessary, in order to make the warrant legal, and a justification to the Constable that it should be stated in the conviction and warrant that the complainant had requested the Magistrate to proceed summarily.

An assault is none the less a breach of the peace because it is committed by a husband upon the person of his own wife, and the wife is a competent person to make the complaint. *Ex parte Abell*, 2 Pugsley & Burbidge, 600.

A battery is not necessarily a forcible striking with the hand or stick or the like, but includes every touching or laying hold, however trifling, of another person or his clothes in an angry, revengeful, rude, insolent or hostile manner, for instance, jostling another out of the way. Thus, if a man strikes at another with a cane or fist, or throws a bottle at him, if he miss it is an assault, if he hit it is a battery.

But it is not a battery merely to lay hands on another to attract his attention, provided it be not done hostilely. *Coward* v. *Baddeley*, 4 H. & N., 478.

ATTEMPTS TO MURDER.

The Rev. Stat. Can., chap 162, s. 8, and following sections,

render felonious various acts done with intent to commit murder. Thus administering, or causing to be administered, any poison or other destructive thing (s. 8), destroying or damaging a building with gunpowder (s. 9), setting fire to any ship or vessel or any part thereof, or casting away or destroying any vessel (s. 10), or shooting at any person or by drawing a trigger or in any other manner attempting to discharge at any person any kind of loaded arms (s. 11), or by any other means attempting to murder is felony (s. 12).

B. drew a loaded pistol from his pocket for the purpose of murdering S., but before he had time to do anything further in pursuance of his purpose, the pistol was snatched out of his hand and he was at once arrested. It was held that this was not an attempt to murder within the meaning of section 12 of this Act. *R.* v. *Brown*, 10 Q.B.D., 381.

BANKS.

Under the Rev. Stat. Can., chap. 120, s. 80, any officer of a bank wilfully giving any creditor thereof an undue or unfair preference over the other creditors is guilty of a misdemeanor, and by section 81, the making of any wilfully false or deceptive statement in any account, statement, return, report or other document, respecting the affairs of the bank is, unless it amounts to a higher offence, a misdemeanor punishable by imprisonment for a term not exceeding two years. Under section 82, it is a misdemeanor for any person, firm or company to use the title of "bank," "banking company," "banking house," "banking association," or "banking institution," without adding to the said designation the words "not incorporated," or without being authorized so to do by this Act or by some other Act in force in that behalf.

Under the 59th section of the Rev. Stat. Can., chap. 164, it is a felony for any cashier, assistant cashier, manager, officer, clerk or servant of any bank to secrete, embezzle or abscond with any money or security for money entrusted to him, whether belonging to the bank or to any person lodging the same with the bank.

BANKRUPTCY.

(*See* INSOLVENCY.)

BARRATRY.

This is the offence of *frequently* inciting and stirring up suits and quarrels between Her Majesty's subjects, either at law or otherwise. The offence is a misdemeanor, punishable by fine and imprisonment. It is insufficient to prove a single act, inasmuch as it is of the essence of the offence that the offender should be a *common* barrator.

BAWDY HOUSE.

(*See* VAGRANCY ; *See* also *ante*, p. 193.)

BETTING AND POOL SELLING.

The Rev. Stat. Can., chap. 159, s. 9, now governs this offence. The English Act, relating to betting houses, uses the the words "house, room, or other place," and the Canadian Act for the suppression of gaming houses, Rev. Stat. Can., chap. 158, uses the words, "any house, room, or place." A tree in Hyde Park, to which a man used to resort to bet, was held not a "place" under the Act. *Daggett* v. *Catterns*, 12 Jur. N.S., 243. Under that Act the place must be one of which the defendant is or may be the owner or occupier, or of which he has the care or management. (*Ib.*). But a temporary wooden structure erected during races, was held to be within this Act. *Shaw* v. *Morley*, L.R., 3 Ex., 137 ; so a field is a place within this Act. *Eastwood* v. *Miller*, 30 L.T.N.S., 716 ; so is an umbrella on a race-course. *Bowes* v. *Fenwick*, L.R., 9 C.P., 339 ; *Haigh* v. *Sheffield*, L.R., 10 Q.B. 102.

Where an information charged defendant with having on the 5th October, and on divers other days and times between the said 5th October, and the laying the information (16th November) kept a betting-house, a conviction for so using the house on the 8th November, was held good and valid and did not allege more than one offence. *Onley* v. *Gee*, 4 L.T.N.S., 338.

The offence of keeping a gambling house comes within the provisions of the Rev. Stat. Can., chap. 174, s. 140.

BIGAMY.

This offence consists in marrying a second time while the defendant has a former husband or wife still living. It is felony under the Rev. Stat. Can., chap. 161, s. 4.

The first marriage must be valid. If it is *void*, bigamy cannot be committed, otherwise if it is *voidable* only. *R.* v. *Jacobs*, 1 Mood C.C., 140; see *Breakey* v. *Breakey*, 2 Q.B. (Ont.), 353. But it is not necessary that the second marriage should be valid and regular in all respects. *R.* v. *Brawn*, 1 C. & K., 144; *R.* v. *Allen*, L.R. 1, C.C.R., 367.

A *bona fide* belief by the prisoner, at the time of the second marriage, that her husband was then dead, is no defence. *R.* v. *Gibbons*, 12 Cox C.C., 237; unless of course there has been continued absence for seven years. The decisions are contradictory on the point as to whether it is a defence when the seven years have not elapsed. See *R.* v. *Moore*, 13 Cox C.C., 544; *R.* v. *Bennett*, 14 Cox C.C., 45; *R.* v. *Horton*, 11 Cox C.C., 670.

If the Crown proves the second marriage of the prisoner while his first wife is living, the prisoner must prove the absence of the first wife during the seven years preceding the second marriage, and where such absence is not established, it is not incumbent on the prosecution to prove the prisoner's knowledge that the first wife was living at the time of the second marriage. *R.* v. *Dwyer*, 27 L.C.J., 201.

It has been held that where the prisoner relies on the first wife's lengthened absence, and his ignorance of her being alive, he must show enquiries made, and that he had reason to believe her dead, or at least could not ascertain where she was or that she was living, more especially where he has deserted her, and this, notwithstanding that the first wife has married again. *R.* v. *Smith*, 14 Q.B. (Ont.), 565. It is conceived, however, that this case will not now apply. Under the statute, the absence, unless for seven years, would not be a defence for the prisoner, and when there is

continual absence for that time, the burden of proving that the prisoner knew that his wife was living within that time, is upon the prosecution. *R.* v. *Curgerwen*, L.R. 1, C.C.R., 1.

After the expiration of the seven years the prisoner cannot be convicted, unless the prosecution prove that within such seven years the prisoner was aware of the existence of his first wife. If such evidence is not forthcoming, the prisoner may legally marry after the seven years have expired, though it is proved that his first wife is then living. See *R.* v. *Lumley*, L.R. 1, C.C.R., 198.

In a prosecution for bigamy where there is a foreign marriage, the foreign law must be strictly proved, and the marriage must be proved to be in accordance with that law. This is necessary, even where the Justices, in their individual capacity, know that the marriage has been celebrated with the formalities required by the foreign law. *R.* v. *Smith*, 14 Q.B. (Ont.), 565, This, however, is not necessary if the marriage is admitted by the defendant, and there are corroborating circumstances strengthening the admission. The testimony of the officiating clergyman, that he had a marriage license, which was brought to him by one of the parties, that he duly returned the same, that all the forms of law were observed as required by the license, and that the marriage was performed according to the rites and ceremonies of his church, is sufficient proof of the license having been issued and returned, and of the marriage having been duly solemnized. *R.* v. *Allen*, 2 Oldright, 373.

It has been held that the admission of the first marriage by the prisoner, unsupported by other testimony, is sufficient to justify a conviction for bigamy, so far as proof of the first marriage is concerned. *R.* v. *Creamer*, 10 L.C.R., 404.

The Act is not *ultra vires* the Dominion Legislature, either as being repugnant to Imperial Legislation or on any other grounds.

In one case in order to prove the second marriage which took place in Michigan, in addition to the evidence of the girl herself, the evidence of the officiating minister was tendered, who showed that during the last twenty-five years he had solemnized hundreds of marriages, that he was a clergyman of the Methodist

Church, that he understood the laws of Michigan relating to marriage, that he had been all the while resident in Michigan, that he had had communications with the Secretary of State regarding these laws, and that this so-called second marriage was solemnized by him according to the marriage laws of that State. The evidence was held admissible in proof of the validity of the second marriage, and was sufficient proof of the same, even assuming that such ought not to have been presumed. *R.* v. *Brierly*, 14 Ont. R., 525.

The first wife is not admissible as a witness to prove that her marriage with the prisoner was invalid, (*R.* v. *Madden*, 14 Q.B. (Ont.), 588), and she cannot be allowed to give evidence either for or against the prisoner (*R.* v. *Bienvenu*, 15 L.C.J., 141). But after proof of the first marriage the second wife may be a witness, for then it appears that she is not the legal wife of the prisoner. *R.* v. *Tubbee* 1, P.R. (Ont.), 98.

There must also be proof that the husband or wife was alive at the date of the second marriage. *R.* v. *Lumley*, L.R. 1, C.C.R., 196 ; *R.* v. *Curgerwen*, L.R. 1, C.C.R., 1.

It was proved that the prisoner and his wife were married in 1865, and that they lived together after marriage, but how long did not appear. There was no evidence of separation or when they last saw each other. In 1882, the prisoner married a second time, and was indicted for and convicted of bigamy. The conviction was held right, there being no evidence to displace the presumption, arising on this state of facts, that the first wife was living at the date of the second marriage *R.* v. *Jones*, 15 Cox C.C., 284.

Where the first marriage is contracted in Canada and the second in the United States, it is necessary to prove that the prisoner was, at the time of his second marriage, a subject of Her Majesty, resident in Canada, and that he left Canada with intent to commit the offence. *R.* v. *Pierce*, 13 Ont. R., 226.

BLASPHEMY.

The mere denial of the truth of the Christian religion is not

enough to constitute the offence of blasphemy, there must be added a wilful intention to pervert insult and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentation or artful sophistries, calculated to mislead the ignorant and unwary. *R.* v. *Ramsay*, 15 Cox C.C., 231 ; see also *R.* v. *Bradlaugh* (*Ib.*), 217.

BODILY HARM.

The Rev. Stat. Can., chap 162, sections 13 and following sections, relate to the infliction of bodily harm, and grievous and actual bodily harm under different circumstances. Section 33 declares that every one who by any unlawful act, or by doing negligently or omitting to do any act, which it is his duty to do, causes grievious bodily injury to any other person, is guilty of a misdemeanor.

B., knowing that he had gonorrhœa, had connection with a girl without informing her of the fact, by means of which the disease was communicated to her, and it was held that he might be convicted of inflicting actual bodily harm, it appearing that, though the girl consented, she was ignorant of B. having the disease, and would not have consented had she been aware of the fact. *R.* v. *Sinclair*, 13 Cox C.C., 28.

The prisoner was the first or almost the first to leave the gallery of a theatre at the close of the performance. He ran down the stairs, wilfully put out the gas and placed an iron bar across the doorway. This caused a panic among the persons when leaving the gallery, and several of them were seriously injured through the pressure of the crowd, the Court held that the prisoner was properly convicted under the 14th section of the Act. *R.* v. *Martin*, 8 Q.B.D., 54.

BRIBERY.

The Rev. Stat. Can., chap. 8, defines the persons who are guilty of bribery. Section 84 declares that giving money to procure votes, (*b*) promising to procure employment, (*c*) giving money to

obtain the return of any person to serve in the House of Commons, (*d*) procuring such return in consequence, or (*e*) advancing money to be used in bribery, are respectively misdemeanors. Section 85 makes certain acts of voters bribery and misdemeanors. To bribe or attempt to bribe any Officer of Customs is a misdemeanor. Rev. Stat. Can. chap. 32, s. 221.

Under section 84, it is an offence to promise to pay a voter at an election his travelling expenses, conditionally on his coming and voting for a particular candidate, but a promise to pay a voter his travelling expenses without such a condition, is legal. Where a letter desired an elector to come from H. to C. to vote at the latter place for a particular candidate, a postscript to the letter said: "Your travelling expenses will be paid," it was held that this was evidence of bribery by the writer of the letter. *Cooper* v. *Slade*, 6 E. & B., 447.

It was agreed between three candidates and their supporters that there should be a test ballot to determine who should stand at the election. R., one of the three, was at the head of the ballot, and ultimately elected M.P., but it appeared that his agents had given money to voters to vote for him at the test ballot without, however, making any stipulation as to their votes at the election. This was held to be bribery. *Brett* v. *Robinson* L.R. 5, C.P., 503.

Under section 89 the offence of personation is complete upon the personator tendering the voting paper, although on being asked if he be the person whose name is signed to the voting paper, he answers "No," and the vote is accordingly rejected. A conviction for such offence need not set out the facts constituting the offence. *R.* v. *Hague*, 9 Cox C.C, 412.

BRIDGES.

The Act respecting bridges, Rev. Stat. Can., chap. 93, imposes a penalty for opening a bridge without the notice required to be given to the Railway Committee of the Privy Council, or for opening contrary to an order of the Railway Committee, or for

wilfully omitting to report an accident on or to the bridge. (*Ib.*, s. 18, 19 and 20).

BUGGERY.

This offence is felony punishable with imprisonment for life, under the Rev. Stat. Can., chap. 157, s. 1. An attempt to commit the offence or an indecent assault on any other male, is a misdemeanor. (*Ib.*, s. 2).

BURGLARY.

This offence has been defined to be a breaking and entering the mansion-house of another in the night, with intent to commit some felony within the same, whether such felonious intent be executed or not. A statutory definition of the crime is contained in the Rev. Stat. Can., chap. 164, s. 37. "Every one who enters the dwelling house of another with intent to commit any felony therein, or being in such dwelling house commits any felony therein, and in either case breaks out of the said dwelling house in the night, is guilty of burglary."

Section 2 (*k*) of the same statute enacts, that: "For the purposes of this Act (and of course the offence of burglary), the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day, and the day shall include the remainder of the twenty-four hours."

To constitute a dwelling-house within the law of burglary, the house must either be the place where one is in the habit of residing, or some building between which and the dwelling-house there is a communication either immediate or by means of a covered and enclosed passage leading from one to the other, the two buildings being occupied in the same right. *R.* v. *Jenkins*, R. & R., 224. See s. 36 of the Act.

Under section 40 of the Act, breaking into any building within the curtilage, although it is not a dwelling-house in the sense applicable to burglary as already explained, is felony where the party

commits any felony, therein or where, being in such building, he commits any felony and then breaks out.

By section 39, entering any dwelling-house in the night with intent to commit felony is felony. And by the Rev. Stat. Can., chap. 174, s. 193, where a breaking and entering are proved to have been made in the day time, and no breaking out appears to have been made in the night time, or when it is left doubtful whether such breaking and entering or breaking out took place in the day or night time, the prisoner may be acquitted of the burglary but may be convicted of breaking and entering the dwelling-house with intent to commit a felony, under the preceding section of the statute, and a person charged with an offence against the statute, cannot secure an acquittal by showing that the breaking and entering were such as to amount in law to burglary. (*Ib.* s. 194).

Housebreaking differs from burglary, in this, that the former may be committed by *day*, the latter by *night*. This offence consists in breaking and entering any dwelling-house, school-house, shop, warehouse or counting-house, with the intention of committing any felony therein, or being in such house committing any felony, and breaking out of the same. Section 41.

Under section 43, it is a misdemeanor to have in possession at night implements for the purpose of housebreaking, without lawful excuse. Where several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of the housebreaking implements, all may he found guilty, for the possession of one is in such case the possession of all. *R.* v. *Thompson*, 11 Cox C.C., 362. But proof of a general intent to break or enter any dwelling-house is insufficient. There must be proof of an intent to enter some particular building. *R.* v. *Jarrald*, 9 Cox C.C., 307.

Larceny in a dwelling-house is provided for by the 45th section of the Act. This crime differs from housebreaking inasmuch as there need not be any breaking, nor any entry with a view to the commission of the larceny. The goods, however, must be under the protection of the house, and not in the personal care of the owner. If in such personal care, the prisoner would either be

guilty of stealing from the person or robbery, if there were circumstances of violence, force, and putting in fear. In burglary, there need not be any actual larceny; it will suffice if there is an intent to commit a felony.

But in relation to the duties of Justices of the Peace, no extended enquiry into the technicalities of the aforesaid offences is necessary. The material question will be whether there is a felonious intention or a felonious act. If the offence is not burglary, it may be housebreaking; if not the latter offence, it may be larceny in a dwelling-house; the various sections of the statute applying to almost all cases where either a felony has been committed, or there is an intention to commit the same.

So sacrilege is felony under the 35th section of the Act.

An attempt to commit a burglary may be established on proof of a breaking with intent to rob the house, although there be no proof of actual entry of any portion of prisoner's person. *R.* v. *Spanner*, 12 Cox C.C., 155.

Where a prisoner was indicted under the 39th section, for breaking and entering a shop with intent to commit a felony, it was proved that he broke in the roof with intent to enter and steal, and was then disturbed; but there was no evidence that he ever entered the shop. It was held that he might be convicted of the misdemeanor of attempting to commit a felony. *R.* v. *Bain*, L. & C., 129.

An opening of a door in a shop under the same roof where the prisoner lived as a servant, for the purpose of committing a felony, is a breaking and entering. *R.* v. *Wenmouth*, 8 Cox C.C., 348.

BY-LAWS.

In Ontario the Rev. Stat., chap. 184, authorizes municipalities to pass certain By-laws and by section 289 a copy of any By-law, written or printed without erasure or interlineation and under the seal of the corporation, and certified to be a true copy by the Clerk and any members of the Council, shall be deemed authentic.

A By-law founded on an Act not then in force is invalid. Thus where a By-law was passed on the 27th of March to go into force

on the 3rd of April following, in anticipation of an Act passed the 10th of March to go into operation the 2nd of April then next ensuing, a conviction on the By-law was quashed. *R.* v. *Reed*, 11 Ont. R., 242.

A conviction for an offence against a By-law must set out the By-law where the statute on which the By-law is framed merely gives power to pass By-laws, but does not make the particular Act, for which the conviction is an offence. *Starr* v. *Heales*, 4 Russell & Geldert, 84. In Ontario see Rev. Stat., chap. 184, s. 427.

A By-law is bad which discriminates in favour of one class of citizens over another. *R.* v. *Pipe*, 1 Ont. R., 43.

A conviction was that the defendant did on the 16th May, 1886, create a disturbance on the public streets of the Village of L., by beating a drum, etc., contrary to a certain By-law of the village. The information was in like terms, except that the Act was laid as done on Sunday. The By-law was passed under the Rev. Stat. (Ont.), chap. 184, s. 489, s.s. 46, whereby power was given to pass by-laws "for regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noise or noises calculated to disturb the inhabitants." The By-law was "the firing of guns, blowing of horns, beating of drums and other unusual or tumultuous noises in the public streets of L., on the Sabbath day, are strictly prohibited." The only evidence was that given by a person who said he "saw" the defendant "playing the drum on the streets of L.," on the day in question. It was held that the conviction was bad in not alleging that the beating of the drum was without any just or lawful excuse. *R.* v. *Martin*, 12 Ont. R., 800. See also *R.* v. *Reeves*, 1 Ont. R., 490; *R.* v. *Coutts*, 5 Ont. R., 644.

CANADA TEMPERANCE ACT.

(*See* SCOTT ACT).

CANNED GOODS.

The Rev. Stat. Can., chap. 105, s. 2, provides that every package of canned goods sold or offered for sale in Canada for con-

sumption therein, shall have attached thereto or imprinted thereon, a label or stamp setting forth in legible characters the name and address of the person, firm or company by whom the same was packed, or of the dealer who sells the same or offers it for sale, and a contravention of the Act renders the party liable on summary conviction to a penalty of two dollars for each such package and for a subsequent offence a penalty not exceeding twenty dollars, and not less than four dollars for each package, in respect of which any such provision has been violated.

CHAMPERTY.

(*See* MAINTENANCE.)

CHEATS AND FRAUDS.

If a person puts a false mark or token upon an article, as upon a picture, the name of a well-known painter, and sells the article by means of that false token, his offence amounts to a cheat at Common Law. *R.* v. *Closs*, 3 Jur. N.S., 1309.

The 80th section of the Rev. Stat. Can., chap. 164, provides that every one who, by any fraud or unlawful device or ill-practice in playing at any game of cards or dice, or of any other kind, or at any race, or in betting on any event, wins or obtains any money or property from any other person, shall be held to have unlawfully obtained the same by false pretences.

CHILD ABANDONING.

The Rev. Stat. Can., chap. 162, s. 20, enacts that everyone who unlawfully abandons or exposes any child, being under the age of two years, whereby the life of such child is endangered, or the health of such child has been, or is likely to be, permanently injured, is guilty of a misdemeanor. There cannot be an unlawful abandonment of a child under this section, except by a person on whom the law casts the obligation of maintaining and protecting the child, and makes this a duty. A person who has the lawful custody and possession of the child, or the father who is legally bound to provide for it (see section 19 of this statute), may offend

against the provisions of the statute. But strangers to the child, under no obligation to provide for it, do not come within the statute. *R.* v. *White*, L.R. 1, C.C.R., 311. If the abandonment, instead of merely injuring the health of the child, causes its death, the prisoner would it seems, be guilty of murder or manslaughter, according to the circumstances. (*Ib.*, 314.) Though a father has not the actual custody of his child, yet, as he is legally bound to provide for it, his abandonment and exposure of it brings him within the statute. (*Ib.*, 311).

So the mother of a child, who has the actual custody of it, may come within the Act. The mother of a child, five weeks of age, packed it up in a hamper as a parcel, and sent it by railway, addressed to the place where its putative father was then living, giving directions to the clerk at the station to be very careful of the hamper and send it by the next train, but saying nothing as to its contents. The child reached its destination in safety, but it was held that the mother had unlawfully abandoned and exposed the child. *R.* v. *Falkingham*, L.R. 1, C.C.R., 222.

To create this offence at Common Law the abandonment must cause an injury to the health of the child. *R.* v. *Philpot*, 1 Dears, 179.

CHILD, NEGLECTING TO MAINTAIN.

The Rev. Stat. Can., chap. 162, s. 19, provides that everyone who being legally liable either as parent, guardian or otherwise to provide for any child necessary food and clothing, wilfully and without lawful excuse refuses to do so is guilty of a misdemeanor.

It would seem that under this section, there can be no conviction unless the parent has the means to provide for the child. *R.* v. *Rugg*, 12 Cox C.C., 16.

A parent who wilfully withholds necessary food from his child, with the wilful determination by such withholding to cause the death of the child is guilty of murder if the child dies. A parent who has the means to supply necessaries but who negligently though not wilfully withholds from a child food which if administered would sustain its life, and the child consequently dies, is guilty of manslaughter. *R.* v. *Coude*, 10 Cox C.C., 547.

CHILD STEALING.

The Rev. Stat. Can., chap. 162, s. 45, governs this offence. Under s.s. 2, no person who has claimed any right to the possession of such child, or is the mother or has claimed to be the father of an illegitimate child shall be liable to prosecution. The force or fraud must be practised upon the child himself in order to bring it within this section, and it is not sufficient if the force is exercised on the guardian or any other person than the child taken or detained. *R.* v. *Barrett*, 15 Cox C.C., 658.

There may be a conviction under this section where the child has been in the service of the prisoner, and is unlawfully detained by fraud. *R.* v. *Johnson*, 15 Cox C.C., 481.

CHINESE IMMIGRATION.

The Rev. Stat. Can., chap. 67, restricts the immigration of Chinese to Canada, and requires the payment of fifty dollars duty on each arrival. To wilfully evade or attempt to evade any provision of the Act, as respects the payment of duty is a misdemeanor. (*Ib.*, s. 17), and to take part in organizing any court or tribunal composed of Chinese persons (*Ib* s. 18), or to molest persecute or hinder any officer or person carrying out the Act is a misdemeanor. (*Ib.*, s. 19).

CHURCHES.

The Act respecting offences against religion, Rev. Stat. Can., chap. 156, makes it a misdemeanor for any person by threats of force to unlawfully obstruct or prevent any clergyman from performing his duties, or to wilfully disturb, interrupt or disquiet any assemblage of persons met for religious worship.

This statute would only protect the clergyman when engaged in the performance of the acts therein mentioned, and not when performing other duties, such as collecting alms. *Cope* v. *Barber*, L.R. 7, C.P., 393.

Where several persons are prosecuted, tried, and convicted together of an offence against section 2 of the Act, which imposes

penalties on those who disturb any assemblage of persons met for religious worship, there should be only one conviction drawn up, and not a separate conviction for each person offending, but the conviction of each person separately is no doubt correct. The offence is in its nature the act of each, and all may not necessarily be equally guilty. *Parsons* q.t. v. *Crabbe*, 31 C.P. (Ont.), 151.

COCKFIGHTING.

(*See* CRUELTY TO ANIMALS).

COINAGE OFFENCES.

The Rev. Stat. Can., chap. 167, is the Act respecting offences relating to coin.

The mere possession of a large quantity of pieces of counterfeit coin of the same date and make, each being wrapped up in a separate piece of paper, affords evidence of a guilty knowledge and of an intention to utter under the 12th section. *R.* v. *Jarvis*, 7 Cox C.C., 53.

Under the 13th section the prisoner cannot be convicted of felony without proof of the previous conviction, and when a prisoner is indicted for felony under this section, and the previous conviction is not proved, he cannot be convicted of the misdemeanor of uttering—the law not admitting of a conviction for misdemeanor on a charge of felony unless in cases expressly provided for by statute. *R.* v. *Thomas*, L.R., 2 C.C.R., 41.

It is a misdemeanor at Common Law to make or procure engraved dies with intent therewith to make a foreign coin, even though all the instruments necessary had not been obtained. *R.* v. *Roberts*, 7 Cox C.C., 39. But the possession of a mould for coining the obverse side of a half crown with other coining materials was deemed sufficient evidence to go to a jury on a charge of felony. *R.* v. *Weeks*, 8 Cox C.C., 455.

A galvanic battery is a machine within the 24th section. *R.* v. *Glover*, 9 Cox C.C., 282.

The prisoner was convicted of uttering two false and counterfeit sovereigns with guilty knowledge. The two sovereigns were

originally genuine, but had been reduced in weight by filing off nearly all the original milling. New millings were then made to them fraudulently, so as to make them resemble genuine sovereigns. It was held that the two sovereigns, when passed in that state, were false and counterfeit coins. *R.* v. *Hermann*, 14 Cox C.C., 279.

Under the 24th section, an information should allege possession without lawful authority or excuse, but a charge of possession without lawful excuse is sufficient, as excuse includes authority. The words "the proof whereof shall lie on the accused," only shift the burden of proof, and do not alter the character of the offence. *R.* v. *Harvey*, 11 Cox C.C., 662.

COMMON PURPOSE.

The principle of law is, that a person doing an unlawful act is liable for all the consequences thereof, though they may be more serious than he intended. And if A, intending to murder B, shoots at and wounds C, supposing him to be B, he is guilty of wounding C, with intent to murder him, for he intends to kill the person at whom he shoots. *R.* v. *Smith*, 7 Cox C.C., 51.

If A and B agree together to assault C with their fists, and C receives a chance blow of the fists from either of them, both A and B are guilty of manslaughter. But should A, of his own impulse, kill C with a weapon suddenly caught up, B would not be responsible for the death, he being only liable for acts done in pursuance of the common design of himself and A. *R.* v. *Caton*, 12 Cox C.C., 624.

Where two persons go out with the common object of robbing a third person, and one of them, in pursuit of that object, does an act which causes the death of that third person under such circumstances as to be murder in him who does the act, it is murder in the other also. *R.* v. *Jackson*, 7 Cox C.C., 357.

COMPOUNDING OFFENCES.

Merely to forbear to prosecute is no offence; there is wanting something else to constitute a crime, and this essential is the taking

of some reward or advantage. But forbearing to prosecute a felon on account of some reward received is a misdemeanor. To corruptly take any reward for helping a person to property, stolen or obtained, etc., by any felony or misdemeanor (unless all due diligence to bring the offender to trial has been used) is felony. Rev. Stat. Can., chap. 164, s. 89. So an advertisement offering a reward for the return of stolen or lost property, using words purporting that no questions will be asked, or seizure or inquiry made after the person producing the property, or that return will be made to any pawnbroker or other person who has bought or made advances on such property, renders the advertiser, printer and publisher, liable to forfeit two hundred and fifty dollars. (*Ib.*, s. 90).

Compounding a felony is the taking of some reward for forbearing to prosecute, or making some bargain by which something is to be done for not prosecuting, the staying of such prosecution being the subject, or the principal, or special subject of the arrangement. It is of no consequence whether a charge has been formerly prepared before a Magistrate or not. It is equally an offence to compound in such a case after an information has been laid. *Topence* v. *Martin*, 38 Q.B. (Ont.), 411.

An advance of money for the purpose of taking up a forged promissory note is not compounding a felony. *Ex parte Butt*, 13 Cox C.C., 374.

The offence of compounding a felony is complete at the time when the agreement to abstain from prosecuting is made, and it is not necessary to shew that the prisoner did abstain from prosecuting, and that by reason of such abstention the thief escaped prosecution. Any person having knowledge that a felony has been committed, and entering into an agreement to abstain from prosecuting, or to hinder the ends of Justice, is guilty of the offence, and the offence is not confined to the owners of stolen property entering into such agreement. *R.* v. *Burgess*, 15 Cox C.C., 779; 16 Q.B.D., 141.

Under the Rev. Stat. Can., chap. 164, s. 74, an owner or consignor of goods, who after receiving an advance thereon from the

consignee wilfully and with intent to defraud, makes any disposition of the same different from and inconsistent with the agreement between him and the consignee, is guilty of a misdemeanor, but he is not subject to prosecution if before making such disposition he pays or tenders to the consignee the full amount of any advance made thereon.

Compounding a prosecution for selling liquor without license would not render a party liable under the statute, and it would seem that in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. *Keir* v. *Leeman*, 9 Q.B., 371-394.

Compounding misdemeanors seems strictly to be illegal, as impeding the course of public justice. Where the misdemeanor compounded is one which is injurious to the community generally, and not confined in its consequences to the prosecutor himself, its compromise is as illegal as the compromise of felony. *Dwight* v. *Ellsworth*, 9 Q.B. (Ont.), 540.

In general a prosecution can only be compromised by leave of the court. A prosecution for selling liquor without license cannot be compromised without leave of the court. *Re Fraser*, 1 U.C.L.J., N.S., 326.

The statute 18 Eliz., chap. 5, contains provisions against compounding informations on penal statutes. But this statute does not extend to penalties which are only recoverable by information before Justices. *R.* v. *Mason*, 17 C. P. (Ont.), 534.

COMPULSION.

If a person committing a crime is not a free agent, and is subject to actual force at the time it is committed, he is excused; as if the person who does it is compelled by threats, by a superior force, instantly to kill him or to do him grevious bodily harm if he refuses, but threats of future injury, or the command of any one not the husband of the offender, do not excuse any offence. So necessity may, in some cases excuse, for instance A and B,

swimming in the sea, after a shipwreck, get hold of a plank not large enough to support both, A pushes B off, who is drowned. This is not a crime. Stephen's Dig., 21-2. See also Married Women.

CONCEALED WEAPONS.

(*See* FIRE ARMS.)

CONCEALING THE BIRTH OF A CHILD.

The Rev. Stat. Can., chap. 162, s. 49, enacts that every one, who by any secret disposition of the dead body of any child, of which any woman is delivered, endeavours to conceal the birth thereof, is guilty of a misdemeanor,

The denial of the birth only is not sufficient. There must be some act of disposal of the body after the child is dead. *R.* v. *Turner*, 8 C. & P., 755.

Although a child be laid in such a position that it does not necessarily follow that concealment was intended, yet if the jury find that such was the intention of the mother, it would seem that the offence is complete. *R.* v. *Perry*, 1 Pears & Dearsly, 471. Where it appeared that the body of the child was found three days after it was born, behind the door of the privy belonging to the house where she lived as a domestic servant, the body being in a tub covered with a small cloth, it was held that there was no conclusive evidence to warrant the jury in finding a verdict for concealment of birth. *R.* v. *Opie*, 8 Cox C.C., 332. Still in such a case as this a Justice should commit the prisoner for trial.

In order to convict a woman of endeavouring to conceal the birth of her child, a dead body must be found, and identified as that of the child of which she is alleged to have been delivered. *R.* v. *Williams*, 11 Cox C.C., 684.

The statute applies to persons other than the mother, as well as the mother herself.

The expression in the statute "any child of which any woman is delivered," does not include delivery of a fœtus, which has not reached the period at which it might have been born alive. *R.* v. *Berriman*, 6 Cox C.C., 388; see *R.* v. *Colmer*, 9 Cox C.C., 506.

"Secret disposition" must depend upon the circumstances of each particular case, and the most complete exposure of the body might be a concealment, as for instance, if the body were placed in the middle of a moor in the winter, or on the top of a mountain, or in any other secluded place where it would not likely be found. *R.* v. *Brown*, L.R. 1, C.C.R., 244. But there is no doubt there must be some disposition of the body, which under the circumstances is likely to prevent its being found.

Leaving the dead body of a child in two boxes, closed and not locked or fastened, one being placed inside the other, in a bedroom, but in such a position as to attract the attention of those who daily resorted to the room, is not a "secret disposition of the body" within the statute. *R.* v. *George*, 11 Cox C.C., 41.

To come within the meaning of the term "secret disposition," there must be a putting the child into some place where it is not likely to be found. *R.* v. *Sleep*, 9 Cox C.C., 559.

The section only applies to the concealment of the dead body of the child, and a woman who endeavours to conceal the birth of a child by depositing it, while alive, in the corner of a field, and leaving it to die there, cannot be convicted of concealing the birth. *R.* v. *May*, 10 Cox C.C., 448.

CONSPIRACY.

Conspiracy is an agreement by two persons or more to do, or cause to be done, an unlawful act, or to prevent the doing of an act ordained under legal sanction by any means whatever, or to do or cause to be done an act whether lawful or not, by means prohibited by penal law. *R.* v. *Roy*, 11 L.C.J., 93.

The offence is divisible into three heads: 1. Where the end to be attained is in itself a crime. 2. Where the object is lawful, but the means to be resorted to are unlawful. 3. Where the object is to do an injury to a third party or a class though if the wrong were inflicted by a single individual it would be a wrong and not a crime. *R.* v. *Parnell*, 14 Cox C.C., 508.

A conspiracy cannot exist without the consent of two or more persons. *Mulcahy* v. *R.*, L.R. 3, E. & I. App., 306; and therefore

a man and his wife cannot be indicted for conspiring alone, because they constitute one person in law. Arch. Cr. Pldg., 942.

If two persons are charged with conspiracy one cannot be acquitted and the other convicted, because there must be two persons concerned to constitute the crime, but if more than two are charged all might be acquitted except two, or all or any number beyond two may be convicted. Persons who are not before the Court cannot, of course, be convicted, but prisoners on trial may be convicted of conspiring with others not on trial. *R.* v. *Bunn*, 12 Cox C.C., 339.

The offence of conspiracy is complete as soon as there is an agreement to do a thing which would be if done, though not a crime, such a matter as would bring the agreement to do it within the definition of conspiracy. *Heymann* v. *R.*, 12 Cox C.C., 383, L.R. 8, Q.B., 102.

The gist of the offence is the combination, therefore the parties will be liable, though the conspiracy has not been actually carried into execution. *Horsman* v. *R.*, 16 Q.B. (Ont.), 543. But the combination must be something more than intention merely. See *Mulcahy* v. *R.*, L.R. 3, E. & I., App. 306, 317, 328.

It is not necessary that the object should be unlawful, for when two or more persons fraudulently combine, the agreement may be criminal, although if the agreement were carried out no crime would be committed, but a civil wrong only inflicted on the party. *R.* v. *Warburton*, L.R. 1, C.C.R., 276.

If persons agree together to do some unlawful thing and proceed to do it, they are guilty of a conspiracy; or if they agree to do a lawful thing by unlawful means, and proceed to carry out their agreement by those means, they are guilty of a conspiracy.

An indictment for a conspiracy at Common Law will lie against two or more persons for conspiring to commit an offence, for which special provision is made by statute, and it cannot be contended that the statute having defined only certain acts as illegal has virtually declared all other acts not to be punishable. *R.* v. *Bunn*, 12 Cox C.C., 316.

A money lender and his attorney will be guilty of conspiracy

if they combine to enforce by legal process payment of sums they knew not to be due, and falsely represented them to be due in order to obtain payment. *R.* v. *Taylor*, 15 Cox C.C., 265.

A conspiracy to bring about a change in the Government of the Province of Ontario, by bribing members of the Legislature to vote against the Government, is an indictable offence. A conspiracy to bribe members of Parliament is a misdemeanor at Common Law, and as such is indictable. The jurisdiction given to the Legislature of the Province of Ontario by the Rev. Stat., chap. 11, sections 48, 49, 50 and 51, to punish as for a contempt, does not oust the jurisdiction of the Court where the offence is of a criminal nature, and the same Act may be in one aspect a contempt of the Legislature, and in another aspect a misdemeanor. *R.* v. *Bunting*, 7 Ont. R., 524.

Under the Rev. Stat. Can., chap 146, section 4, a conspiracy with any person to do any act of violence in order to intimidate any legislative body is felony.

Under the Rev. Stat. Can., chap. 162, s. 3, a conspiracy to commit murder is a misdemeanor.

The directors of a joint stock bank, knowing it to be in a state of insolvency, issued a balance sheet showing a profit, and thereupon declared a dividend of six per cent. They also issued advertisements inviting the public to take shares upon the faith of these representations of the flourishing condition of the bank. They were held guilty of a conspiracy to defraud. *R.* v. *Brown*, 7 Cox C.C., 442.

It is an indictable offence where parties, by false pretences and fraudulent representations and lies, enter into a conspiracy together, by those means to raise the price of any vendible commodity. *R.* v. *Berenger*, 3 M. & S., 67. And where the object of the conspiracy was not merely to obtain a settling day and official quotation upon the Stock Exchange of the stock of a certain company, and so induce persons to believe that the company was duly formed and constituted, but also to induce persons to act on that belief and deal in the shares of the company, it was held

indictable. *R.* v. *Aspinall*, L.R. 1, Q.B.D., 730. Affirmed in appeal, L.R. 2, Q.B.D., 48.

Conspiracy is one of the offences within the provisions of the Rev. Stat. Can., chap. 174, s. 140, a Justice, therefore, in committing for trial should be careful to bind over the prosecutor to prosecute and give evidence.

By the Rev. Stat. Can., chap. 173, s. 13, a prosecution is not maintainable against a person for conspiracy to do any act, or to cause any act to be done for the purposes of a trade combination, unless such act is an offence punishable by statute.

CONTRACT.

The Rev. Stat. Can., chap. 173, s. 15, renders criminal certain breaches of contract which endanger life or property, and by section 20 it is a misdemeanor, to make any offer, promise, gift or loan to any Government employee with intent to secure the influence of such employee in obtaining a contract with the Government or the payment of the consideration moneys therefor.

CONTAGIOUS DISEASES AFFECTING ANIMALS.

The Rev. Stat. Can., chap. 69, provides that every owner or breeder of cattle, and every one bringing foreign animals into Canada shall, on perceiving the appearance of infectious or contagious disease, give immediate notice to the Minister of Agriculture, and a malicious and fraudulent concealment entails a penalty not exceeding two hundred dollars. Various other provisions are made, and penalties imposed with the view of preventing the spread of infectious or contagious diseases, and every penalty imposed by the Act is recoverable with costs before any two Justices of the Peace, or any Magistrate having the powers of two Justices of the Peace under the Summary Convictions Act. (*Ib.* s. 46).

CONVICTIONS, RETURN OF.

(*See* RETURNS, *ante*, p. 299).

COPYRIGHT.

The Rev. Stat. Can., chap. 62, is the Act respecting Copyright.

Under section 31 of this Act photograph copies of engravings from pictures are equivalent to copies from the picture itself, and though a number of copies are sold together, the sale of each copy is a separate offence. *Ex parte Beal*, L.R. 3, Q.B., 387; see also *Graves* v. *Ashford*, L.R. 2, C.P., 410; *Bradbury* v. *Hotten*, L.R. 8, Ex., 1.

Under section 29, every person who fraudulently assumes authority to act as agent of the author, or of his legal representative for the registration of a temporary copyright, an interim copyright, or a copyright is guilty of a misdemeanor. The penalty for falsely pretending to have copyright is three hundred dollars. (*Ib.*, s. 33). And under section 28 if any person wilfully make or causes to be made any false entry in the register books of the Minister of Agriculture, or wilfully produces or causes to be tendered in evidence any paper falsely purporting to be a copy of an entry in the said books is guilty of a misdemeanor.

CRIMINAL BREACHES OF CONTRACT.

See MASTER AND SERVANT.

CRUELTY TO ANIMALS.

The Rev. Stat. Can., chap. 172, is the Act respecting Cruelty to Animals. Offences against the second section of this Act are punishable on summary conviction before two Justices of the Peace, and the offender is liable to a penalty not exceeding fifty dollars, or to imprisonment for any term not exceeding three months with or without hard labour or to both. (*Ib.*, s. 2).

The statute interdicts unnecessary abuse not for any lawful purpose, but whenever the purpose for which the act was done is to make the animal more serviceable for the use of man the statute ought not to be held to apply. For instance castration of horses or other animals is not prohibited. But cutting the combs of cocks in order to fit the birds for one or other of two purposes namely, cockfighting or winning prizes at exhibitions is an offence within the Act. *Murphy* v. *Manning*, L.R. 2, Ex. D., 307.

Where an operation that has become customary is performed

with reasonable care and skill on an animal, in the *bona fide* belief that it renders its flesh more fit as an article of human food, such an operation is not an offence within the meaning of this section, though it undoubtedly causes severe pain, and its utility may be open to doubt. Thus spaying sows is not an offence within this section. *Lewis* v. *Fermor*, 16 Cox C C., 176; 18 Q.B.D., 532.

The mere fact that the act causes pain will not render it punishable. Thus dishorning cattle is not an offence, provided the operation be skilfully and properly performed. *Callaghan* v. *Society*, 16 Cox C.C., 101.

Cruelty to an animal to be within the statute must cause substantial and unnecessary suffering. Without evidence of such suffering to keep parrots for a few hours without water on a railway is not an act of cruelty upon which a conviction can rightly follow, the birds being supplied with Indian corn. *Swan* v. *Saunders*, 14 Cox C.C., 566.

The offence of aiding or assisting at the fighting of cocks can only be committed in a place specially kept or used for the purpose. *Clarke* v. *Hague*, 6 Jur., N.S., Q.B., 273; *Morley* v. *Greenhaigh*, 3 B. & S., 374.

The eighth section of the Act relates to the conveyance of cattle by rail or boat, and provides that they shall not be kept for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, for a period of at least five consecutive hours.

When an incorporated company is prosecuted, some knowledge of the particulars ought to be brought home to the owner or manager in case he is charged with the offence. See *Small* v. *Warr*, 47 J.P., 20, D.

DEFRAUDING CREDITORS.

The Rev. Stat. Can., chap. 173, s. 28, provides that everyone who makes or causes to be made, any gift, conveyance, assignment, sale, transfer or delivery of his lands, hereditaments, goods or chattels, or who removes, conceals or disposes of any of his goods, chattel property or effects of any description, with intent to

defraud his creditors, or any of them, and everyone who receives any such property, real or personal, with such intent, is guilty of a misdemeanor.

DEPOSITS AND RETURNS BY PERSONS RECEIVING MONEY AT INTEREST.

The Rev. Stat. Can., chap. 126, provides that every person, corporation or institution, except chartered banks, receiving money in small sums on deposit at interest as savings, must make such returns to the Minister of Finance, as the Governor-in-Council from time to time requires, and every wilful refusal or neglect to obey any such Order-in-Council, is made a misdemeanor.

DESERTION.

The Rev. Stat. Can., chap. 169, s. 1, provides that everyone who, not being an enlisted soldier or seaman, entices any such to desert, or knowingly conceals or assists any deserter, is guilty of a misdemeanor, and liable on summary conviction to a penalty not exceeding two hundred dollars. Other offences are created by the Act, and every offender may be tried and convicted in a summary manner before any two Justices of the Peace on the evidence of one credible witness, or such offender may be prosecuted by indictment for the misdemeanor. (*Ib.*, s. 4.)

"The Seamen's Act" (Rev. Stat. Can., chap. 74, s. 104), inflicts severe penalties on every person who, by any means whatever, persuades or attempts to persuade any seaman to desert, or who wilfully harbours or secretes any deserter. Similiar provisions are contained in the Inland Waters Seamen's Act, (Rev. Stat. Can., chap. 75, s. 28).

A conviction under section 129 of the Rev. Stat. Can., chap. 74, for unlawfully harbouring foreign sailors, deserters from a foreign ship, should show on the face of the proceedings either the consent of both parties, or the written consent of the foreign consul, that the justice should proceed as required by section 127 of the Act. Where such consent did not appear, an affidavit stating that the

justice had the consent was not allowed to be read on showing cause against a rule *nisi* to quash the conviction.

Where in such prosecution both parties had treated the vessel as a foreign vessel and the master and sailors as foreigners, although there was no direct proof that they were so, it is too late in showing cause against a rule *nisi* to quash a conviction based on the vessel and crew being foreign, to object that there was not evidence of those facts. *R.* v. *Blair*, 24 Sup. Ct., N.B., 245.

DISORDERLY HOUSES.

(*See* VAGRANCY.)

DISTURBING RELIGIOUS WORSHIP.

(*See* CHURCHES.)

DRILL ILLEGAL.

(*See* UNLAWFUL TRAINING, ETC.)

DRIVING, WANTONLY AND FURIOUSLY.

The Rev. Stat. Can., chap. 162, s. 28, provides that everyone who having the charge of any carriage or vehicle, by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, does, or causes to be done, any bodily harm to any person whatsoever, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term less than two years, with or without hard labour.

DRUNKENNESS.

Voluntary drunkenness will not exempt a person from criminal liability; for instance, A., in a fit of voluntary drunkenness, shoots B. dead, not knowing what he does. A.'s act is a crime. But involuntary drunkenness, and diseases caused by voluntary drunkenness may excuse; for instance, A., under the influence of a drug fraudulently administered to him, shoots B. dead, not knowing what he does, A.'s act is not a crime. Or if A. in a fit of *delirium*

tremens, caused by voluntary drunkenness, kills B., mistaking him for a wild animal attacking A., the latter's act is not a crime. Stephen's Dig., 19.

A man cannot when drunk, in his own house, be forcibly removed therefrom, even at the request of his own family, unless his conduct is such as would constitute him a nuisance to the public, *i.e.*, by his creating a public disturbance. *R.* v. *Blakely*, 6 P.R. (Ont.), 244.

ELECTIONS.

"The Dominion Elections Act" (Rev. Stat. Can., chap. 8, s. 70) contains various provisions for securing the secrecy of voting, and for preventing any interference with the freedom of the voter, and a penalty, not exceeding two hundred dollars, is imposed for violation. Under section 73, each Returning Officer and his Deputy is invested with all the powers of a Justice of the Peace, and may, by verbal order, arrest any person disturbing the Peace and good order at the election, and may also require the delivery of any offensive weapons in the hands of any person within half-a-mile of the Polling Station. Any person convicted of a battery on election day, within two miles of the place where such election is begun, is guilty of aggravated assault (section 77). By section 78, strangers are not allowed to come into the polling district armed with offensive weapons. It is a misdemeanor to entertain any elector during the election, or to furnish or supply any ensign, standard, or set of colours, or any other flag, or any ribbon label, or like favour, to any person with intent that the same shall be carried in the District, on the day of election, as a party flag or badge to distinguish the bearer as a supporter of a particular candidate. (Sections 80, 81, 82).

Intoxicating liquors are not allowed to be sold or given during the whole of the polling day, under a penalty of one hundred dollars. (*Ib.*, s. 83).

Under section 87, exercising undue influence over any voter is a misdemeanor. So under section 100, it is a misdemeanor to forge any ballot paper, or (*b*) to supply any ballot paper to any

person without authority, or (*c*) to put an improper ballot paper into the box, or (*d*) to fraudulently take out of the polling place any ballot paper, or (*e*) to interfere with any ballot box, or (*f*) attempt to commit any of these offences. Under section 102, stealing or tampering with election documents is felony. Under section 104, it is a misdemeanor for any Returning Officer to act as agent of any candidate. By section 112, the certificate of the Returning Officer is sufficient evidence of the due holding of the election, and of any person named in such certificate having been a candidate thereat.

EMBEZZLEMENT.

(*See* LARCENY.)

EMBRACERY.

The Rev. Stat. Can., chap. 173, section 30, provides that every one who is guilty of the offence of embracery, and every juror who wilfully and corruptly consents thereto, is liable, on indictment, to fine and imprisonment.

Everyone commits the misdemeanor called embracery, who, by any means whatsoever, except the production of evidence and arguments in open Court, attempts to influence or instruct any juryman, or to incline him to be more favourable to the one side than to the other, in any Judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false.

But it is essential to the existence of the offence of embracery that there should be a Judicial proceeding pending at the time the offence is alleged to have been committed. *R.* v. *Leblanc*, 8 Legal News, 114, 29 L.C.J., 69.

A juryman himself may be guilty of this offence by corruptly endeavouring to bring over his fellows to his view. The offence is a misdemeanor, both in the person making the attempt, and also in those of the jury who consent.

There are certain other acts, interfering with the free administration of justice at a trial, which are considered as high misprisions and contempts, and are punishable by fine and im-

prisonment. Such are the following: Intimidating the parties or witnesses; endeavouring to dissuade a witness from giving evidence, though it be without success; advising a prisoner to stand mute; assaulting or threatening an opponent for suing him; a Counsel or Attorney for being employed against him; a Juror for his verdict; a Gaoler or other Ministerial Officer for what he does in discharge of his duty; for one of the Grand Jury to disclose to the prisoner the evidence against him.

ESCAPE.

An escape is where one who is arrested gains his liberty by his own act, or through the permission or negligence of others, before he is delivered by the course of the law. Where the liberation of the party is effected either by himself, or others, without force it is more properly called an *escape*; where it is effected by the party himself, with force, it is called *prison breaking*; where it is effected by others, with force, it is commonly termed a *rescue*.

Under the Rev. Stat. Can., chap. 155, section 2, every one who escapes from, or rescues, or aids in rescuing, any other person from lawful custody, or makes, or causes any breach of prison, if such offence does not amount to felony, is guilty of a misdemeanor. Under section 8, every one who, knowingly and unlawfully, under colour of any pretended authority, directly procures the discharge of any prisoner not entitled to be discharged, is guilty of a misdemeanor, and the person so discharged shall be held to have escaped. An escape during conveyance to the penitentiary, is felony, and prisoners escaping, or attempting to escape therefrom, are to have, on conviction, three years added to the term of their imprisonment. (*Ib.*, sections 3 & 4).

One W. was brought before Magistrates in the custody of the defendant, a constable, to answer a charge of misdemeanor, and after witnesses had been examined, he was verbally remanded until the next day. Being then brought up again, and the examination concluded, the Justices decided to take bail and send the case to the Assizes, and verbally remanded the prisoner until the following day, telling the defendant to bring him up then,

but on that day, the defendant negligently permitted him to escape, and he was held to be properly convicted for permitting an escape. *R.* v. *Shuttleworth*, 22 Q.B. (Ont.), 372.

EVIDENCE.

(*See ante*, page 110.)

EXCISE.

Under the Rev. Stat. Can., chap. 34, s. 82, every manufacturer who neglects or refuses to keep his license posted up in a conspicuous place in his manufactory, incurs a penalty of fifty dollars for the first offence, and one hundred dollars for each subsequent offence. Under section 86, it is a misdemeanor to put into any stamped packages, barrels or casks, any article or commodity on which the duty has not been paid, or which has not been inspected under the Act. Various other penalties are imposed under the Act. Under sections 91 and 98, refusing to assist any officer of Inland Revenue, or to obstruct, impede or interfere with any such officer in the execution of his duty, is a misdemeanor. Section 93 imposes a penalty of one hundred dollars for using weights and measures not duly inspected and approved. Section 94 makes it felony to break the Crown's lock or seal, abstract goods or counterfeit labels. So assaulting or threatening to assault any Officer of Inland Revenue in the execution of his duty, or to take away goods seized or detained, is felony. (*Ib.*, sections 99 and 100). Section 158 imposes certain penalties on distillers and renders various acts misdemeanors, and section 220 refers in the same way to malting and malthouses, and section 313 to tobacco and cigars.

EXPLOSIVE SUBSTANCES.

The Rev. Stat. Can., chap. 150, contains some stringent provisions in reference to the possession, manufacture or use of dynamite, or other explosive substances.

Under section 3, every person who unlawfully and maliciously causes, by any explosive substance, an explosion of a nature likely

to endanger life or to cause serious injury to property, is, whether any injury to person or property is actually caused or not, guilty of felony and liable to imprisonment for life. Under section 8, the Attorney General may order an enquiry, and in such case, a Justice of the Peace may examine any witness appearing before him, and such witness is bound to answer criminating questions, and a witness about to abscond may be arrested and committed to prison.

Keeping explosives, such as dynamite, gunpowder, etc., near habitations or places of public resort, in such quantity that injury to property or life would be caused if they were to explode, is a common nuisance and indictable irrespective of such incidents as carelessness and negligence. *R.* v. *Holmes*, 5 Russell & Geldert, 498.

EXTORTION AND OTHER MISCONDUCT OF PUBLIC OFFICERS.

Every malfeasance or culpable non-feasance of an officer of Justice with relation to his office, is a misdemeanor punishable by fine or imprisonment or both. Forfeiture of the office, if profitable, will also generally ensue.

As to malfeasance, in cases of oppression and partiality, the officers are clearly punishable, and not only when they act from corrupt motives, but even when this element is wanting, if the act is clearly illegal; for example, if a magistrate commit in a case in which he has no jurisdiction.

Extortion, in the more strict sense of the word, consists in an officer's unlawfully taking, by colour of his office, from any man any money or thing of value that is not due to him, or more than is due, or before it is due. This offence is of the degree of misdemeanor, and all persons concerned therein, if guilty at all, are principals. Two or more persons may be jointly guilty of extortion where they act together and concur in the demand. *R.* v. *Tisdale*, 20 Q.B. (Ont.), 273.

Where two persons sat together as Magistrates, and one of them exacted a sum of money from a person charged before them with felony, the other not dissenting, it was held that they might be jointly convicted. (*Ib.*)

As to non-feasance. An officer is equally liable for neglect of his duty as for active misconduct. A refusal by any person to serve an office to which he has been duly appointed, and from which he has no ground of exemption, is an indictable offence. An indictment may be maintained against a Deputy Returning Officer at an election for refusing, on the requisition of the agent of one of the candidates, to administer the oath to certain parties tendering themselves as voters. *R.* v. *Bennett*, 21 C.P. (Ont.), 238.

A person resisting a constable in executing an execution issued by a Justice of the Peace in the form K, in the schedule to the (N. B.) Rev. Stat., chap. 137, is liable to an indictment. *R.* v. *McDonald*, 4 Allen, 440. The fact that the defendant did not know that the person assaulted was a Peace Officer, or that he was acting in the execution of his duty, furnishes no defence. *R.* v. *Forbes*, 10 Cox C.C., 362. It is sufficient that the constable was actually in the execution of his duties at the time of the assault.

EXTRADITION.

For a full discussion of this offence and the procedure before Magistrates, see Clarke & Sheppard's Criminal Law of Canada, p. 10. See also Rev. Stat. Can., chap. 142.

FACTORIES ACT.

(*See* ONTARIO FACTORIES ACT).

FALSE PERSONATION.

(*See* BRIBERY, PERSONATION).

FALSE PRETENCES.

(*See* LARCENY).

FEES OF JUSTICES.

The Rev. Stat. (Ont.), chap. 78, is the Act respecting the fees of Justices of the Peace in Ontario.

Section 3 provides that every Justice wilfully receiving a

larger amount of fees than by law are authorized to be received, shall forfeit and pay the sum of $80, together with full costs of suit.

The Act does not provide for fees in cases above the degree of misdemeanor.

In cases of conviction where witnesses are subpœnaed to give evidence in cases of assault, trespass or misdemeanor, the witness is entitled, in the discretion of the Justice, to receive fifty cents for every day's attendance, where the distance travelled does not exceed ten miles, and five cents for each mile above ten.

A Magistrate, acting under the Rev. Stat. Can., chap. 156, s. 2, convicted four persons for disturbing an assemblage of persons met for religious worship, and imposed upon *each* a fine of $5, but instead of severing the costs which he had charged, imposed the full amount thereof against each defendant, and received it from each. It was held under the circumstances of the case, that the over-charge must be deemed to have been wilfully made, so as to render the Magistrate liable to the penalty imposed by this section of the statute. *Parsons* q.t. v. *Crabbe*, 31 C.P. (Ont.), 151.

Magistrates cannot in Ontario collect any costs which are not provided for by this Act. Where a Magistrate, in the minute of judgment ordered the defendant "to pay $1.00, for the use of the hall for hearing the case," it was held, that in ordering payment of this sum, there was a clear excess of jurisdiction, and the conviction was quashed. *R.* v. *Elliott*, 12 Ont. R.. 524.

SCHEDULE.

(*Section* 1.)

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS.

1. For an Information and Warrant for apprehension, or for an Information and Summons for assault, trespass, or other misdemeanor.	$0 50
2. For each copy of Summons to be served on defendant or defendants	10

3. For *every Subpœna* (*only one* Subpœna *on each side to be charged for in each case, which may contain any number of names*)..... 10
(*If the Justice of the case requires it, additional subpœnas shall be issued without charge.*

4. For every Recognizance, (*only one to be charged in each case*)..... 25

5. For Information and Warrant for surety of the peace for good behaviour, (*to be paid by Complainant*)..... 50

6. For Warrant of Commitment for default of surety to keep peace or good behaviour, (*to be paid by Complainant*)..... 50

7. For hearing and determining the case..... 50

8. Where one Justice alone cannot lawfully hear and determine the case, an additional fee for hearing and determining to be allowed to the associate Justice..... 50

In case more Justices hear the case, the Justice by whom the information was taken (if he hears the case), shall be entitled to one fee of fifty cents for hearing and determining, and the Justice who sat at his request shall be entitled as associate to the said additional fee, when one is chargeable.

If a case occurs which is not covered by this provision, the Justices shall be entitled to the fees according to their seniority as Justices.

9. For Warrant to levy penalty..... 25

10. For making up every Record of Conviction, where the same is ordered to be returned to the Sessions or on *certiorari*..... 1 00

11. But in all cases which admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than $20 can be imposed, there only shall be charged for the conviction not more than..... 50
And for the Warrant to levy the penalty..... 25

12. For copy of any other paper connected with any trial and the minutes of the same if demanded—per folio of one hundred words..... 10

13. For every Bill of Costs, (*when demanded to be made out in detail*).. 10
Items 12 and 13 to be only chargeable when there has been a conviction.)

FERRIES.

The Rev. Stat. Can., chap. 97, enables the Governor-in-Council to make regulations in regard to ferries, and imposes penalties on

persons interfering with ferry rights, and all fines or penalties are recoverable in a summary manner before any one Justice of the Peace, on the oath of any credible witness other than the informer. (*Ib.*, s. 9).

FERTILIZERS.

The Act respecting agricultural fertilizers, Rev. Stat. Can., chap. 108, s. 12, imposes penalties on any person who sells or exposes for sale any fertilizer in respect of which the provisions of the Act have not been complied with. Every person who forges or utters or uses, knowing it to be forged, any manufacturers' certificate, bill of inspection, certificate of analysis, or inspectors' tag, required under the Act, is guilty of a misdemeanor. (*Ib.*, s. 13).

FIRE ARMS.

The Rev. Stat Can., chap. 148, s. 2, provides that every one who has upon his person a pistol or air gun without reasonable cause to fear an assault or other injury to his person, or his family or property, may be required to find sureties for keeping the peace for a term not exceeding six months. By section 2 every one who when arrested, either on a warrant issued against him for an offence, or whilst committing an offence, has on his person a pistol or air gun, is liable on summary conviction before two Justices of the Peace, to a penalty not exceeding fifty dollars, and not less than twenty dollars. It would seem that proceedings under this section should only be taken after conviction for the offence. For instance, suppose a prisoner is convicted of an assault, and the evidence shows that he had a pistol on his person when arrested for the assault, it would be proper after conviction for the assault to proceed under this section, but to proceed first under this section on an alleged offence does not seem to be warranted.

By section 8, if two or more persons openly carry dangerous or unusual weapons in any public place, in such a manner and under such circumstances as are calculated to create terror and alarm, each of such persons shall on summary conviction before

two Justices of the Peace, be liable to a penalty not exceeding forty dollars, and not less than ten dollars.

FISHERIES.

The Rev. Stat. Can., chap. 95, contains various provisions on this subject. Penalties imposed may be recovered on parol complaint before a Stipendiary Magistrate or Justice of the Peace in a summary manner, on the oath of one credible witness. (*Ib.*, s. 19). In certain cases a summons may issue returnable immediately. (*Ib.*, s.s. 2). The forms in the schedule to the Act may be used when applicable, and the Summary Convictions Act, Rev. Stat. Can. chap. 178, shall apply to proceedings under the Act. (*Ib.*, s. 20).

FOOD, NEGLECTING TO PROVIDE FOR WIFE, CHILD OR SERVANT.

(*See* MAINTENANCE).

FORCIBLE ENTRY OR DETAINER.

This offence is described as the violent taking or after unlawful taking, the violent keeping, possession of lands and tenements with menaces, force and arms, and without the authority of the law. This offence is a misdemeanor at common law, and an indictment will lie for it if accompanied by such circumstances as amount to more than a bare trespass and constitute a public breach of the peace. *R.* v. *Wilson*, 8 T.R., 357. See also *R.* v. *Martin*, 10 L.C.R., 435.

The statutes 8 Hy. IV., chap. 9; 8 Hy. VI., chap. 9; 6 Hy. VIII., chap. 9, and 21 Jac. 1, chap. 15, as to forcible entries seem to be in force in this country. *Boulton* v. *Fitzgerald*, 1 Q.B. (Ont.), 343; *R.* v. *McGreavy*, 5 O.S., 620.

Under these statutes the party aggrieved by a forcible entry and detainer, or a forcible detainer, may proceed by complaint made to a local Justice of the Peace, who will summon a jury and call the defendant before him, and examine witnesses on both sides if offered, and have the matter tried by a jury. *Russell* v. *Loyd*, 14 L.C.R., 10.

A mere trespass will not support an indictment for forcible entry, there must be such force or show of force as is calculated to prevent any resistance. *R.* v. *Smyth*, 1 M. & Rob., 155.

The object of prosecutions for forcible entry is to repress high-handed efforts of parties to right themselves. *R.* v. *Connor*, 2 P.R. (Ont.), 140.

And a party may be guilty of forcible entry by violently and with force entering into that to which he has a legal title. *Newton* v. *Harland*, 1 M. &. Gr., 644.

Where a person having the legal title to land is in actual possession of it, the attempt to eject him by force brings the person who makes it within the provisions of the statute against forcible entry. It will do so though the possession of the person, having such legal title, has only just commenced, though he may himself have obtained it by forcing open a lock, though his ejection has not been made by a "multitude" of men, nor attended with any great use of violence, and though the person who attempts to eject him may even set up a claim to the possession of the land. Laws & Telford, L.R. 1, Appeal Cases, 414.

This offence is now brought within the provisions of the Rev. Stat. Can., chap 174, s. 140, which requires as a preliminary to the presentment or finding of an indictment by a grand jury, that the prosecutor or other person presenting the indictment should be bound by recognizance to prosecute or give evidence against the person accused of such offence.

FOREIGN ENLISTMENT OFFENCES.

The Imperial Statute, 33 & 34 Vic., chap. 90, governs offences of this character throughout the Dominion and the adjacent territorial waters. (See statutes of 1872).

It would seem that the equipment forbidden by section 8, s.s. 3, of this Act, is an equipment of a warlike character, by means of which the ship, on leaving Her Majesty's Dominions, shall be in a condition to cruise or commit hostilities. See *Attorney-General* v. *Sillem*, 10 Jur., N.S., 262.

A warrant of commitment recited that M. was charged on the

oath of W, "For that he, M, was this day charged with enlisting men for the United States army, offering them $350 each, as a bounty," without charging any offence with certainty, without stating that the men enlisted were subjects of Her Majesty, and without showing that W was unauthorized by license of Her Majesty to enlist, was held bad. *Re Martin*, 10 U.C.L.J., 130.

FORGERY.

The Rev. Stat. Can., chap. 165, governs this offence and make it a felony, though it was only a misdemeanor at common law. Cases not provided for by the statute may still be punished at common law. The offence is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right. *Re Smith*, 4 P.R. (Ont.), 216, or the making of a false document with intent to defraud *R.* v. *Bail*, 7 Ont. R., 228.

Forgery is the falsely making or altering a document to the prejudice of another, by making it appear as the document of that person, and a simple lie reduced to writing is not necessarily forgery. Consequently, where a bank clerk made certain false and fictitious entries in the bank books under his control for the purpose of enabling him to obtain money of the bank improperly, it was held that he was not guilty of forgery. *R.* v. *Blackstone*, 4 Manitoba L.R., 296. He would, however, be guilty of embezzlement.

The instrument forged must have some apparent validity, that is, it must purport on the face of it to be good and valid for the purpose for which it is created, and not be illegal in its very frame, though it is immaterial whether if genuine it would be of validity or not. *R.* v. *Brown*, 3 Allen, 13; *R.* v. *Pateman*, R. & R., 445.

An instrument which is declared by law to be wholly void, is not the subject of forgery if on its face it affords evidence that it comes within the law declaring it void. *Taylor* v. *Golding*, 28 Q.B. (Ont.), 198, 203.

Where the prisoner accepted a bill of exchange, which had no drawer's name, and endorsed a fictitious name on the back of it, this was holden not to be forgery under the statute, though it

might be at common law. *R.* v. *Harper*, L.R. 7, Q.B.D., 78. But this decision was on the ground that the bill was wholly void, and if the bill had a drawer's name accepting it in the name of a fictitious person with intent to defraud, would be forgery. *R.* v. *White*, 2 F. & F., 554. So the addition of a false address without the knowledge of the acceptor and passing it off as the acceptance of, another person would, it seems, come within the statute. *R.* v. *Epps*, 4 F. & F., 81. When the instrument such as a cheque is valid, forging and uttering an endorsement with a view to get it cashed by the credit of the name, comes within the statute. *R.* v. *Wardell*, 3 F. & F., 82.

If the alleged promissory note has no maker's name thereto, and is consequently not legally a promissory note, a party cannot be convicted for forging an endorsement thereon, nor could a party be convicted of uttering in such case, unless the uttering took place after the maker's name was signed to the note. *R.* v. *McFee*, 13 Ont. R., 8.

Forging or uttering in Canada a writing purporting to be a bank note issued by a banking company in the State of Maine, amounts to the crime of forgery, though it is not proved that the company had power by charter to issue notes of that description, it being shown that the note carried on its face the semblance of a bank note issued by a company in the State of Maine, and there being nothing in its frame to show it illegal. *R.* v. *Brown*, 3 Allen, 13. It is sufficient if the instrument is in such form as to deceive persons of ordinary observation. *R.* v. *Callicott*, R. & R., 212.

At common law and independently of the provisions of the statute, the forgery must be of some document or writing, therefore the painting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist, is not forgery. *R.* v. *Closs*, 21 L.J.M.C., 54. But any instrument designated in the statute is now the subject of forgery.

As to the fabrication, it need not be of the whole instrument. Very frequently the only false statement is the use of a name to which the defendant is not entitled. It does not matter whether

the name wrongly applied be a real or fictitious one. *R.* v. *Lockett*, 1 Leach, 94. Even to make a mark in the name of another person with intent to defraud that person is forgery. *R.* v. *Dunn* 1 Leach, 57. It is forgery within the meaning of section 26 of the Act, to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed. *R.* v. *Ritson*, L.R. 1, C.C.R., 200.

Not only a fabrication but even an alteration, however slight, if material, will constitute forgery. Section 3 of the Act, provides that the wilful alteration for any purpose of fraud or deceit of any document or thing written, printed, or otherwise made capable of being read, or of any document or thing, the forging of which is made punishable by this Act shall be held to be a forging thereof. A person having an order for the delivery of wheat for the support of poor persons in a municipality is guilty of forgery, if with intent to defraud he materially alters the order so as to increase the quantity of wheat obtainable thereunder. *R.* v. *Campbell*, 18 Q.B. (Ont.), 416.

And the alteration of a $2 Dominion note to one of the denomination of $20, such alteration consisting in the addition of a cypher after the figure 2 wherever that figure occurred in the margin of the note, is forgery, though the body or obligatory part of the note has not been altered, but the note merely given the appearance of one of a larger denomination. *R.* v. *Bail*, 7 Ont. R., 228.

It is forgery to execute a deed in the name of and as representing another person, with intent to defraud, even though the prisoner has a power of attorney from such person, but fraudulently conceals the fact of his being only such attorney, and assumes to be principal. *R.* v. *Gould*, 20 C.P. (Ont.), 159.

It must be proved that the alleged forgery was intended to represent the handwriting of the person whose handwriting it appears to be, and is proved not to be, or that of a person who never existed. The person whose name is forged is a competent witness,

but his evidence requires corroboration. Rev. Stat. Can., chap. 174, s. 218. *R.* v. *McDonald*, 31 Q.B. (Ont.), 337; *R.* v. *Giles*, 6 C.P. (Ont.), 84. Whether he be or be not called as a witness, the handwriting may be proved not to be his by any person acquainted with his handwriting, either from having seen him write, or from being in the habit of corresponding with him. The instrument must be made with intent to defraud, which is the chief ingredient of the offence. It is not, however, necessary to prove an intent to defraud any particular person; it is sufficient to prove that the party accused did the act charged with intent to defraud. Rev. Stat. Can., chap. 174, s. 114. As there must be evidence of an intent to defraud, the writing of a signature in sport without any intention to defraud, or pass it off as genuine, is not forgery. A man may draw a promissory note for any sum he pleases, and in favor of any person, and payable to him or to his order, or to bearer, and so long as it remains simply as *his own* promissory note, in his own possession, and charging no other person but himself with liability, he may alter it at his own free will in all or any particulars. But when another person becomes interested in the note, or discounts it, or receives it in payment, it is then fraud and forgery to pass it off as containing the names of persons who have not in fact signed or endorsed it. See *R.* v. *Craig*, 7 C.P. (Ont.), 239; *R.* v. *Dunlop*, 15 Q.B. (Ont.), 119. It is the intent to deceive and defraud that the law considers criminal, but where this intent exists it is immaterial whether any person is actually defrauded by the forgery, or that any person should be in a situation to be defrauded by the act. *R.* v. *Nash*, 21 L.J.M.C., 147.

An authority to use the name which is alleged to be forged, will of course justify the prisoner. *R.* v. *Smith*, 3 F. & F., 504.

In all forgeries, the instrument supposed to be forged must be a false instrument in itself, and if a person gives a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit there being wholly given to himself, without any regard to the name or any relation to a third person. *R.* v. *Martin*, L.R. 5, Q.B.D., 34.

The offence of forgery is not triable at the Quarter Sessions. *R.* v. *McDonald*, 31 Q.B. (Ont.), 337; *R.* v. *Dunlop*, 15 Q.B. (Ont.), 118.

The offence of *uttering* the forged instrument is provided for by the same Act, and made an offence of the same nature as the forgery itself. The words used in the statute are: "offers, utters, disposes of, or puts of, knowing the same to be forged, or altered," etc. A tender or attempt to pass off the instrument will be sufficient, and there need not be an acceptance by the other. It is an uttering if the forged instrument is used in any way, so as to get money or credit by it, or by means of it, though it is produced to the other party, not for his acceptance, but for some other purpose. *R.* v. *Ion*, 21 L.J.M.C., 166. Of course, the forged character of the instrument and the intent to defraud must be proved, as in forgery. It will be also necessary to prove that the defendant *knew* the instrument to be forged, as for instance, by showing that he had in his possession other forged notes of the same kind.

The making on a glass plate a positive impression of an undertaking of a foreign state, for the payment of money, by means of photography, without lawful authority or excuse, is a felony within the 19th section of the Act. *R.* v. *Rinaldi*, 9 Cox C.C., 391.

A guarantee is the subject of forgery within the 26th section though no consideration appear. *R.* v. *Cœlho*, 9 Cox C.C., 8. This includes post office orders. *R.* v. *Vanderstein*, 10 Cox C.C., 177.

A guarantee given on the appointment of an agent to an insurance company, against loss, etc., by negligence, or dishonesty of the agent, is an undertaking for payment of money within the 29th section, and the agent may be convicted of forging such a document. *R* v. *Joyce*, 10 Cox C.C., 100.

An I. O. U. is an undertaking for the payment of money. *R.* v. *Chambers*, 12 Cox C.C., 109; L.R. 1, C.C.R., 341.

A "clearance" or certificate of payment of dues, given by the secretary of a friendly society, is not an acquittance or receipt for money within this section. *R.* v. *French*, L.R. 1, C.C.R., 217.

A document in the following form:

"THORNTON, October, 1867.

"Received of the S. L. B. Soc'y, the sum of £417 13s., on account of my share, No. 8,071.

£417 13s. pp. S. A.

"WM. KAY."

is a warrant, authority, or request, for the payment of money within this section. *R* v. *Kay*, L.R., 1 C.C.R., 257.

An instrument in the following form:

"$3.50. "CARRICK, April 10, 1863.

"John McLean, tailor, please give Mr. A. Steel, to the amount of three dollars and fifty cents, and by so doing you will oblige me.

[Signed] ANGUS MCPHIAL."

is an order for the payment of money, and not a mere request. *R.* v. *Steel*, 13 C.P (Ont.), 619.

But an instrument as follows:

"RENFREW June 13, 1860.

"*Mr. McKay:*

"SIR,—Would you be good enough as for to let me have the loan of $10 for one week or so, and send it by the bearer immediately, and much oblige your most humble servant,

"J. ALMIRAS, P. P."

is not an order for the payment of money. *R.* v. *Reopelle*, 20 Q.B. (Ont.), 260.

"*Mr. Warren:*

"Please let the bearer, Mrs. Tuke, have the amount of ten pounds, and you will oblige me.

"B. B. MITCHELL."

is an order for the payment of money and not a mere request. *R.* v. *Tuke*, 17 Q.B. (Ont.), 296.

The 29th section applies not only to the forgery of an order for the payment of money, but also by express terms to the

forgery of any indorsement on such order. *R.* v. *Cunningham*, 6; *Russell & Geldert*, 31.

Under the Gas Inspection Act, Rev. Stat. Can., chap. 101, s. 45, every person who forges or counterfeits any certificate purporting to be granted under the Act, or any stamp which under the Act is to be affixed to any such certificate, or wilfully uses any such counterfeited certificate, or stamp, knowing it to be forged or counterfeited is guilty of forgery, and shall be punished accordingly.

The 4th section of the Rev. Stat. Can., chap. 166, makes the forging or counterfeiting of any trade mark a misdemeanor.

FRANCHISE.

The Electoral Franchise Act, Rev. Stat. Can., chap. 5, s. 40, provides that every officer and person, who is by law the custodian of any assessment roll or list of voters, which is required by the Revising Officer for the purpose of revising any list of voters, is guilty of a misdemeanor if he refuses or omits to furnish the same to the Revising Officer when applied for.

So under section 42, every person, who is an agent within the meaning of "The Indian Act," and who either directly or indirectly seeks to induce any Indian to register as a voter or to vote or refrain from voting at any election, is guilty of a misdemeanor.

FUGITIVE OFFENDERS.

The Rev. Stat. Can., chap. 143, applies to fugitives from Justice who have committed crimes in some part of Her Majesty's Dominions other than Canada. When such person is or is suspected of being in or on his way to Canada, a Magistrate may proceed in the same way as if the offence of which the fugitive is accused had been committed within his own jurisdiction. On finding a strong or probable presumption of guilt the Magistrate is required to commit the fugitive to prison to await his return, and must forthwith send a certificate of the committal and such report of the case as he thinks fit to the Governor-General.

FURIOUS DRIVING.

(*See* Rev. Stat. Can., chap. 162, s. 28).

GAME.

In Ontario the Rev. Stat., chap. 221, is the Act for the protection of game and furbearing animals.

By section 7, offences against the Act are punishable upon summary conviction, on information or complaint before a Justice of the Peace.

GAMBLING IN PUBLIC CONVEYANCES.

The Rev. Stat. Can., chap. 160, contains the law in reference to this offence, and makes it a misdemeanor to obtain any property by any gambling practice. So an attempt to commit the offence is also a misdemeanor. The conductor or other officer in charge of the conveyance may, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit the offence.

The first section only authorizes a sentence for a term less than a year. See *Goodman* v. *The Queen*, 3 Ont R., 18.

GAMING HOUSES.

The Rev. Stat. Can., chap. 158, contains the law on this subject. Large powers of entry and search are given in regard to houses in which it is believed that gaming is carried on, and it is a serious offence to obstruct the officers of the law in such cases.

Keeping a common gaming house is an indictable offence at common law, and a commitment for unlawfully keeping such house discloses an offence. The cards referred to in the fourth section must be such as are ordinarily used in playing an unlawful game, but "poker" is not in itself an unlawful game. *R.* v. *Shaw*, 4 Manitoba L.R., 404.

The law does not deem it within its province to punish such practices as gaming, unless either some fraud is resorted to, or

regular institutions are established for the purpose, so as to amount to a public nuisance.

No rules or practice of any game can make that lawful which is unlawful by the laws of the land, and if, while engaged in a friendly game of football, one of the players commits an unlawful act, whereby death is caused to another, he is guilty of manslaughter. It is immaterial that the act was according to the rules of the game, this fact would only rebut any inference of malice. *R.* v. *Bradshaw*, 14 Cox C.C., 83.

The Rev. Stat. Can., chap. 164, s. 80, provides that every one who, by any fraud or unlawful device, or ill-practice, in playing at any game of cards or dice, or of any other kind, or at any race, or in betting on any event, wins or obtains any money or property from any other person, shall be held to have unlawfully obtained the same by false pretences, and shall be punishable accordingly.

The defendant was convicted by the Police Magistrate, of the City of Toronto, for playing at a game of cards called "pharaoh," contrary to the statute 12 Geo. 2, chap. 28, and sentenced to pay £50, sterling—the penalty thereby imposed. It was held that under 27 Geo. 3, chap. 1, s. 2, the jurisdiction of Justices of the Peace in such cases was taken away, and in lieu thereof, the recovery of such penalty was to be by civil action. *R.* v. *Matheson*, 4 Ont. R., 559.

In Ontario, the Rev. Stat., chap. 184, section 489, s.s. 36, authorizes the Council of every Township, City, Town, or Incorporated Village, to pass a by-law for suppressing gambling-houses, and for seizing and destroying faro banks, *rouge et noir*, roulette tables, and other devices for gambling found therein.

The offence of keeping a gambling house comes within the provisions of the Rev. Stat. Can., chap. 174, s. 140.

GAOLS.

(*See* PRISONS. *See* also Rev. Stat. Can., chap. 182).

GAS.

Under "The Gas Inspection Act," Rev. Stat. Can., chap. 101,

s. 41, every person who, except under the authority of the Act, makes, or knowingly assists in making, or who knowingly forges or counterfeits any stamp or mark used for the stamping or marking of any meter, under the Act, incurs a penalty not exceeding two hundred dollars, and not less than fifty dollars. And any person knowingly selling, or disposing of any meter, with such forged stamp or mark thereon, incurs a penalty not exceeding two hundred dollars, and not less than twenty dollars.

Under section 42, heavy penalties are imposed for falsely altering meters, or obstructing their action. So under sections 43 and 44 it is unlawful to fix any meter for use before it has been stamped and verified, or for an inspector to stamp any meter without duly testing and finding the same correct; and by subsequent sections, penalties are imposed for other offences against the Act.

GOVERNMENT HARBORS, PIERS AND BREAKWATERS.

The Rev. Stat. Can., chap. 84, contains various provisions on this subject, and by section 6, all pecuniary penalties imposed under the Act may be recovered with costs under the Summary Convictions Act (Rev. Stat. Can., chap. 178).

GRIEVOUS BODILY HARM.

The Rev. Stat. Can., chap. 162, s. 13, applies to offences of this nature.

A person who fires a loaded pistol at a crowd of people, not aiming at any one in particular, but intending generally to do grievous bodily harm, and severely wounds one of the group, may be convicted of the felony of feloniously shooting and wounding the person injured, with intent to do grievous bodily harm. *R.* v. *Fretwell*, 9 Cox C.C., 471.

To constitute grievous bodily harm it is not necessary that the injury should be either permanent or dangerous; if it be such as seriously to interfere with comfort or health, it is enough. *R.* v. *Ashman*, 1 F. & F., 88.

HARBOR MASTERS.

The Rev. Stat. Can., chap. 86, enables the Governor in Council to appoint Harbor Masters, and to make regulations defining their rights, powers and duties, and the penalty imposed by any such regulation may be recovered under The Summary Convictions Act (Rev. Stat. Can., chap. 178; *Ib.* 5, s. 17).

HAWKERS.

In Ontario, the Rev. Stat., chap. 184, s. 495, empowers the Council of any County, City and Town, separated from the County, to pass by-laws "for licensing hawkers or petty chapman," etc. Sub-section 3 (*a*), enacts that the word "hawkers" shall include all persons who being agents for persons not resident within the County, sell or offer for sale, tea, dry goods or jewellery, or carry and expose samples or patterns of any such goods, to be afterwards delivered within the County to any person not being a wholesale or retail dealer in such goods, wares or merchandize. Parties may take their arrangements out of the terms and scope of the by-law if they please, and a person who buys goods as an independent trader is not necessarily an agent within this statute, because he becomes such for the purpose of evading the by-law, so long as the agency does not, in fact, exist. *R.* v. *McNicol*, 11 Ont. R., 659.

It is no offence under this clause to expose samples of cloth and solicit orders for clothing, to be afterwards manufactured from such cloth, and to be then delivered to the persons giving such orders. The term "dry goods," does not include clothing ordered to be manufactured from cloths, samples of which are exposed with a view to solicit orders for such clothing. *R.* v. *Bassett*, 12 Ont. R., 51. Under the same Act a member of a firm carrying and exposing samples or making sales of tea, is not within the restriction preventing "agents for persons not resident within the County" from so doing, and is not such an agent. *R.* v. *Marshall*, 12 Ont. R., 55.

Electro-type ware is not jewellery within the above enactment,

and a conviction for selling this without license is therefore bad, and liable to be quashed though the fine has been paid. *R.* v. *Chayter*, 11 Ont. R., 217.

The words "other goods, wares and merchandize," in a conviction are too general, and the kind of goods ought to be shown. (*Ib.*)

HIGHWAYS.

(*See* NUISANCES).

HOMICIDE.

(*See* MURDER).

HOUSE BREAKING.

(*See* BURGLARY).

HUSBAND NEGLECTING TO MAINTAIN.

(*See* MAINTENANCE).

IGNORANCE.

A mistake or ignorance of law is no defence for a party charged with a criminal act, but it may be ground for an application to the merciful consideration of the Government. *R.* v. *Madden*, 10 L.C.J., 344.

Ignorance or mistake of fact may in some cases be a defence, as for instance, if a man intending to kill a thief in his own house, kill one of his own family, he will be guilty of no offence. But if intending to do grievous bodily harm to A, he in the dark kill B, he will be guilty of murder, the exemption from liability proceeding on the assumption that the original intention was lawful. So a man is not liable for an accident which happens in the performance of a lawful act, with due caution. For example, A, properly pursuing his work as a bricklayer, lets fall a brick on B's head, and the latter dies in consequence of the injury, A will not be liable, but it would have been otherwise, had A at the time been engaged in some criminal act, or if he had not exercised proper skill or care.

IMMIGRATION.

The Rev. Stat. Can., chap. 65, contains numerous provisions for the protection of immigrants. By section 30 they are not allowed to be solicited except by licensed persons, under a penalty of not less than fifty dollars. The seduction of any female immigrant by the master officer, seaman, or other employee of any vessel, while such vessel is in Canadian waters, is a misdemeanor, (*Ib.*, s. 36). By section 42, s.s. 3, every violation of the provisions of the Act, where the penalty exceeds forty dollars, is a misdemeanor. A summons may be issued by one Justice of the Peace, but a conviction can only be made by two such Justices. (*Ib.*, sections 41 and 42.)

IMPRISONMENT.

The Rev. Stat. Can., chap. 181, s. 23, s.s. 3, provides that every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding twenty dollars, or to imprisonment with or without hard labour, for a term not exceeding three months, or to both. By section 28, s.s. 6, the term of imprisonment shall, unless otherwise directed, commence from the day of passing sentence, but no time on which the convict is out on bail can be reckoned as part of the term. In the case of several convictions, the sentences may be made to take effect one after the other. (*Ib.*, s. 27).

A mere accidental error in pronouncing sentence is not sufficient ground for discharging a prisoner. A prisoner was convicted of larceny and sentenced to one year's imprisonment in Dorchester Penitentiary. The warden refused to receive him on the ground that the shortest period for which prisoners could be sentenced to, or received at the Penitentiary, was two years. Prisoner was then taken to the County Gaol. On a motion for *habeas corpus*, the jailer in his return set out the conviction for larceny, and also returned that the prisoner was detained under a warrant of a Justice for attempting to escape by tearing up the floor of his cell. The warrant annexed to the return was under

the hand of two Justices. The Court refused to discharge him, and decided that he should be sentenced to imprisonment in the Common Gaol for one year, inclusive of the period for which he had already been detained. *Re Rice*, 2 Russell & Geldert, 77.

The general rule that the period of imprisonment in pursuance of any sentence, commences on and from the day of passing such sentence, does not suffer exception where the defendant is allowed to go at large after sentence without bail, and therefore where a defendant was allowed to go at large until the term of the sentence had expired, his commitment subsequently was held to be illegal, *Ex parte Gervais*, 6 Legal News, 116. But if the prisoner is released on bail before the expiration of the sentence, the time during which he is out on bail is not reckoned as part of the sentence. Rev. Stat. Can., chap. 181, s. 28, s.s. 6. It is otherwise, however, if the release is not on bail. Where a prisoner sentenced to six months imprisonment was allowed to remain at liberty until fourteen days before the expiry of the original period of imprisonment, his commitment then was held valid for the remaining fourteen days only, and not for six months from the date of the commitment. *Re Hénault*, 6 Legal News, 121.

A warrant should state the day a prisoner is sentenced, otherwise the time when the imprisonment commences and expires is uncertain. *Ex parte Stather*, 25 Sup. Ct., N.B., 374.

INDECENCY.

Every one commits a misdemeanor, who does any grossly indecent act in any open and public place in the presence of more persons than one; *Elliot's case*, L. & C., 103. But it is uncertain whether such conduct in a public place amounts to a misdemeanor, if it is done when no one is present, or in the presence of one person only.

In order to support an indictment for indecent exposure in a public place, it is sufficient to show that the offence was committed in a place where an assembly of the public is collected, even though they have no legal right of access thereto. *R.* v. *Wellard*, 15 Cox C.C., 559.

A place is public if it is so situated, that what passes there can be seen by any considerable number of persons, if they happen to look. *Webb's case*, 1 Den., 338; *R.* v. *Orchard*, 3 Cox C.C., 248.

Thus the inside of a urinal open to the public, and by the side of a foot path in Hyde Park is a public place. *R.* v. *Harris*, L.R. 1, C.C.R., 288.

It is unlawful for men to bathe without any screen or covering so near to a public footway frequented by females, that exposure of the person must necessarily occur, and they who so bathe are liable to an indictment for indecency. *R.* v. *Reed*, 12 Cox C.C., 1.

It is not necessary that the exposure should be made in a place open to the public. If the act be done where a great number of persons may be offended by it and several see it, it is sufficient. *R.* v. *Thallman*, 33 L.J.M.C., 58.

Printing or publishing indecent or obscene books, prints or pictures, is a misdemeanor at common law, and punishable with fine or imprisonment or both, *R.* v. *Curl*, 2 Str., 788, and it is no defence that the object was not corrupt. *R.* v. *Hicklin*, L.R. 3, Q.B., 360.

Keeping a booth on a public race-course, for the purpose of showing an indecent exhibition is an offence at common law. *R.* v. *Saunders*, L.R. 1, Q.B.D., 15.

INDECENT ASSAULTS,

(*See* ASSAULTS).

INDIANS.

The law in reference to this class of persons is contained in the Rev. Stat. Can., chap. 43. To obviate the difficulty as to Indian names, section 28 provides that it shall not be necessary to insert or express the name of the person or Indian summoned, arrested, or proceeded against except where the name of such person or Indian is truly given to or known by the Magistrate. In the latter case, he may name or describe the person or Indian by any part of the name given to or known by him, and if no such part is known he may be described in any manner by which he may

be identified. The Summary Convictions Act (Rev. Stat. Can., chap. 178) supplies the procedure on the prosecution of the various offences under the Act, (see sections 67 & 76). Section 94 of the Act creates severe punishment for furnishing intoxicants to Indians.

The functionary convicting under this section must be appointed to exercise his jurisdiction within some prescribed area, and if an Indian agent only, it must be shown that the Indians to whom liquor is sold were Indians over whom the agent had jurisdiction. *R.* v. *McAuley*, 14 Ont. R., 643.

This section provides that the punishment for selling liquor to Indians may be imprisonment, *or* fine, or fine *and* imprisonment, but does not provide for a fine and imprisonment in default of payment of the fine. *R.* v. *Mackenzie*, 6 Ont. R., 165. Where therefore a conviction for giving intoxicating liquor to an Indian, imposed a fine and costs and in default of immediate payment, imprisonment, the conviction was held invalid, and that the defect was not remedied by section 125, which enacts that no prosecution, conviction, etc., under the Act shall be invalid on account of want of form so long as the same is according to the true meaning of the Act. (*Ib.*)

Imprisonment may be imposed under this section as a substantive punishment, but it would seem that it cannot be awarded in case of immediate non-payment of a fine where a fine is imposed under this section. Imprisonment may be adjudged under section 95, where the offence is selling liquor to Indians on board a vessel. Where a fine is imposed under section 94, the conviction must follow the form (J, 1.) in the Rev. Stat. Can., chap. 178, and award distress in default of payment of the fine. *Ex parte Goodine*, 25 Sup. Ct. N.B., 151.

Land leased by the Crown is not a reserve or special reserve, and it is only to sales of liquor on reserves or special reserves that the prohibition contained in section 94 applies.

In the case of such leased land, a prosecution for selling liquor should be under the Liquor License Act. *R.* v. *Duquette*, 9 P.R., (Ont.), 29.

A man who sells liquor to an Indian is guilty of two offences, and may be convicted of selling under the Rev. Stat. Ont., chap. 194, as well as under the Indian Act. *R.* v. *Young*, 7 Ont. R., 88.

It is not necessary that the conviction should show whether the offender is a white man or an Indian. Where the conviction alleged that the offence was committed on the 29th September, 1887, and the information and evidence showed that it was on the 27th, the variance was held immaterial. *R.* v. *Green*, 12 P.R. (Ont.), 373.

The words "appeal brought," in section 108 of the Act, are satisfied by the giving of notice and perfecting the appeal by the giving of the security provided for by the Rev. Stat. Can., chap. 178, s. 77, and it is not necessary for an appellant from a conviction under "The Indian Act," to bring his appeal to a hearing within the time limited by the 108th section. *R.* v. *McGauley*, 12 P.R. (Ont.), 259. *Re Hunter* v. *Griffiths*, 7 P.R. (Ont.), 86, not followed.

A visiting Superintendent and Commissioner of Indian Affairs, for the Brant and Haldimand Reserve, has jurisdiction, under the statutes relating to Indian Affairs, to act as a Justice of the Peace in the matter of a charge against the plaintiff for unlawfully trespassing upon and removing cordwood from the Indian Reserve in the County of Brant. *Hunter* v. *Gilkison*, 7 Ont. R., 735.

INDICTABLE OFFENCES.

All treasons, felonies, and misdemeanors, misprisions of treason and felony, whether existing at common law or created by statute, are the subjects of indictment; so also are all attempts to commit any of these acts.

All crimes involve the elements of *will, criminal intention*, or *malice*. To make a person a criminal, the intention must be a state of mind forbidden by the law. For instance, a person innocently uttering a forged note, not intending to defraud, commits no crime. When the law expressly declares an act to be criminal, the question of intention or malice need not be considered.

Malice is found not only in cases where the mind is actively or positively at fault, as where there is a deliberate design to defraud, but also where the mind is passively or negatively to blame—that is, where there is culpable or criminal inattention or negligence. It is usual to lay down that malice is either *express* or *in fact*, as where a person with a deliberate mind and formed design kills another; (2) *Implied* or *in law*, as where one wilfully poisons another, though no particular enmity can be proved, or where one gives a perfect stranger a blow likely to produce death. Here there is a wilful doing of a wrongful act without lawful excuse, and the intention is an inference of law resulting from the doing the act. The law infers that every man intends the necessary consequence of his own act. Malice in its ordinary sense of ill-will or malevolence, is not essential to a crime; malice in its legal signification of criminal intention is. For instance, legal malice may constitute homicide, murder, though there may be an entire absence of ill-will; where there is ill-will or malevolence, homicide, which would otherwise be manslaughter, is constituted murder. Intention sometimes determines the criminality of an act. For instance, A takes a horse from the owner's stables without his consent. If he intend to fraudulently deprive the owner of the property, and appropriate the horse to himself, he is guilty of the crime of larceny; if he intend to use it for a time and then return it, without depriving the owner of his property therein, it will only be a trespass or civil injury.

In some cases, belief, though erroneous, of a prisoner in the existence of a right to do the act complained of, excludes criminality. *R.* v. *Twose*, 14 Cox C.C., 327. But this cannot be laid down as an absolute rule of law. Each case must depend on its own circumstances. Where an Act of Parliament renders a particular act unlawful, without reference to motive, belief is immaterial. See *R.* v. *Bishop*, 5 Q.B.D., 259. But where the state of mind or intention is made an element by the statute, as where a statute inflicts a penalty on any person wantonly doing a certain act, and such act is done by the agent of an incorporated company, some knowledge of the particulars ought to be brought

home to the manager to render him liable. *Small* v. *Warr*, 47 J.P., 20.

But as a general rule no penal consequences are incurred where there has been no personal neglect or default, and a *mens rea* is essential to an offence under a penal enactment unless a contrary intention appears by express language or necessary inference. *Dickinson* v. *Fletcher*, L.R., 9 C.P., 1.

A mere naked intention, however, is not criminally punishable. There must be some carrying out, or attempt to carry out, that intention into action. Thus, although A makes up his mind to shoot B, and confesses this resolution, the law is powerless to deal with him; but directly he does anything in pursuance of that design he is within the grasp of the law.

If there be a present criminal intention, the prisoner is not exculpated because the results of the steps he takes to carry out that intention are other than those he anticipated or intended. For example, if A, intending to shoot B, shoot C, mistaking C for B, he is criminally liable; and if A shoots at B's poultry and by accident kills a man, if his intention was to steal the poultry, he will be guilty of murder. See Harris' Crim. Law, 1, 2.

An *attempt* to commit a crime must be distinguished from an *intention* to commit it. Every attempt to commit a crime is itself an indictable misdemeanor at common law.

An attempt to commit a crime, whether the crime attempted be misdemeanor or felony, is a misdemeanor. *R.* v. *Connolly*, 26 Q.B. (Ont.), 322; *R.* v. *Goff*, 9 C.P. (Ont.), 438. So inciting another to commit a misdemeanor, as endeavoring to induce a person to take a false oath, is a misdemeanor. *R.* v. *Clement*, 26 Q.B. (Ont.) 297.

The act of attempting to commit a felony must be immediately and directly tending to the execution of the principal crime, and committed by the prisoner under such circumstances, that he has the power of carrying his intention into execution. *R.* v. *McCann*, 28 Q.B. (Ont.), 514.

It may be observed that the Rev. Stat. Can., chap. 174, s. 183 provides that a person charged with any felony or misdemeanor,

may be convicted of an *attempt* to commit the same, and no person tried in this manner shall be liable to be aftewards prosecuted for committing or attempting to commit the felony or misdemeanor for which he was so tried. See *R.* v. *Webster*, 9 L.C.R., 196.

A disregard of or a non-compliance with a positive command in an Act of Parliament is indictable as a misdemeanor. *R.* v. *Toronto St. Ry. Co.*, 24 Q.B. (Ont.), 454. So is the wilful violation of any Act. Rev. Stat. Can., chap. 173, s. 25.

By the Rev. Stat. Can., chap. 174, s. 184, although a felony appears on the facts given in evidence, a misdemeanor with which the party may be charged will not merge therein, and the party may still be convicted of *such* misdemeanor. But a party cannot, under this section, be convicted of any felony which may be disclosed in evidence, but only of *the misdemeanor* with which he is charged, if included in the felony proved. *R.* v. *Ewing*, 21 Q.B. (Ont.), 523.

Independently of some statutory authority, a person cannot, on an indictment for felony, be found guilty of a misdemeanor. *R.* v. *Thomas*, L.R., 2 C.C.R., 141.

An order made under a power given in a statute is the same thing, as if the statute enacted what the order directs or forbids, and disobedience of such order is a misdemeanor for which an indictment will lie. *R.* v. *Walker*, L.R. 10, Q.B., 355.

When a person filling a public office, wilfully neglects or refuses to discharge the duties thereof, and there is no special remedy or punishment pointed out by the statute, an indictment will lie, as there would otherwise be no means of punishing the delinquent. *R.* v. *Bennett*, 21 C.P. (Ont.), 237.

But it seems that a mere non-feasance, in no way criminal in itself, cannot be treated as a misdemeanor or any species of criminal offence, unless expressly declared to be such by competent Legislative authority. *R.* v. *Snider*, 23 C.P. (Ont.), 330-36.

Contributory negligence is not an answer to a criminal charge, as it is to a civil action. *R.* v. *Kew*, 12 Cox C.C., 355.

INFANTS.

Under the age of seven an infant cannot be convicted of felony (*Marsh* v. *Loader*, 14 C.B.N.S, 535), for until he reaches that age he is presumed to be incapable of crime, and this presumption cannot be rebutted by the clearest evidence of a mischievous discretion. Between seven and fourteen he is still *prima facie*, deemed by law to be incapable of crime: but this presumption may be rebutted by clear and strong evidence of such mischievous discretion. An infant under fourteen cannot, however, be convicted of rape as a principal, but he may as a principal, in the second degree.

INSANITY.

No act is a crime if the person who does it is, at the time when it is done, prevented either by defective mental powers or by any disease affecting his mind from knowing the nature and quality of his act, or from knowing that the act is wrong, or from controlling his own conduct, unless the absence of the power of control has been produced by his own default. But an act may be a crime, although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

Every person is presumed to be sane, and to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, but the jury may have regard to his appearance and behaviour in Court. *R.* v. *Oxford*, 9 C. & P., 525; *R.* v. *Stokes*, 3 C. & K., 185; Stephen's Dig., 17-18-19.

A person so deficient in understanding as not to comprehend the proceedings on his trial, cannot be convicted of any offence; the trial must be stopped.

A deaf mute being tried for felony was found guilty, but the jury found also that he was incapable of understanding, and did not understand the proceedings on the trial. It was held that he could not be convicted, but must be detained as a non-sane person during the Queen's pleasure. *R.* v. *Berry*, L.R. 1, Q.B.D., 447.

INSOLVENT COMPANIES.

"The Winding up Act," Rev. Stat. Can., chap. 129, s. 95, makes it a misdemeanor for any officer of a company to destroy or alter any book with intent to deceive or defraud.

INSPECTION OF STAPLE ARTICLES OF CANADIAN PRODUCE.

The Rev. Stat. Can., chap. 99, governs this matter. Section 20 imposes a penalty on any Inspector who refuses or neglects to inspect, on personal or written application by the owner of an article, which the Inspector is appointed to inspect. Altering, effacing or counterfeiting the Inspector's brands or marks with a fraudulent intention, involves a penalty of forty dollars. (*Ib.*, s. 21.) When the penalty or forfeiture does not exceed forty dollars, it shall, except when the Act otherwise provides, be recoverable by any Inspector in a summary way before any two Justices of the Peace, according to the usual practice in such cases. (*Ib.*, s. 25.)

INTOXICATING LIQUORS.

(*See* LIQUOR, SCOTT ACT.)

LANDLORD AND TENANT.

The 11 Geo. II., chap. 19, s. 4, was passed to prevent tenants fraudulently removing goods to the prejudice of the landlord. The statute provides that when the goods carried off or concealed shall not exceed the value of £50, the landlord or his bailiff, servant or agent may exhibit a complaint in writing before two or more Justices of the Peace who are empowered to summon the parties concerned, and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged, and upon full proof of the offence may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords at such time as the said Justices shall appoint. In case of neglect or refusal, the Justices may order distress, and for want of distress imprisonment with hard labor without bail or mainprize for the space of

six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

By the fifth section of the Act an appeal is given to the Quarter Sessions. A bailiff or agent may prosecute, and the money may be ordered to be paid to such bailiff or agent. In Ontario, by virtue of the provisions of chap. 61 of the Rev. Stat., the defendant cannot be compelled to give evidence on the prosecution. *R.* v. *Lackie*, 7 Ont. R., 431.

LARCENY, EMBEZZLEMENT AND OBTAINING BY FALSE PRETENCES.

The Act respecting these offences is the Rev. Stat. Can., chap. 164.

Theft is the wrongfully obtaining possession of any movable thing which is the property of some other person and of some value, with the fraudulent intent entirely to deprive him of such thing, and have or deal with it as the property of some person other than the owner.

Independently of the provisions of the statute the goods taken must be personal goods, for none other can be the subject of larceny at common law. It is to be observed, however, that the statute specifies various subjects of larceny which were not such at common law. Stealing dogs, beasts or birds ordinarily kept in a state of confinement and not the subject of larceny at common law is punishable on summary conviction. (*Ib.*, s. 9.)

Partridges hatched and reared by a common hen while they remain with her are the subjects of larceny. *R.* v. *Shickle*, L.R. 1, C.C.R., 158.

Water supplied by a water company to a consumer and standing in his pipes may be the subject of larceny at common law. *Ferens* v. *O'Brien*, 15 Cox C.C., 332.

When the law as to stamping promissory notes was in force it was held that an unstamped promissory note was not a valuable security within the 12th section. *Scott* v. *The Queen*, 2 S.C.R., 349.

It is not absolutely necessary that the instrument be negotiable in order to constitute it a valuable security. *R.* v. *John*, 13 Cox C.C., 100.

Section 18 of the Act relates to the stealing of any tree, where the value of the article or articles stolen exceeds the sum of five dollars. It seems that in estimating the amount of injury, the injury done to two or more trees may be added together, provided the trees are damaged at one and the same time, or so nearly at the same time as to form one continuous transaction. *R.* v. *Shepherd*, L.R., 1 C.C.R., 118.

Section 19 of the Act applies to the whole or any part of any tree *growing*, and not cut down or made into cordwood. Under the 22nd section, it seems the offender must have *knowledge* of the possession, and reading this section in connection with the others it seems that whatever trees, etc., are made the subject of larceny in the other sections, if found in the possession, or on the premises of any one, to his knowledge, and without accounting for how he came by the same, will subject such person to a conviction for so having them. A tree cut by the proprietor into cordwood, and taken away by some one after it has been made into cordwood, is, if stolen, a mere larceny of goods and chattels, and does not come within the 22nd section of the Act. Even if the section does apply to trees cut by the owner and lying on his land as he felled them, still it does not apply to cordwood, which is not "the whole or any part of any tree." *R.* v. *Caswell*, 33 Q.B. (Ont.), 303.

Things attached to the land, and which are not embraced in these sections, are not the subjects of larceny, unless severed from the freehold, and unless between the time of severance and the taking, the property therein vests in the owner of the freehold. Where the severance and the taking are one continuous act, there can be no larceny. *R.* v. *Townley*, L.R. 1, C.C.R., 315; followed in *R.* v. *Read*, 14 Cox C.C., 17.

If some of the things are severed before the larceny as to these, an indictment for simple larceny or receiving, is sustainable, and the conviction will be good, though the indictment contain any number of articles as to which a separate indictment could not be sustained. *R.* v. *St. Denis*, 8 P.R. (Ont.), 16.

The prisoner was indicted for larceny under The Indian Act,

Rev. Stat. Can., chap. 43, s. 65, and was convicted. The Court held that he ought not to have been convicted, because the wood, the subject of the alleged larceny, was not, in the absence of satisfactory information supported by affidavit, "seized and detained as subject to forfeiture" under the Act, and because the affidavit required by section 62 had not been made, and was a condition precedent to the seizure. *R.* v. *Fearman*, 10 Ont. R, 660. It seems, however, that the prisoner might have been indicted for larceny at common law. (*Ib.*)

At common law also the taking must be of the goods of another. Therefore a man cannot steal his own goods, and husband and wife, being one in law, they cannot steal each others goods. In Ontario, the Act respecting the property of married women, Rev. Stat. (Ont.), chap. 132, may to some extent modify this rule.

So long as a wife is living properly with her husband, if she gives away his property, or sells it under ordinary circumstances, it would not be larceny, but if a wife goes away with a man for the purpose of committing adultery, and taking with her property of her husband's, and the adulterer either sells it or uses it as his own, he will be guilty of larceny, where he knows the real ownership of the property. *R.* v. *Harrison*, 12 Cox C.C., 19.

The wife, though she is a party to the adultery, cannot be convicted of theft, and the adulterer cannot be convicted if he merely assists the wife to carry away her own wearing apparel from her husband. *R.* v. *Fitch*, D. & B., 187.

In reference to the property of third persons, where a wife is not acting under the control of her husband, she is liable to conviction independently of him. *R.* v. *Cohen*, 11 Cox C.C., 99.

At common law, one joint tenant, or tenant in common, could not steal the goods which belonged to himself and the others jointly. Now, however, section 58 of the statute alters the law in this respect. See *R.* v. *Lowenbruck*, 18 L.C.J., 212; see also section 31 of the Act.

An association which has not for its object gain or profit, is not a copartnership under the 58th section. Where a member of a Young Men's Christian Association embezzled money obtained by

him on behalf of the association, it was held that such association was not a co-partnership within the section, and that, therefore, there could be no conviction. *R.* v. *Robson*, 16 Q.B.D., 137.

In order to convict of an attempt to commit larceny, it must appear that there was property in the place where the attempt is made, that could be stolen. Therefore, where a person puts his hand into the pocket of another, with intent to steal, he cannot be convicted of an attempt to steal, unless it appears that there was some property in the pocket which might be stolen. *R.* v. *Collins*, 9 Cox C.C., 497.

A gipsy, obtaining money and goods under pretence of practicing witchcraft, and without any intention to return them, was held properly indicted for larceny. *R.* v. *Bunce*, 1 F. & F., 523.

The Rev. Stat. Can., chap. 160, s. 4, passed for the prevention of gambling practices in public conveyances, declares that any money obtained by an offence against the first section of the Act, shall be dealt with as if obtained by larceny from the person.

At common law a bailee or person lawfully acquiring the possession of property for some specific purpose, could not be convicted of larceny in respect of any subsequent felonious conversion, if his intention at the time of obtaining possession were innocent. See *Pease* v. *McAloon*, 1 Kerr, 116. But now under section 4 of the Act, a bailee fraudulently converting is guilty of larceny.

Prisoner, a travelling watchmaker, received from different persons, watches, which he was to repair, and pledged the same for a loan of money. There was no evidence that the prisoner had made any effort to redeem the watches, and he was held guilty of larceny as a bailee. *R.* v. *Wynn*, 16 Cox C.C., 231. See also *R.* v. *Berthiaume*, 3 Montreal L.R., 143; *R.* v. *Sulis*, 7 Quebec L.R., 226.

To constitute a bailment, the property must come into the possession of the bailee lawfully under a contract, and where the property is obtained by fraud, and the prosecutor parts with all control over it as well as possession, there is no bailment. *R.* v. *Hunt*, 8 Cox C.C., 495. As to who is a bailee, see *R.* v. *Oxenham*,

13 Cox C.C., 349; *R.* v. *Aden*, 12 Cox C.C., 512; *R.* v. *Daynes*, 12 Cox C.C., 514.

It is submitted that a married woman may be a bailee. See Rev. Stat. Can., chap. 1, s. 7 (21).

An infant over fourteen years of age fraudulently converted to his own use goods which had been delivered to him by the owner, under an agreement for the hire of the same, and it was held that he was rightfully convicted of larceny as a bailee, though the contract was void by reason of the minority. *R.* v. *McDonald*, 15 Q.B.D., 323.

The prisoner, not being otherwise in the service of the prosecutor, was employed by him merely to take care of a horse for a few days, and afterwards to sell it, and having sold the horse and appropriated the money to his own use, it was held that he was properly convicted of larceny. *R.* v. *De Banks*, 13 Q.B.D., 29.

The prisoner asked the prosecutor for the loan of a shilling. The prosecutor gave the prisoner a sovereign, believing it to be a shilling, and the prisoner took the coin under the same belief. Sometime afterwards he discovered that the coin was a sovereign, and then and there fraudulently appropriated it to his own use. The prisoner was convicted of larceny of the sovereign, and it was held that he was not guilty of larceny as a bailee, and a conviction for larceny at common law was sustained. *R.* v. *Ashwell*, 16 Q.B D., 190. But the old rule that the innocent receipt of a chattel coupled with its subsequent fraudulent appropriation does not amount to larceny, is not affected by the foregoing case. See *R.* v. *Flowers*, 16 Q.B.D., 643.

There must be an actual or constructive taking of the goods, as larceny involves a trespass. Where the owner, by mistake, gives the possession of the goods, but the defendant knows the mistake and intends from the first to steal, this is a sufficient taking. *R.* v. *Middleton*, L.R. 2, C.C.R., 38. There must also be a carrying away, but as the felony lies in the very first act of removing the property, the least removing of the thing taken from the place where it was before with intent to steal, is a sufficient asportation. See *R.* v. *Townley*, L.R. 1, C.C.R., 319.

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Where property is taken by a party under a claim of right, if the jury are of opinion that the taking by the prisoner was an honest assertion of his right, they should find him not guilty, but if it is only a colourable pretence to obtain possession they should convict. *R.* v. *Wade*, 11 Cox C.C., 549.

To constitute larceny there must be a felonious intent to take the goods of another against his will, with intent to deprive the owner of his property therein. *R.* v. *McGrath*, L.R. 1, C.C.R., 210-11; see also *R.* v. *Prince Ib.*, 150; *R.* v. *Bailey Ib.*, 147.

Returning the goods may be evidence to negative the felonious intent at the time of taking them, but it is no defence that the prisoner intended to return them when taken.

A finder of lost goods who converts them, commits theft, if at the time when he takes possession of them he intends to convert them, knowing who the owner is, or having reasonable grounds to believe that he can be found. Such conversion is not theft (*a*) if at the time when the finder takes possession of the goods, he has not such knowledge or grounds of belief as aforesaid, although he acquires them after taking possession of the goods, and before resolving to convert them; or (*b*) if he does not intend to convert the goods at the time when he takes possession of them, whether he has such knowledge or grounds of belief or not at any time. See *R.* v. *Matthews*, 12 Cox C.C., 489. If the circumstances are such as to lead the finder reasonably to believe that the owner intended to abandon his property in the goods, the finder is not guilty of theft in converting them. See *R.* v. *Thurborn*, 1 Den., 387; *R.* v. *Glyde*, L.R. 1, C.C.R., 139.

Where there is no force or fear, and the property is taken suddenly, the offender is guilty of the offence of stealing from the person. To constitute this offence, the thing taken must be on the person, or under the protection of the prosecutor. If for instance, on retiring at night, the prosecutor leaves his clothing in another room, rifling the pockets would not be stealing from the person. See s. 32 as to this offence.

If the thing taken and carried away is on the body or in the immediate presence of the person from whom it is taken, and if the

taking is by actual violence, intentionally used to overcome, or to prevent his resistance, or by threats of injury to his person, property or reputation, the offence is robbery.

Robbery is the felonious taking of property from the person of another, or in his presence against his will, by force, violence, or putting in fear. There must be a felonious intent; and where a creditor violently assaulted his debtor, and so forced him to give a cheque in part payment, and then again assaulted the debtor in order to force him to give money in payment of the debt, it was held that there was no robbery, the creditor believing that he had a right to his debt. *R.* v. *Hemmings*, 4 F. & F., 50.

Robbery is in fact larceny, aggravated by circumstances of force, violence or putting in fear, and a party charged with robbery may be convicted of larceny, as the latter crime includes the former. *R.* v. *McGrath*, L.R. 1, C.C.R., 210-11.

No sudden taking or snatching of property unawares from a person is sufficient to constitute robbery, unless some injury be done to the person, or there be a previous struggle for the possession of the property, or some force used to obtain it, and the fear must precede the taking.

In robbery there must be a complete removal of the thing from the person of the party robbed—both a taking and a carrying away. An assault with intent to rob is distinguished from robbery in this, that in the former there is no taking or carrying away, the purpose not being effected. A person charged with an assault with intent to rob, cannot be convicted of a common assault. *R.* v. *Woodhall*, 12 Cox, 240. But a person tried for robbery may be convicted of an assault with intent to rob. Rev. Stat. Can., chap. 174, s. 192.

If the possession of goods is lawfully obtained from the owner there can be no larceny, nor can there be any larceny if the property in the goods pass to the wrongdoer. Where the owner *intends* to part with the property, though he may form such intention in consequence of some deceit or misrepresentation, there is no larceny, but there may be an obtaining by false pretences. But where the owner does not intend to part with the goods or money taken by

the defendant, and the latter fraudulently gets possession of them, intending not to pay for them, he is guilty of larceny. Where the owner voluntarily parts with the possession intending to vest the property in the defendant, because he relies on the defendant's *promise* to pay for them, he cannot be convicted of larceny. *R.* v. *Bertles*, 13 C.P. (Ont.), 610.

Against the wall of a public passage was fixed what is known as an "automatic box," the property of a company. In such box was a slit of sufficient size to admit a penny piece, and in the centre of one of the sides was a projecting button or knob. The box was so constructed that upon a penny piece being dropped into the slit, and the knob being pushed in, a cigarette would be ejected from the box on to a ledge which projected from it. Upon the box were the following inscriptions:—"Only pennies, not half-pennies," "To obtain an Egyptian Beauties' Cigarette, place a penny in the box and push the knob as far as it will go." The prisoner dropped into the slit in the box a brass disc, about the size and shape of a penny, and thereby obtained a cigarette. This was held to be larceny, the cigarette having been obtained by fraud. *R.* v. *Hands*, 16 Cox C.C., 188.

Two prisoners, by a series of tricks, fraudulently induced a barmaid to pay over money of her master's to them without having received from them in return the proper change. The barmaid had no authority to pay over money without receiving the proper change and had no intention of, or knowledge that she was so doing, and this was held to be larceny. *R.* v. *Hollis*, 12 Q.B.D., 25.

Where a servant is entrusted with his master's property with a general or absolute authority to act for his master in his business, and is induced by fraud to part with his master's property, the person who is guilty of the fraud, and so obtains the property, is guilty of obtaining it by false pretences and not of larceny; because to constitute larceny there must be a taking against the will of the owner, or of the owner's servant duly authorized to act generally for the owner. But where a servant has no such general or absolute authority from his master, but is merely entrusted with the possession of his goods for a special or limited

purpose, and is tricked out of that possession by fraud, the person who is guilty of the fraud, and so obtains the property is guilty of larceny, because the servant has no authority to part with the property in the goods except to fulfil the special purpose for which they were entrusted to him. *R.* v. *Prince*, L.R., 1 C.C.R., 150.

It is not to be inferred from the foregoing that the offender will entirely escape criminal liability. The 196th section of the Rev. Stat. Can., chap. 174, provides that a person indicted for the misdemeanor of obtaining money by false pretences, shall not be entitled to an acquittal though it is proved that he obtained the property in such a manner as to amount to larceny. So also if larceny is proved when another offence is charged. (*Ib.* s. 197.)

According to the common law, and as illustrative of the distinction between larceny and embezzlement, if a servant received money on account of his master, and put it in his pocket before it reached his master's custody (as if a clerk in a shop, on receiving money from a customer, put it into his pocket before putting it into the till), he could not be convicted of larceny, for the money was never in the master's possession, but if the servant placed it in the till, his afterwards taking it out of the till, with a felonious intent, would be larceny, and it is still larceny. *R.* v. *Hennessy*, 35 Q.B. (Ont.), 603. Now, however, section 52 of the statute removes even this distinction. This section, however, only applies to cases where the chattel, money or valuable security is received from third persons on account of the master, and not where it is received directly from the master. *R.* v. *Cummins*, 4 U.C.L.J., 182.

There may, however, be an embezzlement by a clerk or servant of money received *from* as well as money received *for* his master. The difference is that in the first case the offence is a larceny at common law, when not a mere breach of trust. Under this 52nd section of the Act, however, it is not necessary that the servant should receive the money by virtue of his employment. Therefore, though the servant receives the money without authority and without any duty to receive, he is still liable under this section. See Arch. Cr. Pldg., 453. But the money must be

received "for, or in the name, or on the account, of the master or employer." *R.* v. *Cullum*, L.R. 2, C.C.R., 28. *R.* v. *Read* L.R. 3, Q.B.D., 131.

When the prisoner is charged with embezzlement as a clerk or servant it is necessary to prove that he was appointed or employed to collect or receive money for his employer. *R.* v. *Coley*, 16 Cox C.C., 226.

As to receiving "on account of the master" within the meaning of this section, see *R.* v. *Gale*, L.R. 2, Q.B.D., 141. By section 195 of the Rev. Stat. Can., chap, 174, a person charged with embezzlement may be convicted of larceny, and where the charge is larceny there may be a conviction of embezzlement, or of obtaining money by false pretences. (*Ib.* s. 198.)

There can be no offence under sections 51 and 52, unless the person who converts stands, to the owner of the property converted, in the relation of a clerk or servant or person employed in the capacity of a clerk or servant.

It is a question for a jury whether a person accused of embezzlement is a clerk or servant or not and whether he received the money by virtue of his employment. *R.* v. *Arman*, 7 Cox C.C., 45. See *R.* v. *Negus*, L.R. 2, C.C.R., 34. A clerk or servant is a person bound either by an express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact. (*Ib.*; *R.* v. *Tite*, L. & C., 33; *R.* v. *Foulkes*, L.R. 2, C.C.R., 152.)

A man may be a clerk or servant (1) although he was appointed or elected to the employment in respect of which he is a clerk or servant by some other person than the master whose orders he is bound to obey. *Macdonald's case*, L. & C., 85.

2. Although he is paid for his services by a commission or a share in the profits of the business. *R.* v. *Carr*, R. & R., 198.

3. Although he is a member of any co-partnership, or is one of two or more beneficial owners of the property embezzled. Rev. Stat. Can., chap. 164, s. 58.

4. Although he is the clerk or servant of more masters than one. *R.* v. *Spencer*, R. & R., 299.

5. Although he acts as clerk or servant only occasionally, or only on the particular occasion on which his offence is committed. *R.* v. *Hughes*, Moo. C.C., 370.

But an agent or other person who undertakes to transact business for another without undertaking to obey his orders is not neccssarily a servant, because he receives a salary, or because he has undertaken not to accept employment of a similar kind from any one else, or because he is under a duty, statutory or otherwise, to account for money, or other property received by him. *R.* v. *Callahan*, 8 C. & P., 154; Stephen's Dig., 243-4. See as to traveller paid by commission, *R.* v. *Richmond*, 12 Cox C.C., 495; and further on the point as to who is a clerk or servant, see *R.* v. *Hall*, 13 Cox C.C., 49; *R.* v. *Foulkes*, 13 Cox C.C., 63.

The offence of embezzlement cannot be committed by the appropriation of property which does not belong to the master of the alleged offender, although such property may have been obtained by such alleged offender by the improper use of the property entrusted to him by his master; but property which does belong to the master of the offender may be embezzled, although the offender received it in an irregular way. *R.* v. *Cullum*, L.R. 2, C.C.R., 28; *R.* v. *Glover*, L. & C., 466.

The inference that a prisoner has embezzled property by fraudulently converting it to his own use may be drawn from the fact that he has not paid the money or delivered the property in due course to the owner, or from the fact that he has not accounted for the money or other property which he has received, or from the fact that he has falsely accounted for it, or from the fact that he has absconded, or from the fact that upon the examination of his accounts there appeared to be a general deficiency unaccounted for; but none of these facts constitutes in itself the offence of embezzlement, nor is the fact that the alleged offender rendered a correct account of the money or other property entrusted to him inconsistent with his having embezzled it. Stephen's Dig., 248-9.

In order to support a charge of obtaining money by false pretences there must be a pretence of an existing fact; it must appear that the party defrauded has been induced to part with his money by the pretence, and the pretence must be untrue. *R.* v. *Crab*, 11 Cox C.C., 85.

The prisoner must represent some fact as existing which does not exist, and a mere promise by the prisoner as to future conduct will not render him liable, the prosecutor relying upon the promise rather than being deceived by the representation. *R.* v. *Bertles*, 13 C.P. (Ont.), 607. But a fraudulent misrepresentation of an existing fact accompanied by a promise is a sufficient false pretence. *R.* v. *West*, 8 Cox C.C., 12. Where the prosecutor lent the prisoner money on the false pretence that he was going to pay his rent, the Court held that this was not a false pretence of an existing fact, though the prosecutor would not have lent the money but for the pretence. *R.* v. *Lee*, 9 Cox C.C., 304. But where money was obtained by the prisoner from an unmarried woman on the false representation that he was a single man and that he would furnish a house with the money and would then marry her, it was held that the false representation of an existing fact (that he was a single man), was sufficient to support a conviction for false pretences, although the money was obtained by that representation united with the promise to furnish a house and then marry her. *R.* v. *Jennison*, 9 Cox C.C., 158; see also *R.* v. *Fry*, 7 Cox C.C., 394.

It is essential to constitute the offence of obtaining goods by false pretences, (1) That the statement upon which the goods are obtained must be untrue, (2) the prisoner must have known at the time he made the statement, that it was untrue, (3) the goods must have been obtained by reason of this false statement. R. v. *Burton*, 16 Cox C.C., 62.

Where a life insurance agent obtained payment of a premium after the time had expired, on a representation that payment "would be effectual," it was held that this amounted to a representation that the policy had not lapsed or become void, and that he had authority to say that the payment would keep the policy

alive for another year, and a conviction for obtaining by false pretences was affirmed. *R.* v. *Powell*, 15 Cox C.C., 568.

Not only is it necessary that there be a false pretence of an existing fact, but the prosecutor must be induced to part with his money in consequence of the false pretence; it must be the motive operating on his mind and inducing him to part with his money; in other words the prosecutor must be deceived by the representation. *R.* v. *Gemmell*, 26 Q.B. (Ont.), 312; *R.* v. *Connor*, 14 C.P. (Ont.), 529. If it is false to his knowledge it does not come within the statute. *R.* v. *Mills*, 7 Cox C.C., 263.

It is sufficient if the party is partly and materially, though not entirely, influenced by the false pretence. *R.* v. *English*, 12 Cox C.C., 171. It is immaterial that the prosecutor is influenced in part by a statement of the prisoner which is true. *R.* v. *Lince*, 12 Cox C.C., 451; see also *R.* v. *Howorth*, 11 Cox C.C., 588.

The false pretence may be by a letter written by the prisoner, as well as by words. If the words of the letter fairly and reasonably contain a statement of a false pretence, the prisoner may be convicted. *R.* v. *Cooper*, L.R. 2, Q.B.D., 510.

It is not absolutely necessary that the pretence should be in writing or by words. *R.* v. *Rigby*, 7 Cox C.C., 507.

The expression "false pretence" in the statute means a false representation, made either by words, by writing or by conduct, that some fact exists or existed, and such a representation may amount to a false pretence, although a person of common prudence might easily have detected its falsehood by enquiry, and although the existence of the alleged fact was in itself impossible.

But the expression "false pretence" does not as we have already seen, include a promise as to future conduct, not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist, or such untrue commendation, or untrue depreciation of an article which is to be sold, as is usual between sellers and buyers, unless such untrue commendation or depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined. *R.* v. *Bernard*, 7 C. & P., 784; *R.* v. *Hazleton*, L.R. 2, C.C.R., 134.

Questions frequently arise as to whether giving a cheque on a bank, in which the drawer of the cheque has no funds, is an obtaining by false pretences. It seems clear that drawing a cheque on a bank, where the drawer has no *account*, would be a false pretence, but where the drawer has an account, the mere fact that there are no funds is not sufficient; there must also be evidence that the drawer intended to defraud and obtain goods or money on the cheque (see *R.* v. *Hazleton*, *supra*), and did not intend to pay it on presentation.

The offence is complete when the false pretence is made. *R.* v. *Byrne*, 10 Cox C.C., 369.

The prisoner wrote to the prosecutor to induce him to buy counterfeit bank notes. The prosecutor, in order to entrap the prisoner and bring him to justice, pretended to assent to the scheme, arranged a meeting of which he informed the police, and had them placed in a position to arrest the prisoner at a signal from the prosecutor. At such meeting the prisoner produced a box which he said contained counterfeit bank notes, which he agreed to sell to the prosecutor for a certain sum. The prisoner gave a box to the prosecutor which he pretended to be the one containing the notes, and the prosecutor then gave the prisoner $50, and a watch, as security for the balance which he had agreed to pay. The prosecutor immediately gave the signal to the police, and seized the prisoner and held him until they arrested him and took the money and watch from him. On examining the box given the prosecutor, it was ascertained that the prisoner had not given him the one containing the notes as he pretended, but a similar one containing waste paper. The box containing the notes was found on the prisoner's person. It was clear and undisputed that the motive of the prosecutor in parting with the possession of the money and watch as he had done was to entrap the prisoner. The prisoner having been convicted of obtaining the money and watch of the prosecutor by the false pretence of giving him the counterfeit notes, which he did not give, the majority of the Court held the conviction right. *R.* v. *Covey*, 22 Sup. Ct. N.B., 543.

A clause of a deed by which a borrower of a sum of money falsely declares a property well and truly to belong to him may constitute a false pretence. *R.* v. *Judah*, 8 Legal News, 124.

A misrepresentation of quantity is a sufficient false pretence to sustain an indictment. *R.* v. *Sherwood*, 7 Cox C.C., 270 So if a man is selling an article by weight and falsely represents the weight to be greater than it is, and thereby obtains payment for a quantity greater than that delivered, he is indictable for obtaining money by false pretences. *R.* v. *Ridgway*, 3 F. & F., 838.

A wilful representation of a definite fact with intent to defraud, the fact being cognizable by the senses, as where a seller represents the quantity of coal to be fourteen tons, when it is in fact only eight tons, but so packed as to look more, or where the seller by manœuvering contrives to pass off tasters of cheese as if they were extracted from the cheese offered for sale whereas they are not, is a false pretence. *R.* v. *Goss*, 8 Cox C.C., 262.

Exaggeration or puffing of the quality of goods in the course of a bargain is not within the statute. *R.* v. *Bryan*, 7 Cox C.C., 313.

On an indictment for obtaining money by false pretences, it was proved that the prisoner, a travelling hawker, represented to the prosecutor's wife that he was a tea dealer from Leicester, and induced her to buy certain packages, which he stated to contain good tea, but three-fourths of the contents of which was not tea at all, but a mixture of substances unfit to drink, and deleterious to health. It was proved that the prisoner knew the real nature of the contents of the packages, and that he designedly, falsely pretended that it was good tea, with intent to defraud. It was held that the prisoner was guilty of obtaining money by false pretences. *R.* v. *Foster*, L.R. 2, Q.B.D., 301.

Where money has been obtained on a forged cheque knowingly, it does not amount to larceny, but to obtaining money by false pretences. *R.* v. *Prince* L.R. 1, C.C.R., 150.

When a contract has been entered into by reason of false representations, and goods or money obtained under the contract it is too remote to charge the obtaining the goods or money by

false pretences, and an indictment is not maintainable. *R.* v. *Bryan*, 2 F. & F., 567. But under the more recent decisions the execution of a contract between the same parties does not secure from punishment, the obtaining of money by false pretences in conformity with that contract. *R.* v. *Meakin*, 11 Cox C.C., 270. And where A applied to B for a loan upon the security of a piece of land, and falsely and fraudulently represented that a house was built upon it, and B advanced money upon A signing an agreement for a mortgage, depositing his lease and executing a bond as collateral security, it was held that he was properly convicted of obtaining money under false pretences. *R.* v. *Burgon*, 7 Cox C.C., 131.

The crime of obtaining goods by false pretences is complete, although at the time when the prisoner made the pretence and obtained the goods he intended to pay for them when it should be in his power to do so. *R.* v. *Naylor*, L.R. 1, C.C.R., 4.

A dog is not included in the term "chattels," and is not the subject of the misdemeanor of false pretences. *R.* v. *Robinson*, 8 Cox C.C., 115.

The property obtained need not necessarily be in existence at the time the pretence is made if its subsequent delivery is directly connected with the false pretence. *R.* v. *Martin*, L.R. 1, C.C.R., 56.

Where possession only and not the property in the thing is parted with in consequence of the false pretence, it is larceny. *R.* v. *Radcliffe*, 12 Cox, C.C., 474. See also *R.* v. *Twist*, 12 Cox C.C., 509.

The word "obtain" in the Act does not mean obtain the loan of, but obtain the property in any chattel, and to constitute an obtaining by false pretences it is essential that there should be an intention to deprive the owner wholly of the property in the chattel, and an obtaining by false pretences the *use* of a chattel for a limited time only, without an intention to deprive the owner wholly of the chattel is not an obtaining by false pretences within this section. *R.* v. *Kilham*, L.R. 1, C.C.R., 261.

As to the distinctions between larceny and embezzlement, and

the obtaining of money, etc., by false pretences, it is the essence of the offence of larceny that the property be taken against the *will* of the owner. *R.* v. *Prince*, L.R. 1, C.C.R., 154.

The owner of the thing stolen has no intention to part with his property therein to the person taking it, although he may intend to part with the possession. If taken by the consent of the owner—for instance, if he *intends* to part with the property—no larceny will be committed.

In false pretences, the property is obtained with the consent of the owner, the latter intending to part with his property, but the intention is induced by fraud. It therefore necessarily differs from larceny in the fact that the property in the chattel passes to the person obtaining it, and it may, though perhaps not necessarily, differ from larceny in this, that the owner is induced to voluntarily part with his property in consequence of some false pretence of an existing fact made by the person obtaining the chattel. But the crime of obtaining money by false pretences is similar to larceny in this, that in both offences there must be an intention to deprive the owner wholly of his property in the chattel. See *R.* v. *Kilham*, L.R. 1, C.C.R., 261.

Embezzlement consists in obtaining the lawful possession of goods, etc., without fraud or any false pretences, as upon a contract, or with the consent of the owner in the ordinary course of duty or employment, or independently of such employment, and subsequently converting the goods, with a felonious intent to deprive the owner of his property therein. It differs from larceny in this, that the possession of the goods, etc., is lawfully obtained in the first instance, without the ingredient of trespass, and the conversion takes place while the privity of contract exists between the parties.

By section 88 of the Act, bringing into Canada property stolen, embezzled, or unlawfully obtained in any other country in such manner as by the laws of Canada would be a felony or misdemeanor, shall be an offence of the same nature, and punishable in like manner as if the stealing, embezzling, converting or unlawfully obtaining such property had taken place in Canada.

The prisoner being the agent of the American Express Company, in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books of its receipt, as it was his duty to do, and afterwards absconded with it to Canada where he was arrested. The prisoner was held guilty of larceny, though there was nothing to show that the act of the prisoner was by the law of the State of Illinois, larceny, and it seems that proof of this description is not required. *R.* v. *Hennessy*, 35 Q.B. (Ont.), 603.

LAWLESS AGGRESSIONS.

(*See* AGGRESSIONS).

LIBEL AND INDICTABLE SLANDER.

A libel is a malicious defamation, made public either by printing, writing, signs, pictures, or the like, tending either to blacken the memory of one who is dead, or the reputation of one who is alive, by exposing him (or his memory) to public hatred, contempt or ridicule.

All words spoken of another, which impute to him the commission of a crime punishable by law are indictable; so all words spoken of another, which have the effect of excluding him from society, for example, to say he has the leprosy; so writing or publishing anything which renders another ridiculous or contemptible is indictable, except it be within the fair limits of literary criticism. So words used of a man which impair or hurt his trade, or livelihood, as to call a physician a quack, are indictable. To make a writing a libel it must be published, though by publication is not necessarily meant in a newspaper, for communication to a single person, in a private letter, is a publication. No words spoken, however scurrilous, even though spoken personally to an individual, are the subject of an indictment, unless they directly tend to a breach of the peace; for example, by inciting to a challenge. We must here except words seditious, blasphemous, grossly immoral, or uttered to a Magistrate while in the execution of his duty.

The publication of any obscene writing is unlawful and indictable, and it is no defence that the object of the party was laudable, for, in case of libel, the law presumes that the party intended what the libel was calculated to effect. *R.* v. *Hicklin*, L.R. 3, Q.B., 360.

Proceedings before Magistrates, under the Rev. Stat. Can., chap. 178, are strictly of a judicial nature, and the place where such proceedings are held is an open Court. The defendant, as well as the prosecutor, has a right to the assistance of an Attorney and Counsel, and to call what witnesses he pleases, and both parties having been heard, the trial and judgment may be lawfully made the subject of a printed report, if that report is impartial and correct. *Lewis* v. *Levy*, E. B. & E., 537; see also *Usill* v. *Hales*, L.R. 3, C.P.D., 319. The same rule would apply to investigations by Magistrates in the case of indictable offences, so long as the Magistrate continues to sit in open Court, but if he chooses to carry on the proceedings in private as he may do under section 57 of the Rev. Stat. Can., chap. 174, then the publication of the proceedings would be unlawful.

A Justice of the Peace may issue his warrant to arrest a party charged with libel. *Butt* v. *Conant*, 1 B. & B., 548. The Rev. Stat. Can., chap. 163, is the Act respecting libel.

LIQUOR.

In the North-West Territories intoxicating liquor is not allowed to be manufactured, sold or bartered, except by special permission of the Governor-in-Council. Rev. Stat. Can., chap. 50, s. 92. The same law prevails in the District of Keewatin. Rev. Stat. Can., chap. 53, s. 35.

Section 91 of the "Liquor License Act, 1883," now repealed, applied only to localities in which the Canada Temperance Act was not in force. *R.* v. *Klemp*, 10 Ont. R., 143. See *ex parte Coleman*, 23 Sup. Ct., N.B., 574.

In Ontario the Rev. Stat., chap. 194, is the Act respecting the sale of fermented or spirituous liquors.

The Legislature of Ontario in passing this Act had power to

impose hard labour in addition to imprisonment. *R.* v. *Hodge*, 7 Appeal (Ont.), 246; *Hodge* v. *The Queen*, 9 Appeal Cases, 117; *Sulte* v. *Corporation Three Rivers*, 11 S.C.R., 25.

Under section 3, 4 and 5 of this Act, the Board of License Commissioners has power to pass certain resolutions. Acting in the assumed exercise of this power, the Board of License Commissioners for Toronto passed resolutions to the effect that no licensed victualler should sell any intoxicating liquor to any child apparently under the age of fourteen years, and should not suffer any billiard table to be used in his tavern during the time prohibited by the Act or by the resolution for the sale of liquor therein, and a penalty of $20, to be levied by distress, was imposed on any person infringing the resolutions. It was held that the Legislature had power to delegate its authority and enable the License Commissioners to enact regulations of the above character. *R.* v. *Hodge*, 7 Appeal (Ont.), 246; *Hodge* v. *The Queen*, 9 Appeal Cases, 117.

A license to sell liquor only extends to permit a sale on the premises licensed, and not to other premises forming no part of the licensed premises, though owned by the same person. The defendant was licensed to sell "in and upon the premises know as the 'Palmer House.'" The "Palmer House" stood upon the front part of a deep lot owned by the defendant, the rear part of which had been for many years enclosed and used as a fair ground. Facing the ground and opening therein was a booth, the back of which formed part of a fence, which separated the fair ground from the yard in the rear of the hotel. The distance between the nearest outbuilding of the hotel and the booth was fifty yards, and it did not appear that the booth was used at all in connection with the hotel. A conviction for selling liquor without a license in the booth was held proper, for it was no part of the licensed premises. *R.* v. *Palmer*, 46 Q.B. (Ont.), 262.

Under section 49 of the Act, no person shall sell by wholesale or retail any spirituous, fermented or other manufactured liquors, without having first obtained a license under the Act, authorizing him so to do; but this section shall not apply to sales under legal process, or for distress, or sales by Assignees in Insolvency.

As to the penalty for contravention of this section of the Act, see section 70.

It would seem that the conviction should negative a sale under legal process. See ante p. 260. *R.* v. *Mackenzie*, 6 (Ont.) R., 165.

If the prosecution is for selling without license, the conviction should allege the sale to be without license. See *ex parte Woodhouse*, 3 L.C.R., 94; see Schedule D, No. 3, also section 103; see however, *McCully* v. *McCay*, 3 Cochran, 82.

Section 25 of the (Ont.) 32 Vic., chap. 32, applied where there was no license; section 26 when there was a license to sell not less than a quart, but the party was without the license therefor, that is to sell the smaller quantity. *R.* v. *Firmin*, 33 Q.B. (Ont.), 523.

This section prevents any person selling without license, and section 54 applies where the offender has a license but sells during prohibited hours.

The 50th section prohibits keeping liquor for sale. Under this section the evidence should show that the liquor was kept in such a place as is specified therein.

Where an Act made it an offence to keep liquor for sale in any house, or other place whatsoever, it was held sufficient to allege that the offence was committed at a certain town, without specifying the house or building. *R.* v. *Coulter*, 4 Manitoba L.R., 309. Probably in view of the forms in the Schedule to this Act the foregoing decision is correct, but it is submitted there must be proof at the hearing that the liquor is kept in a house, building, etc.

To keep liquor for the purpose of selling, or for the purpose of trading, or for the purpose of bartering, is only one offence of keeping for an unlawful purpose. *R.* v. *Coulter*, *supra*. As to the evidence necessary to prove that the liquors are kept for sale, see section 108.

Two defendants cannot be jointly convicted under the 50th section, and an award of one penalty, jointly, against them is erroneous. The offence does not arise from the joint act of the defendants, but from the personal and particular omission of each defendant to procure a license, and it is several in its nature.

When such defendants are jointly charged in an information, it is a violation of the provisions of the Rev. Stat. Can., chap. 178, s. 26, which requires every complaint to be for one matter only. See *ante*, p. 230. *R.* v. *Snider*, 23 C.P. (Ont.), 330.

Such a conviction of two defendants was therefore quashed on *certiorari*. *R.* v. *Sutton*, 14 C.L.J., N.S., 17.

A conviction for selling liquor without license, which did not state that the liquor was not supplied upon a requisition for medicinal purposes, was held bad under the (Ont.) 32 Vic., chap. 32, s. 23. *R.* v. *White*, 21 C.P. (Ont.), 354. See also *ex parte Clifford*, 3 Allen, 16; *Mills* and *Brown*, 9 U.C.L.J., 246.

In the case of *R.* v. *White*, *supra*, the exception was contained in the *enacting* clause of the statute, and it is not to be inferred from this decision that a conviction under this or the 49th section should negative the exceptions contained in sections 51 or 52, these exceptions being in different subsequent sections. See *ante*, p. 260.

A conviction under this section need not negative the exceptions contained in sections 51 and 52. *R.* v. *Breen*, 36, Q.B. (Ont.), 84. See *ante*, p. 260.

Section 52 regulates sales by chemists and druggists for medicinal purposes.

A conviction of defendant, who was a registered druggist, for selling spirituous and intoxicating liquors by retail, to wit, one bottle of brandy to one O S, at and for the price of $1.25, without having a license so to do as by law required, the said spirituous and intoxicating liquor being so sold for other than strictly medicinal purposes only, was held valid, for the defendant was not, as a druggist, authorized to sell without a license, and it was unnecessary for the prosecutor to show that he was not licensed, or to negative any exemptions or exceptions. *R.* v. *Denham*, 35 Q.B. (Ont.), 503; see the form Schedule D, No. 11; also section 114.

Section 54 of the Act prohibits selling on Sunday, and during certain specified hours. As to the evidence necessary in prosecutions under this section, see section 110. This section applies

when the defendant has a license but sells during the prohibited hours.

It is only the holder of a license who can be prosecuted under this section for selling on prohibited days. *R.* v. *Duquette*, 9 P.R. (Ont.), 29; *R.* v. *French*, 34 Q.B. (Ont.), 403.

A conviction under this section must shew that the place in which the liquor was sold was one in which "intoxicating liquors are or may be sold by wholesale or retail;" in other words it must shew that the defendant had a license. *R.* v. *Bodwell*, 5 Ont. R., 186. See Schedule D, No. 5, also Schedule G.

The punishment for offences under this section must be either imprisonment with hard labor or a fine. If a fine is imposed there is no power to award imprisonment at hard labor in the event of non-payment, but only imprisonment without hard labor. (*Ib.*)

A conviction under this section should shew that the sale was not made on a requisition for medicinal purposes. See *R.* v. *White*, 21 C.P. (Ont.), 354. See the form of conviction in the Schedule G to the Act.

If the conviction were for allowing the liquor to be drunk on the premises, during the prohibited hours, it would be necessary to aver that such consumption was not by the occupant or some member of his family or lodger in the house. See Schedule D No. 6, to the Act.

Under section 60, persons having a shop license to sell by retail, and chemists, must not permit any liquor sold by them to be consumed on the premises, either by the purchaser or any other person.

The holder of a shop license cannot sell in quantities less than three half-pints at any one time, to any one person. See section 2, s.s. 3. *R.* v. *Faulkner*, 26 Q.B. (Ont.), 529.

Section 66 of the Act renders it unlawful for the License Commissioners, or any Inspector, either directly or indirectly, to receive or take any money for any certificate, license or report, other than the sum to be paid therefor as the duty under the Act.

Prior to this Act, when licenses were granted by the Council,

it was held that a reeve of a municipality was not liable to conviction for signing a certificate for a license, and delivering the same to the clerk, with instructions not to hand it over to the applicant until the inspector had reported in favour of the applicant. *R.* v. *Paton*, 35 Q.B. (Ont.), 442.

The 70th section of the Act prescribes the penalties for selling liquor without license as well for the first as for the second offence.

The fact of an offence is established and known to the law only by a conviction, and the first offence means the first time that the accused is convicted, and a second offence would, it seems, be an offence committed after such previous conviction. See *McGregor* v. *McArcher*, 2 Russell & Chesley, 362.

A conviction for selling liquor without license may award imprisonment for thirty days in default of sufficient distress. *R.* v. *Young*, 7 Ont. R., 88; see section 88 of the Act.

Section 81 provides that, if any person guilty of an offence, under the Act, compounds or compromises, or attempts to compound or compromise the offence, he shall, on conviction, be imprisoned at hard labor.

This section is within the powers of the Provincial Legislature. *R.* v. *Boardman*, 30 Q.B. (Ont.), 553; *Keefe* v. *McLennan*, 2 Russell & Chesley, 5.

The 88th section of the Act relates to the recovering of penalties by distress.

Where a fine is imposed, there is no power to award imprisonment at hard labor, in the event of non-payment, under this section. The only legal award is imprisonment without hard labor. *R.* v. *Bodwell*, 5 Ont. R., 186.

The 93rd section of the Act enables any person to prosecute under the Act.

A deputy revenue inspector may validly sign a plaint or information. *Reynolds & Durnford*, 7 L.C.J., 228.

Under section 94, all informations or complaints for the prosecution of any offence against any of the provisions of this Act, must be laid or made in writing (within thirty days after the

commission of the offence, or after the cause of action arose, and not afterwards), before any Justice of the Peace for the County or District in which the offence is alleged to have been committed, but may be made without any oath or affirmation to the truth thereof, and the same may be according to the form of Schedule C, to this Act or to the like effect.

Under this section the information must show that it is laid within thirty days after the commission of the offence, or after the cause of action arose. See *ante*, p. 221.

But the information need not contain an express allegation to this effect. If it appears on the face of the information this will suffice. *Reid* v. *McWhinnie*, 27 Q.B. (Ont.), 289.

Where, therefore, the information in the form given in Schedule C to the Act, shows the day of sale as in that form, and also the day of the laying of the information, this will be sufficient, without any express allegation that the laying of the information is within the thirty days; provided, of course, that the fact is so.

The Court would no doubt sustain an information which followed the form C in the Schedule. See section 103, *R.* v. *Strachan*, 20 C.P. (Ont.), 182.

Under the (Ont.) 32 Vic., chap. 32, it was not necessary that it should appear on the face of the conviction that the prosecution was commenced within twenty days of the commission of the offence. This latter point, however, depended upon the fact that the section of the Act containing the limitation, was entirely distinct from the section creating the offence and imposing the penalty. The rule in such cases is that the limitation arising under a distinct clause is matter of defence, and need not appear on the face of the conviction. *R.* v. *Strachan*, 20 C.P. (Ont.), 182; *Wray* v. *Toke*, 12 Q.B., 492.

It has been held in the Province of Quebec, that in a prosecution for selling liquor without license, the information need not be under oath. *Ex parte Cousine*, 7 L.C.J., 112; see also *R.* v. *McConnell*, 6 O.S., 629.

Where the information and the evidence show the sale of

liquor to be at a certain place which, by a public statute, is shown to be within the County for which the Magistrate is acting, this will be sufficient. *R.* v. *Young*, 7 Ont. R., 88. .

Under the 96th section of the Act, certain prosecutions are to be before two Justices of the Peace, except in rural municipalities where one Justice may act (see section 99). Where the conviction is by one Justice only, it should show the facts giving him jurisdiction, and the form of conviction given in the schedule must be altered and adapted to meet the exigencies of the case. See *R.* v. *Clancy*, 7 P.R. (Ont.), 35.

In Nova Scotia it has been held where a summons for selling liquor contrary to law was issued by two Justices of the Peace, and the cause tried before one of them and a Justice who had not signed the summons, that the conviction must be set aside. *Weeks* v. *Bonham*, 2 Russell & Chesley, 377.

Section 101 of the Act regulates the procedure in cases where a previous conviction is charged.

Under the 4th sub-section of section 101, convictions imposing the increased penalties for second and third offences are bad, unless proceedings have been taken for the first offence. *R.* v. *Bodwell*, 5 Ont. R., 186.

F was convicted on the 5th of February, before W R, a Justice of the Peace, for that he did on Sunday, the 19th of January, sell and receive pay for intoxicating liquor at his hotel, and was fined $40 and costs, to be paid forthwith, and in default of distress, to be imprisoned for twenty days at hard labour.

On the 12th of February, F was convicted before D S, and J L, two Justices of the Peace, for that he did "on Sunday, the 26th of January, sell and receive pay for intoxicating liquors," etc., "the same being the third offence," etc., and was fined $100 and costs, and in default of distress to be imprisoned for fifty days.

A certificate of the first named conviction was before the Magistrates on the second conviction. There was also evidence of the sale of liquor by defendant on three Sundays, but the information did not allege the previous offence. It was not shown whether defendant was licensed.

The Court held that the first conviction was bad, for it did not show whether it was for selling liquor without a license, or having a license for selling on Sunday, and if for selling without a license it was bad, because it awarded imprisonment at hard labour, and if for selling on Sunday, then because it was not alleged to be a second offence. It was held also, that the second conviction was bad, because, if for selling without a license, the fine was beyond what the statute warranted, and because the information did not charge the two previous offences. *R.* v. *French*, 34 Q.B. (Ont.), 403.

Section 102 of the Act relates to the statement of offences in the information and other proceedings.

It is not necessary in a conviction to mention the statute under which the conviction takes place, further than it is referred to in the form of conviction given in the schedule. See *R.* v. *Strachan*, 20 C.P. (Ont.), 182.

Prior to the passing of this Act it was held that the person to whom the liquor was sold, should be named or described. *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537.

Where no person is mentioned, and a subsequent charge is made, evidence outside the conviction would have to be resorted to, to prove the identity of the charge and the defendant. Similarity of name would not alone be sufficient, and where the name was wholly unknown, it would especially be a question of external evidence. *R.* v. *Strachan*, 20 C P. (Ont.), 182-7.

An information stated that defendant, "a licensed hotelkeeper in the Town of Peterborough, did, on Sunday, the 2nd July, 1876, at the hotel occupied by him in the said town, dispose of intoxicating liquor to a person who had not a certificate therefor, etc.," and the conviction thereunder stated that the defendant was convicted "upon the information and complaint of J Q, the above named complainant, and another, before the undersigned," etc., "for that the said defendant," etc., in the words of the information. The Court held that the person to whom the liquor was sold should have been named or described, but that such an objection was only tenable on motion to quash the information when

before the Magistrate; that it sufficiently appeared that the hotel was a licensed hotel, at which liquor was allowed to be sold; that a sale "at" the hotel was equivalent to a sale "therein or on the premises thereof," and that it sufficiently appeared that the defendant was "the proprietor in occupancy, or tenant, or agent in occupancy." It was held also that the words "and another" could be treated as surplusage, it appearing in fact that J Q was the only complainant. *R.* v. *Cavanagh*, 27 C.P. (Ont.), 537.

A conviction for that one H, "did keep his barroom open, and allow parties to frequent and remain in the same, contrary to law," was held clearly bad as showing no offence. So a conviction for that the said "H," did sell wine, beer, and other spirituous or fermented liquors, to wit, "one glass of whiskey, contrary to law," not alleging that the sale was without license, was held bad for uncertainty, as not showing whether the offence was for selling without a license, or during illegal hours. *R.* v. *Hoggard*, 30 Q.B. (Ont.), 152.

A conviction under 40 Geo. III., chap. 4, for selling liquor without license was quashed because the information stated that "the defendant was in the habit of selling spirituous liquor without license," without charging any specific offence, and not showing time nor place, nor that the liquors were sold by retail, and also because the conviction directed the defendant to pay the costs of the prosecution without specifying the amount. *R.* v. *Ferguson*, 3 O.S., 220. But it was no objection, under 29 & 30 Vic., chap. 51, s. 254, that the costs of conveying the defendant to gaol in the event of imprisonment were specified. *Reid* v. *McWhinnie*, 27 Q.B. (Ont.), 289.

In *Reid* v. *McWhinnie*, 27 Q.B. (Ont.), 289, it was held sufficient to state the offence in the conviction as selling "a certain spirituous liquor called whiskey," though section 254 of the 29 & 30 Vic., chap. 51, which created the offence, mentioned "intoxicating liquor of any kind," for intoxicating liquor and spirituous liquor were used in the Act as convertible terms, and in the Customs Act of the same session, whiskey was recognised as a spirituous liquor. The offence alleged was selling "a certain quantity.

to-wit, one pint." This was held sufficient without negativing that it was a sale in the original packages, within the exemption in section 252 of the Act, for it would be judicially noticed that a pint was less than five gallons or twelve bottles, which the packages must at least have contained. (*Ib.*)

The following conviction for selling spirituous liquors by retail contrary to law, namely:—"That A B, of, etc., merchant and shopkeeper, did within the space of six calendar months, now last past, in the year aforesaid, at, etc., sell and vend a certain quantity of spirituous liquors, in less quantity than one quart, to wit, one pint, etc., without license for that purpose, previously obtained, contrary to the form of the statute in such case made and provided," was held bad in substance, in leaving it doubtful under which of the statutes, 40 Geo. III., chap. 4; 6 Wm. IV., chap. 2; 6 Geo. IV., chap. 4—and for what offence the conviction was made. *Wilson* v. *Graybiel*, 5 Q.B. (Ont.), 227.

A defendant had been convicted of two offences, one under the 49th section for selling "without the license by law required therefor," and one under section 61, for allowing liquors sold by him, and for the sale of which a wholesale license was required, to be consumed on the premises, and the conviction adjudged "for his said offence to forfeit and pay the sum of $20," the conviction was held bad in not shewing for which offence the penalty was imposed. *R.* v. *Young*, 5 (Ont.) R., 184 (*a*).

Where a statute imposes a fine for the first offence, and the conviction is for a fine, it has been held not necessary to specify whether the conviction was for the first or second offence, as from the punishment awarded the Court would imply the first offence. *R.* v. *Strachan*, 20 C.P. (Ont.), 182.

Where a particular act constitutes the offence, it is enough to describe it in the words of the Legislature, and a conviction under the (Ont.) 32 Vic., chap. 32, alleging that the defendant sold spirituous liquors by retail without license, stating time and place, was held sufficient without a statement of kind and quantity. *R.* v. *King*, 20 C.P. (Ont.), 246; *re Donelly*, 20 C.P. (Ont.), 165.

A conviction for selling liquor without license is bad, if it do not specify the day on which the offence was committed. *R* v. *French*, 2 Kerr, 121; see the form of conviction, Schedule G.

Where the jurisdiction of the Justice appeared on the conviction, the offence being alleged to have happened at the Town of Moncton, where it was heard and tried, and the conviction being in the form prescribed by the (N.B.) Rev. Stat., chap. 138, and the place of sale spoken of at the trial appearing to be known to all parties, and no objection having been then made that it was not within the jurisdiction of the Justices, it was held that the jurisdiction sufficiently appeared, though it was not shown by positive evidence that the offence was committed within the limits of the Town of Moncton. *Ex parte Dunlop*, 3 Allen, 281.

A conviction under 28 Vic., chap. 22, for selling liquor without a license, omitted to state that defendant had been convicted of selling "by retail." It was held on appeal to the Quarter Sessions that the offence was not sufficiently stated in the conviction, and it was accordingly quashed. It was also held that the proper time for applying to amend the conviction under the 29 & 30 Vic., chap. 50, was at the time it was made, and that it could not afterwards be amended under the provisions of that Act. *Bird* v. *Brian*, 3 L.C.G., 60.

In an appeal from a conviction for selling liquor contrary to chapter 22 of the (N.S.) Revised Statutes, the Court will allow the original summons to be amended. *Taylor* v. *Marshall*, 2 Thomson, 10.

The 103rd section of the Act, provides that the forms given in the schedule thereto shall be sufficient, and the general rule is, that a conviction following the forms prescribed will be good, if sustained by the evidence. *R.* v. *Strachan*, 20 C.P. (Ont.), 182; *Reid* v. *McWhinnie*, 27 Q.B. (Ont.), 289.

Under section 105, a conviction is not void for defects in form or substance, if there is jurisdiction and evidence to prove the offence, and no greater penalty is imposed than authorized by the Act.

The conviction must show jurisdiction in the Magistrate, by

stating the place where the offence was committed. This section does not cure an objection of this kind, for it only applies provided it can be understood from the conviction that the same was made for an offence within the jurisdiction of the Justice. *R.* v. *Young*, 5 Ont. R., 184 (*a*). In this case the evidence did not show where the offence was committed, though a place was mentioned which the Magistrate knew perfectly well was within the jurisdiction.

In *R.* v. *Allbright*, 9 P.R. (Ont.), 25, the Court refused, on the return of a *certiorari*, to amend a conviction for selling liquor in the sentencing part, by striking out of the conviction the award of "hard labour."

A conviction, under the Act, for selling liquor without a license purporting to be made by three Magistrates, but signed by two only, was returned with a *certiorari*. It was held, that if this was an objection at all it was only ground for sending back the writ, that the third Magistrate might sign the conviction, but not a ground for quashing it. *R.* v. *Young*, 7 Ont. R., 88. But the Court inclined to the opinion, that there was nothing in the objection. See *R.* v. *Smith*, 46 Q.B. (Ont.), 442.

A *certiorari* will not lie to remove a conviction under the Act, where the conviction has been affirmed and amended on appeal. *R.* v. *Grainger*, 46 Q.B. (Ont.), 196.

By section 106, in any prosecution or proceeding, under this Act, in which proof is required respecting any license, a certificate, under the hand of the License Inspector of the District, shall be *prima facie* proof of the existence of a license, and of the person to whom the same was granted or transferred; and production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the License Inspector, without any proof of his appointment or signature.

It seems that Magistrates have not the right, where a formal existing license is produced, to go behind it for the purpose of enquiring, not into the simple issue is the defendant licensed or unlicensed, but whether certain preliminary requisites have or have not been complied with before the license produced had been

given to the tavern-keeper. The quashing of a by-law, under which a certificate has been granted, and license issued for the sale of spirituous liquors, does not nullify the license, and a conviction for selling liquor without license connot therefore, under these circumstances, be supported. *R.* v. *Stafford*, 22 C.P. (Ont.), 177.

The Rev. Stat. Ont., chap. 61, s. 9, provides, that on the trial of any proceeding, matter or question, under any Act of the Legislature of Ontario, or on the trial of any proceeding, matter or question before any Justice of the Peace, Mayor or Police Magistrate, in any matter cognizable by such Justice Mayor or Police Magistrate, *not being a crime*, the party opposing or defending, or the wife or husband of such person opposing or defending, shall be competent and compellable to give evidence in such proceeding, matter or question.

An information under the 54th section of the Liquor License Act, for selling intoxicating liquors on a Sunday, is an information for a crime within the meaning of the said section of the Rev. Stat. (Ont.), chap. 61, and therefore the defendant cannot be compelled to give evidence against himself—the general policy of the law not compelling any man to criminate himself—where, therefore, in a prosecution for selling liquor on a Sunday, the defenddant was compelled to give evidence which established the charge, and there was no other evidence, the conviction was quashed. *R.* v. *Roddy*, 41 Q.B. (Ont.), 291; followed in *R.* v. *Sparham*, 8 Ont. R., 570; see also *R.* v. *Lackie*, 7 Ont. R., 437.

Under section 108, where the appliances usually found in taverns are found in any place, it is deemed a place in which liquor is kept for the purpose of sale, unless the contrary is proved by the defendant.

It is for the Magistrate trying the case, to determine whether the "contrary is proved" by the defendant, in any prosecution within the meaning of this section. See *R.* v. *Bennett*, 3 Ont. R, 45.

Under section 112, the occupant of the house in which the offence is committed, is personally liable to the penalty, though the act

was done by some other person, who cannot be proved to have acted under the direction of the occupant. Where a married woman is lessee of the premises, and the husband in her absence sells liquor without a license, the wife is liable to conviction under this section. *R.* v. *Campbell*, 8 P.R. (Ont.), 55.

A wife who sells liquor at the husband's place of business in his absence is his agent, so that the husband may be convicted for the act of the wife. *R.* v. *McAuley*, 14 Ont R., 643.

The 112th section applies where the act complained of was done either by the occupant or by some other person. *R.* v. *Breen*, 36 Q.B. (Ont.), 84

It seems that if the act of sale by the person other than the occupant, were an isolated act, and wholly unauthorized by him, and not in any way in the course of his business, but a thing done wholly by the unwarranted or wilful act of the subordinate, the occupant might escape personal liability. *R.* v. *King*, 20 C.P. (Ont.), 246.

The statute points at two distinct classes of offenders; first, those who sell liquor without a license, and second, those who, having such license, sell liquor within the prohibited hours. In the latter case, though the tavern may be the property of the defendant, unless he is in occupancy as proprietor, or as tenant or agent, he is not liable. Thus, if the owner of a tavern, but not occupying it or carrying on the business, had gone into it and sold a glass of liquor, he would not be within the Act. So if a stranger, a mere trespasser, went into the tavern, either in the absence of, or against the will of the actual tenant or occupant, and not in any way as the agent of the occupant, and sold liquor to another person, he would not be within the Act. *R.* v. *Parlee*, 23 C.P. (Ont.), 359.

Under section 114, the burden of proving the existence of a license, where such is required to legalize the act, is upon the defendant. Though the general rule of law is that the burden of proof lies on the party who substantially asserts the affirmative, there is an exception in this case, and in a prosecution for selling liquor without license, it is for the defendant to show his license,

not for the informant to negative its existence. *Re Barrett*, 28 Q.B. (Ont.), 559; *ex parte Parks*, 3 Allen, 237.

When a party is prosecuted for an act which he cannot lawfully do without license, the possession of the license is a matter of defence and not of proof by the prosecutor. *R.* v. *McNicol*, 11 (Ont.) R., 659; *Thibault* q.t. v. *Gibson*, 12 M. & W., 88.

And, for these reasons, it is no objection to a conviction for selling liquor without license, that it does not shew that the defendant is not licensed. *R.* v. *Young*, 7 Ont. R., 88: see also *R.* v. *Bryant*, 3 Manitoba L.R., 1.

The 115th section of the Act relates to the attendance and competency of witnesses.

Under the former statute, the informer was a competent witness, being expressly made so by the statute. *R.* v. *Strachan*, 20 C.P. (Ont.), 182.

LIVERY STABLE.

The Municipal Act Rev. Stat. (Ont.), chap. 184, s. 510), authorizes the licensing of owners of livery stables, and of horses for hire. A by-law passed under this section, required every person owning or keeping a livery stable, or letting out horses for hire, to pay a license fee. Defendant was convicted under this by-law for that "he did keep horses for hire" without having paid the license fee. The conviction was held valid because keeping horses for hire was in effect within the meaning of the statute and by-law, the same as being the owner of a livery stable. *R.* v. *Swalwell*, 12 Ont. R., 391.

LOTTERIES.

The Rev. Stat. Can., chap. 159, now governs these matters.

By the Imperial Act 10 & 11 Wm. 3, chap. 17, all lotteries are declared to be public nuisances. The Imperial Act 12 Geo. 2nd, chap. 28, superseded the 10 & 11 Wm. 3, chap. 17, with respect to lotteries of horses, carriages and other personal chattels. *Clark* v. *Donnelly*, R. & J. Dig., 1619. This Act is in force here. *Cronyn* v. *Widder*, 16 Q.B. (Ont.), 356. (*Ib.*, 378).

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar, a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of his goods. It was held that as the approximation of the number of buttons depended upon the exercise of judgment, observation and mental effort, this was not a "mode of chance" for the disposal of property within the meaning of the Act. *R.* v. *Jamieson*, 7 Ont. R., 149.

The defendant, being the proprietor of a newspaper, advertized in it that whoever should guess the number nearest to the number of beans which had been placed in a sealed glass jar, in a window in a public street, should receive a $20 gold piece, the person making the next nearest guess, a set of harness, and the person making the third nearest guess, a $5 gold piece; any person desiring to compete, to buy a copy of the newspaper, and to write his name and the supposed number of the beans on a coupon to be cut out of the paper. It was held that as the approximation of the number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposal of property within the meaning of the Act. *R.* v. *Dodds*, 3 Ont. R., 390. And it seems that the Act only applies to the unlawful disposal of some existing real or personal property.

When one hundred and forty-nine lots of land were sold by lottery, the person getting No. 1 ticket to have the first choice; it was held that this was a lottery, though it did not appear that there was any difference in the value of the lots. The lottery consisted in having a choice of the lots, and that choice was to be determined by chance. *Power* v. *Canniff*, 18 Q.B. (Ont.), 403.

A sale of land by lot in which there were two prizes, was held to be within the 12 Geo. 2nd, chap. 28. *Marshall* v. *Platt*, 8 C.P. (Ont.), 189; see also *Lloyd* v. *Clarke*, 11 C.P. (Ont.), 248.

An information to forfeit land sold by lottery, contrary to 12 Geo. 2nd, chap. 28, may be filed by a private individual, and need

not be by the Attorney-General, or any public Officer. *Mewburn* v. *Street*, 21 Q.B. (Ont.), 498.

LUMBER.

The Act respecting the culling and measuring of lumber in the Provinces of Ontario and Quebec (Rev. Stat. Can., chap. 103, s. 35), imposes penalties on cullers, who offend against the provisions of the Act, or on any person acting as a culler without license (*Ib.* s. 36), or any supervisor or culler who deals in lumber (*Ib.* s. 37), or is guilty of wilful neglect of his duty or of partiality in the execution of the duties of his office. (*Ib.* s. 38), Under section 39, assaulting a culler, in the execution of his duty, under the Act, renders the party liable to a penalty not exceeding forty dollars and not less than twenty dollars. So under section 40, it is an offence against the Act, to forge or counterfeit any stamp, directed to be provided for use or the impression of the same, on any article of lumber, or to knowingly deface or remove any of the marks or letters marked, indented or imprinted in or upon any article of lumber, after the same has been culled or measured under the Act.

MAINTENANCE.

This is the officious intermeddling in a suit, that in no way belongs to one, by maintaining or assisting either party with money or otherwise to prosecute or defend it. It is a misdemeanor punishable by fine and imprisonment. Champerty is a species of maintenance. It is the unlawful maintenance of a suit in consideration of some bargain to have part of the thing in dispute or some profit out of it. See *Carr* v. *Tannahill*, 30 Q.B. (Ont.), 223 ; *Kerr* v. *Brunton*, 24 Q.B. (Ont.), 395.

Champerty is punishable at common law. *Scott* v. *Henderson*, 2 Thomson, 116. Acts of maintenance or champerty are justifiable, when the party has an interest in the thing in variance, and at the present day the Court would be very loath to declare an act of this kind to be an offence criminally indictable, unless

some corrupt motive were manifestly present, or there was danger of oppression or abuse. *Allan* v. *McHeffey*, 1 Oldright, 121.

From the decision in *Smith* v. *McDonald*, 1 Oldright, 274, that the Crown must first eject the occupant before selling land, of which it is not in possession, it would seem that the law as to champerty is binding on the Crown.

A sharing in the profits, derived from the success of the suit, is essential to constitute champerty. *Hilton* v. *Woods*, L.R. 4, Eq., 432; *Hartley* v. *Russell*, 2 S. & St., 244. See as to champerty, *re Cannon*, *Oates* v. *Cannon*, 13 Ont. R., 705.

MAINTENANCE OF WIFE, CHILD, ETC.

When a husband is charged, under s. 19, of the Rev. Stat. Can., chap. 162, with neglecting to support his wife, it is not necessary to prove that the life of the wife has been endangered or her health permanently injured by the neglect to provide her with necessary food, the danger to life referring to the second part of the section, where the prisoner is charged with unlawfully and maliciously doing some bodily harm. *R.* v. *Scott*, 28 L.C.J., 264.

But it is necessary to prove that the defendant is the husband of the prosecutrix; that the wife was in need of food, clothing and lodging; that the husband was able to provide the same, but wilfully and without lawful excuse neglected so to do. The wilful refusal or neglect to provide food, clothing or lodging, without lawful excuse, is what constitutes the crime. If the refusal is attributable solely to want of ability, or the wife is better able to support herself than the husband is to support her, or if she is in no need whatever of support and does not ask food or require it, or she is living with another man as his wife, or without justification she absents herself from her husband's roof, and without excuse refuses to return, in these and similar cases it would be absurd to convict the husband as a criminal, and it must be held that there is "lawful excuse" for what otherwise might be held wilful refusal or neglect. *R.* v. *Nasmith*, 42 Q.B. (Ont.), 242.

In addition to the obligation to maintain, under this section,

the Rev. Stat. Can., chap. 157, s. 8 (*b*), declares that all persons, who, being able to work, and thereby maintain themselves and families, wilfully refuse or neglect to do so are vagrants, and liable to punishment under the Act. But under this section an obligation to maintain must be made out.

A man cannot be convicted under this section, who offers to take back his wife, although her refusal to return is sufficiently grounded on his ill usage, such offer negativing the refusal to support as well before as after the offer. *Flannagan* v. *Bishop Wearmouth*, 8 E. & B., 451.

Notwithstanding the provisions of the Acts relating to the separate property of a married woman, such woman who, deserted by her husband and having no means of maintaining her children, leaves them and neglects to provide for them, cannot be convicted on that ground as a vagrant. *Peters* v. *Cowie*, L.R. 2, Q.B.D., 131.

If the husband refuse to maintain the wife because she has left him and has committed adultery, he cannot be convicted. *R.* v. *Flinton*. 1 B. & Ad., 227. But it is no defence that he is an industrious man and is constantly at work. *Carpenter* v. *Stanley*, 33 J.P., 38

A Justice, in proceeding under this section, exercises a Judicial discretion. *R.* v. *Shortis*, 1 Russell & Geldert, 70.

The wife is now made a competent witness, under the Act. Prior to the passing of the statute it was ruled that she could not give evidence. *R.* v. *Bissell*, 1 Ont. R., 514.

So the defendant is also a competent witness. *R.* v. *Meyer*, 11 P.R. (Ont.), 477.

MALICIOUS INJURIES.

The Act respecting these offences is the Rev. Stat. Can., chap. 168.

Injuring or destroying private property is in general no crime but a mere civil trespass over which a Magistrate has no jurisdiction, unless by statute. *Powell* v. *Williamson*, 1 Q.B. (Ont.), 155.

The above Act renders various Acts criminal if they are unlawful and malicious.

There are various offences against this Act, which may be disposed of summarily by a Justice of the Peace. See sections 24, 25, 26, 27, 41, 45, 53 and 59, and the punishment and penalty by the Act imposed, shall equally apply and be enforced, whether the offence is committed from malice conceived against the owner of the property, or otherwise. (*Ib.*, s. 60).

The 13th section of the Act was intended to apply to malicious injuries to houses, by throwing explosive substances against or into them, with intent to destroy them or injure the inmates, and not to cases of wanton mischief or assault. *R.* v. *Brown*, 3 F. & F., 821.

The endangering of life to be within this 13th section, must result from the damage done to the building, referred to in the indictment, but the enactment does not contemplate the necessity of the persons endangered being inside the building, and would include the case of persons outside, whose lives were imperilled by anything proceeding from the damaged building. *R.* v. *McGrath*, 14 Cox C.C., 598.

An apparatus for manufacturing potash, consisting of ovens, kettles, tubs, is not a machine or engine within the meaning of the 17th section of the Act, the cutting, breaking or damaging of which is felonious. *R.* v. *Dogherty*, 2 L.C.R., 255.

Under this section, it is not necessary that the damage done should be of a permanent kind. If the engine is rendered temporarily useless, it will be an offence within this section. Thus, plugging up the feed-pipe of a steam-engine, and displacing other parts of the engine, so as to render it temporarily useless and cause an explosion, unless removed, comes within the Act. *R.* v. *Fisher*, L.R. 1, C.C.R., 7.

The defendant had buried a child in a graveyard, near the remains of his own father. The complainant had a parcel of ground which the sexton of the church had appropriated to his exclusive use, without any authority from the incumbent or churchwardens. The complainant subsequently extended his

fence, by the like consent of the sexton only, and enclosed more ground, so that the fence crossed diagonally over the grave of defendant's child. Defendant remonstrated, but obtained no redress or removal of the fence, and proceeded to remove it himself. In process of doing so he broke a marble pillar of complainant's fence, for which he was summoned before a Magistrate for "wilfully and maliciously" destroying a fence. He was fined $5, over and above the sum of $10, for damages for the injury done, and $6.50 costs. From this conviction the defendant appealed to the General Sessions of the Peace. It was held, that although the defendant was guilty of a trespass, for which he might be mulcted in damages in a civil action, he was not liable to a fine, and that, acting under a claim of right, the act was not necessarily malicious. *R.* v. *Bradshaw*, 38 Q.B. (Ont.), 564.

The 60th section does not dispense with proof of malice in cases of this kind. The 60th section merely means, that every punishment imposed by the Act, upon any person *maliciously* committing any offence, shall be enforced, whether the malice, which constitutes the offence, be conceived against the owner of the property in respect of which it shall be committed, or against any other person; but malice either against the owner, or some one must be proved, or legitimately inferred from the facts in evidence, in order to constitute an offence punishable under the Act. (*Ib.*)

Where an offence has been committed wrongfully and intentionally without just cause or excuse, and with full knowledge of the ownership of the property, malice may be inferred, and it need not be proved as against the owner of the property. *R.* v. *Smith*, 1 Sup. Ct. N.S., 29.

Where malice is essential, the *bona fide* belief by the party that he had the right to do the act, is important as regards the intention. If the party does the act unlawfully, not believing that he has any right to take the proceeding, that would be evidence from which malice could be inferred. *R.* v. *Elston*, 5 Allen, 2.

Where, in a proceeding before two Justices, under 1 Rev. Stat. N.B., chap. 133, for wilfully cutting and carrying away timber off complainant's land, there is shown to be a *bona fide* question

of title or boundaries, and the act was done under a *bona fide* claim of right, the wilfulness of the act is negatived, and the defendant should be discharged. *Ex parte Donovan*, 2 Pugsley, 389.

Section 39 of this Act enacts that everyone who, by any wilful omission or neglect, obstructs, or causes to be obstructed, any engine or carriage using any railway, or aids or assists therein, is guilty of a misdemeanor.

The prisoner unlawfully altered some railway signals, at a railway station, from "all clear" to "danger" and "caution." The alteration caused a train, which would have passed the station without slackening speed, to slacken speed, and come nearly to a standstill. Another train going in the same direction, and on the same rails, was due at the station in half an hour; it was held that this was obstructing a train within the meaning of the above clause. *R.* v. *Hadfield*, L.R. 1, C.C.R., 253.

The Act is not limited to mere physical obstruction. The prisoner, who was not a servant of the railway company, stood on a railway between two lines of rails at a point between two stations. As a train was approaching, he held up his arms in the mode used by the inspectors of the line, when desirous of stopping a train between two stations. The prisoner knew that his doing so would probably induce the driver to stop or slacken speed, and his intention was to produce that effect. This, as the prisoner intended that it should, caused the driver to shut off steam and diminish speed, and led to a delay of four minutes. It was held that the prisoner had obstructed a train within the meaning of the statute. *R.* v. *Hardy*, L.R. 1, C.C.R., 278.

It was proved that the prisoner caused the death of a mare through injuries inflicted by his inserting the handle of a fork into her vagina, and pushing it into her body. There was no evidence that the prisoner was actuated by ill-will towards the owner of the mare, or spite towards the mare, or by any motive except the gratification of his own depraved taste. The jury found that the prisoner did not in fact intend to kill, maim, or wound the mare, but that he knew what he was doing would or

might kill, maim, or wound the mare, and nevertheless did what he did recklessly, and not caring whether the mare was injured or not. It was held that there was sufficient malice, and that the prisoner might be convicted. *R.* v. *Welch*, L.R. 1, Q.B.D., 23.

On a charge of maliciously wounding a horse it is not necessary to prove that any instrument was used to inflict the wound. *R.* v. *Bullock*, L.R. 1, C.C.R., 115.

The 58th section of this Act applies where the damage exceeds twenty dollars. The 59th section where the damage does not exceed this sum. Where a person, having a public interest (as a Surveyor of highways in removing an obstruction to the highway) acts *bona fide* in the discharge of his duty, he cannot be convicted, under this section, of committing wilful and malicious damage. When such person acts in good faith, it must be taken that he acts under a fair and reasonable supposition, that he had a right to do the act complained of, and the Justices should not find otherwise. *Denny* v. *Thwaite*, L.R. 2, Ex. D., 21.

Under the 59th section, the conviction should clearly show whether the damage, injury, or spoil complained of is done to real or personal property, stating what property and what is the amount which the Justice has ascertained to be reasonable compensation for such damage, injury or spoil.

The English Act uses the words "wilfully or maliciously" committing damage, etc., and it was held that there must be proof of actual damage to the realty itself, and mere damage to uncultivated roots or plants growing upon the realty is insufficient. In this case, the defendant had gathered mushrooms in a field belonging to the plaintiff. They were of value to the latter, but they grew spontaneously and were entirely uncultivated. No damage was done to the grass or hedges and it was held there was no offence within the section. *Gardner* v. *Mansbridge*, 19 Q.B.D., 217.

Under subsection 2 of section 59, whether the defendant has shown a reasonable supposition on his part that he had a right to do the act complained of, is a fact to be determined by the Justice, and his decision upon a matter of fact will not be

reviewed. But this assumes that the defendant has given evidence to that effect, and that there is a conflict of evidence on the point. Where the whole facts show that the matter or charge itself is one in which such reasonable supposition exists, or in other words that the case and evidence are all one way in that respect, and in favour of the defendant, the same rule does not apply. *R.* v. *McDonald*, 12 Ont. R., 381 ; *R.* v. *Malcolm* 2 Ont. R., 511, distinguished. The provisions of subsection 2 of section 59, are applicable to the whole Act. (*Ib.*) See "The Interpretation Act," Rev. Stat. Can. chap. 1, s. 7, s.s. 5.

A conviction charging that defendant at a time and place named, wilfully and maliciously took and carried away the window-sashes out of a building owned by one C, against the form of the statute, without alleging damage to any property real or personal, and without finding damage to any amount was held bad. *R.* v. *Caswell*, 20 C.P. (Ont.), 275.

MANSLAUGHTER.

(*See* MURDER, *see also* INDICTABLE OFFENCES).

MARRIAGE.

The Act respecting offences relating to the law of marriage, Rev. Stat. Can., chap., 161, provides that every one who (*a*) without lawful authority, the proof of which shall be on him, solemnizes or pretends to solemnize any marriage, or (*b*) procures any person to solemnize any marriage, knowing that such person is not lawfully authorized to solemnize such marriage, or knowingly aids or abets such person in performing such ceremony is guilty of a misdemeanor. So it is a misdemeanor for any person, lawfully authorized, to knowingly solemnize any marriage in violation of the laws of the Province in which it is solemnized.

MARRIED WOMEN.

In general if a crime be committed by a married women, in the presence of her husband, the law presumes that she acted under

his immediate coercion, and excuses her from punishment, but if she commit an offence in the absence of her husband, even by his order or procurement, her coverture will be no defence. The presumption, however, that the wife acts under coercion may be rebutted, and if it appears that she was principally instrumental in the commission of the crime, acting voluntarily and not by restraint of her husband, although he was present and concurred, she will be guilty and liable to punishment. See *R.* v. *Cohen*, 11 Cox C.C., 99, and a wife who takes an independent part in the commission of a crime, such as larceny when her husband is not present, is not protected by her coverture. *R.* v. *John*, 13 Cox C.C., 100.

It appears also that the rule exempting the wife does not apply to treason, murder, or manslaughter. *R.* v. *Manning*, 2 C. & K., 903; *R.* v. *Cruse*, 8 C. & P., 541.

But a wife is not liable for a robbery committed under coercion from her husband. *R.* v. *Dykes*, 15 Cox C.C., 771. And the rule of exemption applies to theft, receiving stolen goods knowing them to be stolen, uttering counterfeit coin, and misdemeanors generally. In these latter cases, to which the rule applies, a wife committing the offence in the presence of her husband is excused unless it is shown affirmatively that she was not coerced.

The exceptions are confined to those cases in which personal injuries have been effected by violence or coercion, and though the Married Woman's Property Act in England enables a wife to proceed criminally against her husband, for the protection and security of her own separate estate, yet these Acts do not enable a married woman to take criminal proceedings against her husband for defamatory libel. *R.* v. *Lord Mayor*, 16 Cox C.C., 81.

A married woman was lessee of certain premises, in which her husband sold liquor without a license, and it was held that she was liable to punishment, though the sale took place in her absence. *R.* v. *Campbell*, 8 P.R. (Ont.), 55.

MASTER AND SERVANT.

The Rev. Stat. Can., chap. 173, section 15, provides that every

one who wilfully and maliciously breaks any contract made by him, knowing, or having reasonable cause to believe that the probable consequences of his so doing will be to endanger human life, or to cause serious bodily injury, or to expose valuable property to destruction or serious injury, shall, on summary conviction, before two Justices of the Peace, or on indictment, be liable to a penalty not exceeding one hundred dollars. Various other offences are punishable on the same principles.

The 5 Eliz., chap. 4, is not in force in Ontario, but the 20 Geo. 2, chap. 19 is, and under sections 3 and 4, jurisdiction is given to two or more Justices, and cannot be exercised by one, and the party cannot be arrested on complaint but must be summoned. *Shea* v. *Choate*, 2 Q.B. (Ont.), 211.

In Ontario, under the Rev. Stat., chap. 139, s. 9, and following sections, Justices of the Peace may decide disputes between master and servant, and by section 12, they may hear complaints by servants against the employer for non-payment of wages.

MEDICINE AND SURGERY.

In Ontario, chap. 148, of the Rev. Stat., relates to the profession of medicine and surgery.

Under sections 45 and 51 of the Act, there is no jurisdiction on default by the defendant, of payment of fine and costs, to direct imprisonment for the space of one month, unless in addition to the payment of the fine and costs, the defendant pays the charges of conveyance to gaol. *R.* v. *Wright*, 14 Ont. R., 668.

The defendant, who was agent for a dealer in musical instruments, undertook to cure one, P, of cancer, by friction and application of a certain oil, receiving as remuneration $3 a visit, which he stated was for the medicine, being its actual cost. He admitted having practised in Germany, and that he imported the specific in question by the gross. It also appeared that he prescribed other medicine for the patient besides the oil. This was held to be practising medicine, and that the defendant was rightly convicted of doing so for gain or hope of reward, without registration under the Act. *R.* v. *Hall*, 8 Ont. R., 407.

MENACES AND THREATS.

The Rev. Stat. Can., chap. 173, governs these offences. It is immaterial whether the menaces or threats are of violence, injury or accusation, to be caused or made by the offender, or by any other person (*Ib.*, s. 6). The offence of threatening to accuse any person of an infamous crime with intent to extort money, etc., will be committed, though the accusation was not intended to be made to a Magistrate. (*R.* v. *Robinson*, 2 Mood, 14), and though the valuable thing sought to be gained was the sale of a horse. *R.* v. *Redman*, 35 L.J.M.C., 89.

So the threat need not be of an accusation against the person threatened; threatening a father with an accusation against the son is sufficient. *R.* v. *Redman*, L.R. 1, C.C.R., 12.

Under section 3 of this statute, as to letters threatening to accuse of crime, with intent to extort evidence of the truth of the accusation, will not be allowed in defence. *R.* v. *Cracknall*, 10 Cox C.C., 408.

Section 1 of the Act, makes it felony to send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person, with menaces and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing. The words "without any reasonable or probable cause" apply to the money demanded, and not to the accusation constituting the threat. *R.* v. *Mason*, 24 C.P. (Ont.), 58; *R.* v. *Gardiner*, 1 C. & P., 479; *R.* v. *Hamilton*, 1 C. & K., 212.

A mere request, without a threat, is no offence (*R.* v. *Robinson*, 2 East, P.C., 1111); nor is an offer to give information if money is sent (*R.* v. *Pickford*, 4 C. & P., 227); but a letter stating that an injury is intended and the writer will not interfere to prevent it, unless money is sent, amounts to an offence. *R.* v. *Smith*, 1 Den. C.C., 510.

A demand for money by letter, threatening bodily violence, or to charge with adultery, is an offence, under this section. *R.* v. *Chalmers*, 10 Cox C.C., 450.

The menace under section 2 of the Act, must be such as to influence a reasonable mind. *R.* v. *Walton*, L. & C., 288. It is immaterial that the person has no money at the time of the demand (*R.* v. *Edwards*, 6 C. & P., 515); and a conviction may take place though the money was paid. *R.* v. *Robertson*, L. & C., 483.

The menace must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and take away from his acts that element of free voluntary action which alone constitute consent. *R.* v. *Walton*, 9 Cox C.C., 268.

If a policeman, professing to act under legal authority, threaten to imprison a person on a charge, not amounting to an offence in law, unless money be given him, and the person believe the policeman and give him the money, the policeman may be indicted for the offence of demanding money with menaces with intent to steal, although the offence is completed, and he might also be indicted for stealing the money. *R.* v. *Robertson*, 10 Cox C.C., 9.

Whether the crime of which the person was accused was actually committed is not material, in this, that the prisoner is equally guilty if he intended, by such accusation, to extort money. But it is material in considering the question whether the intention of the prisoner was to extort money or merely to compound a felony. *R.* v. *Richards*, 11 Cox C.C., 43.

Where money is obtained by frightening the owner into handing it over, the prisoner may be convicted of larceny. *R.* v. *Lovell*, 8 Q.B.D., 185.

Threatening to use any force, violence or restraint or to inflict any injury, damage, harm or loss, or in any manner to practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election, is a misdemeanor. Rev. Stat. Can., chap. 8, s. 87.

Assaulting or threatening to assault any Officer of Inland Revenue in the execution of his duty, is felony. Rev. Stat. Can., chap. 34, s. 99.

MILITARY AND NAVAL STORES.

The Rev. Stat. Can., chap. 170, imposes various penalties on persons unlawfully using or obliterating the marks which are applied to Her Majesty's military and naval stores, to denote Her Majesty's property in the stores so marked. The burden of proof is in certain cases thrown on the offender, and when the value of the stores does not exceed twenty-five dollars, the case may be tried summarily by two Justices of the Peace or any Recorder, Stipendiary or Police Magistrate, or the City Court of Halifax (*Ib.*, s. 8); and searching for stores in the sea or any tidal or inland water, without written permission from the Admiralty, is punishable before the same tribunal. (*Ib.*, s. 12.)

MILITIA.

The Rev. Stat. Can., chap. 41, s. 94, creates various offences and penalties in reference to this service, and section 109 provides that every person, who persuades or attempts to procure or persuade any militia-man to desert, or aids him in deserting, or conceals any deserter, is liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months. Every penalty, incurred under the Act, shall be recoverable with costs by summary conviction on the evidence of one credible witness on complaint or information before one Justice of the Peace, and provision is made for commitment in the event of non-payment of the penalty. (*Ib.*, s. 111.)

MISDEMEANOR.

Independently of some statutory authority, Justices of the Peace, out of Sessions, have no power to try misdemeanors in a summary manner. *R.* v. *Carter*, 5 Ont. R., 651.

MISPRISION OF FELONY.

This offence consists in the concealment of some felony (other than treason) committed by another. There must be knowledge of the offence merely, without any assent, for if a man assent he

will either be a principal or an accessory. Thus, one will be guilty of misprision who sees a felony committed and takes no steps to secure the apprehension of the offender. The offence is a misdemeanor punishable by fine and imprisonment.

MORALS.

(*See* PUBLIC MORALS. *See* in Ontario Rev. Stat., chap. 203.)

MURDER AND MANSLAUGHTER.

These offences are provided for by the Rev. Stat. Can., chap. 162. Manslaughter is distinguished from murder in wanting the ingredient of malice, and it may be generally stated that where the circumstances negative the existence of malice in the legal sense, and the killing is unlawful and felonious, it will be manslaughter.

As a rule there can be no accessories before the fact in manslaughter, as the offence is sudden and unpremeditated, but in certain cases there may be. *R.* v. *Gaylor*, 7 Cox C.C., 253.

Murder is unlawful homicide with malice aforethought. Manslaughter is unlawful homicide without malice aforethought.

Malice is a necessary ingredient in and the chief characteristic of the crime of murder. *Re Anderson*, 11 C.P. (Ont.), 62.

Malice in its legal sense means a wrongful act done intentionally without just cause or excuse. *McIntyre* v. *McBean*, 13 Q.B. (Ont.), 542; *Poitevin* v. *Morgan*, 10 L.C.J., 97.

On every charge of murder, where the act of killing is proved against the prisoner, the law presumes the fact to have been founded in malice until the contrary appears. *R.* v. *McDowell*, 25 Q.B. (Ont.), 112; *R.* v. *Atkinson*, 17 C.P. (Ont.), 304. And the onus of rebutting this presumption, by extracting facts on cross-examination or by direct testimony, lies on the prisoner. (*Ib.*)

In order the better to understand the nature of these offences, the reader is referred to the chapter on indictable offences.

The homicide must be of some reasonable creature in being, but a child becomes such being when it has completely proceeded in a living state from the body of its mother, whether it has or

has not breathed, and whether the navel string has or has not been divided. *R.* v. *Poulton*, 5 C. & P., 329; *R.* v. *Crutchley*, 7 C. & P., 814. And the killing of such a child is homicide, whether it is killed by injuries inflicted before, during, or after birth.

To make a killing murder, the death must follow within a year and a day after the stroke or other cause, for if the death is deferred for that length of time the law will presume that it arose from some other cause.

With reference to malice, it does not necessarily mean malevolence or ill-will towards the deceased, for perhaps the majority of murders are committed with a view to robbery. The malice necessary, therefore, in case of murder may be said to be a felonious design or intention in general.

Generally in cases of homicide the prisoner's act must directly and immediately occasion the death, but a person is deemed to have committed homicide, although his act is not the immediate or not the sole cause of death in the following cases: (1) If he inflict a bodily injury on another which causes surgical or medical treatment which causes death. *R.* v. Davies, 15 Cox C.C., 174. The treatment must, however, be in good faith and with common knowledge and skill; (2) If he inflicts a bodily injury on another which would not have caused death, if the injured person had submitted to proper surgical or medical treatment, or had observed proper precautions as to his mode of living; (3) If by any act he hastens the death of a person suffering under any disease or injury, which apart from such act would have caused death.

If a man has a disease which in all likelihood would terminate his life in a short time, and another give him a wound or hurt, which hastens his death, this will constitute murder or manslaughter, for to accelerate the death is sufficient. *R.* v. *Martin*, 5 C. & P., 130.

Of course in such a case as this the prisoner's act hastening the death must be unlawful.

If a prisoner, having been lawfully apprehended by a Police

Constable on a criminal charge, uses violence to the Constable or to any one lawfully assisting him, which causes death, and this is done with intent to inflict grievous bodily harm, he is guilty of murder. And this is the case if the act is done only with intent to escape, but if in the course of the struggle he accidentally causes an injury, it would be manslaughter. *R.* v. *Porter*, 12 Cox C.C., 444.

If an officer is arresting for misdemeanor under a warrant, he must have the warrant with him at the time. If he has not, and the prisoner does not know of its existence, the arrest will be unlawful, and if in resisting the arrest the officer is killed, it will not be murder but manslaughter. *R.* v. *Chapman*, 12 Cox C.C., 4.

Death resulting from fear caused by menaces of personal violence and assault, though without battery, is sufficient to support an indictment for manslaughter. *R.* v. *Dugal*, 4 Quebec L.R., 350.

Where A, in unlawfully assaulting B, who at that time had in her arms an infant, so frightened the infant that it had convulsions, although previously healthy, and from the effects of which it eventually died in about six weeks, A is guilty of manslaughter, if the jury think that the assault on B was the direct cause of death. *R.* v. *Towers*, 12 Cox C.C., 530.

The general rule of law is that provocation by words alone will not reduce the crime of murder to that of manslaughter. But special circumstances attending such a provocation may be held to take the case out of the general rule. For instance, if a husband suddenly and unexpectedly hearing from his wife that she had committed adultery, were thereupon to kill her, it might be manslaughter. *R.* v. *Rothwell*, 12 Cox C.C., 145.

An infant two years and a half old is not capable of appreciating correction, a father therefore is not justified in correcting it, and if the infant dies owing to such correction, the father is guilty of manslaughter. *R.* v. *Griffin*, 11 Cox C.C., 402.

Justices of the Peace have little concern with the technical distinctions between murder and manslaughter. If a party is

guilty of either he should be committed for trial, but it is necessary that the death should be expressly proved, for otherwise *non constat* that any offence has been committed.

As to the liability of a soldier carrying out the order of his sergeant, see *R.* v. *Stowe*, 1 Sup. Ct., N.S., 121.

Across a common was an unfenced and open footpath which the public had a right to use. A commoner knowingly turned a vicious horse on to the common to depasture. The horse kicked a child and caused its death, the child being at the time so near the boundary that the jury could not say whether it was on the footpath or beyond it, but found the owner of the horse guilty of culpable negligence, and convicted him of manslaughter, and the conviction was held right. *R.* v. *Dant*, 10 Cox C.C., 102.

The spectators of a sparring match are not *particepes criminis*, so that their evidence touching what occurred at the match requires corroboration. There is nothing unlawful in sparring, unless perhaps the men fight on until they are so weak that a dangerous fall is likely to be the result of the continuance of the game. Therefore, except in the latter case, death caused by an injury received during a sparring match does not amount to manslaughter. *R.* v. *Young*, 10 Cox C.C., 371.

A medical man is bound to use proper skill and caution in dealing with a poisonous drug or dangerous instrument, and if he does not do so and death ensues he is guilty of manslaughter, but it will be otherwise if he makes an error in judgment only. *R.* v. *Macleod*, 12 Cox C.C., 534. And to render a person liable to conviction for manslaughter, through neglect of duty, there must be such a degree of culpability in his conduct as to amount to gross negligence. *R.* v. *Finney*, 12 Cox C.C., 625.

A grown up person, who chooses to undertake the charge of a human creature, helpless, either from infancy, simplicity, lunacy or other infirmity, is bound to execute that charge without wicked negligence, and if such person, by wicked negligence, lets the helpless creature die, that person is guilty of manslaughter.

Mere negligence is not enough, there must be negligence so great as to satisfy a jury that the offender had a wicked mind, in

the sense of being reckless and careless, whether death occurred or not. *R.* v. *Nicholls*, 13 Cox C.C., 75.

Where, from conscientious religious conviction that God would heal the sick, and not from any intention to avoid the performance of their duty, the parents of a sick child refuse to call in medical assistance, though well able to do so, and the child consequently dies, it is not culpable homicide. *R.* v. *Wagstaffe*, 10 Cox C.C., 530. See further *R.* v. *Downes*, L.R. 1, Q.B.D., 25; *R.* v. *Morley*, 8 Q.B.D., 571.

The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. On the 17th October, 1881, the prisoner had knocked his wife down with a bottle. She fell against a door, and remained on the floor insensible for some time. She was confined to her bed soon afterwards, and never recovered. Evidence was given of frequent acts of violence committed by the prisoner upon his wife within a year of her death, by knocking her down and kicking her on the side, and this evidence was held properly admissible, and that there was evidence to submit to the jury that the disease which caused her death was produced by injuries inflicted by the prisoner. *Theal* v. *The Queen*, 7 S.C.R., 397.

The fact of people drinking together, even to excess, does not, of itself, constitute an offence on the part of the others, although one should die from the effects of the drink. But if a man, profiting by the weakness of another, whether that other be a child, or a man of weak mind, or a man subject to an uncontrollable passion for drink, should encourage such person to drink immoderately, in a quantity likely to cause him severe sickness or death, and death ensues, he, who tempted the other, is responsible for his death. If the one so pressing the other to drink, acted with the intention to kill, he is guilty of murder. If he acted without such intention, but intending to make the other sick, even in sport he is guilty of manslaughter. *R.* v. *Lortie*, 9 Quebec L.R., 352.

The offence of soliciting, encouraging or endeavouring to persuade any person to murder, under section 3 of the Rev. Stat. Can., chap. 162, may be committed by publishing in a newspaper, an article inciting to murder, the article being considered as a separate incitement to each subscriber of the paper, and the fact that a large number of persons are encouraged, instead of one only, does not alter the nature of the offence. *R.* v. *Most*, L.R. 7, Q.B.D., 244.

A man, who has an unlawful and malicious intent against another, and in attempting to carry it out, injures a third person, is guilty of what the law deems malice against the person injured.

The prisoner, in striking at a man, struck and wounded a woman beside him, and on the trial the jury found that the blow was unlawful and malicious, and did, in fact, wound her, but that the striking of her was purely accidental, and not such a consequence of the blow as the prisoner ought to have expected, he was, nevertheless, held guilty. *R.* v. *Latimer*, 17 Q.B.D., 359.

The omission of the words "of malice aforethought" from the averment of the intent in an indictment for wounding with intent to murder, constitutes a substantial defect therein, and is not cured by section 143 of the Rev. Stat. Can., chap. 174. *R.* v. *Carr*, 26 L.C.J., 61.

But the case is different where the prisoner is charged under section 8 of the Act. This section creates a statutory offence, different from the common law, and attaches a severer penalty, and where the indictment describes the offence in the words of this section, if not objected to until after verdict, it will be sufficient. *R.* v. *Deery*, 26 L.C.J., 129.

The words "feloniously, and of his malice aforethought" were omitted in the averment of the intent in a count of an indictment for wounding, with intent to murder; after verdict, the count was held insufficient, notwithstanding the Rev. Stat. Can., chap. 174, s. 246, the offence not being described in the words of the statute. *R.* v. *Bulmer*, 5 Legal News, 287.

Homicide is excusable when necessary to the preservation of a man's own life, or of his wife, child, or parent. Thus, where a

son had reasonable grounds for believing, and honestly believed that his father was about to cut his mother's throat, the shooting of the father, under such circumstances, was held excusable homicide. *R.* v. *Rose*, 15 Cox C.C., 540. See as to homicide under the necessity of procuring food to prolong life. *R.* v. *Dudley*, 14 Q.B.D., 273, 560.

NAVIGABLE WATERS.

The Rev. Stat. Can., chap. 91, enables the Minist of Marine to cause the removal of obstructions caused by wrecks in navigable waters, and sawdust, edgings, slabs, bark or rubbish, are not allowed to be thrown into any navigable river or stream. (*Ib.*, s. 7).

NAVIGATION OF CANADIAN WATERS.

The Rev. Stat. Can., chap. 79, contains various provisions respecting navigation. Wilful disobedience of the rules of navigation prescribed by the Act, entails a penalty not exceeding two hundred dollars, and not less than twenty dollars, (*Ib.*, s. 4). Penalties are recoverable before two Justices of the Peace, on the oath of one credible witness. (*Ib.*, s. 8).

NORTH-WEST MOUNTED POLICE.

The Rev. Stat. Can., chap. 45, s. 18, provides that the commissioner enquire into any alleged breach of discipline, and witnesses may be examined on oath, in the manner prescribed by the Summary Convictions Act. Rev. Stat. Can., chap. 178 (*Ib.*, s. 20.) Offences under sections 24 and 25 may be prosecuted before the Commissioner, or a Stipendiary Magistrate, or any Justice of the Peace, in any part of Canada, and "The Summary Convictions Act" shall apply to such prosecutions. (*Ib.*, s. 25).

NORTH-WEST TERRITORIES.

The Act in relation to this part of the Dominion is the Rev. Stat. Can., chap. 50. This Act is not *ultra vires*, and a Judge

and a Justice of the Peace, with the intervention of a jury of six, have power to try a prisoner charged with treason.

The information in such case (if any information be necessary) may be taken before the Judge alone. An objection to the information would not be waived by pleading to the charge after objection taken.

At the trial in such case, the evidence may be taken by a shorthand reporter. *R.* v. *Riel*, 2 Manitoba L.R., 321, confirmed on appeal to the Privy Council. *Riel* v. *The Queen*, 10 Appeal Cases, 675.

NUISANCE.

Common nuisances are such annoyances as are liable to affect all persons who come within the range of their operation. Every one who commits a common nuisance is guilty of a misdemeanor. There seems to be no authority for a Justice convicting a party summarily of a nuisance, and fining for the offence (*Bross* v. *Huber*, 18 Q.B. (Ont.), 286), and though the obstruction of a highway is a public nuisance, a conviction by a Magistrate for such obstruction and order to pay a continuing fine until the removal of such obstruction was held bad, as unwarranted by any Act of Parliament. *R.* v. *Huber*, 15 Q.B. (Ont.), 589.

To constitute a public nuisance, the thing complained of must be such as in its nature or its consequences is a nuisance, an injury or a damage to all persons who come within the sphere of its operation, though it may be in a greater or less degree. *Little* v. *Ince*, 3 C.P. (Ont.), 545; *R.* v. *Meyers*, 3 C.P. (Ont.), 333.

Throwing noxious matter into Lake Ontario, or any other public navigable water, is a public nuisance, and renders the party committing it liable to an indictment. *Watson* v. *Toronto G. & W. Co.*, 4 Q.B. (Ont.), 158. Obstructions to navigable rivers are public nuisances. *Brown* v. *Gugy*, 14 L.C.R., 213.

So the non-repair of a highway, or the obstruction thereof, is a nuisance, indictable at common law. *R.* v. *Paris*, 12 C.P. (Ont.), 450.

The proper remedy for a public nuisance is by indictment *Small* v. *G. T. R. Co.*, 15 Q.B. (Ont.), 283.

The circumstance that the thing complained of furnishes, on the whole, a greater convenience to the public than it takes away, is no answer to an indictment for a nuisance. *R.* v. *Bruce*, 10 L.C.R., 117; *R.* v. *Ward*, 4 A. & E., 384.

A conviction for obstructing a highway is bad, unless it appears on the face of it that the place was a public highway. *R.* v. *Brittain*, 2 Kerr, 614.

OATHS.

The Rev. Stat. Can., chap. 141, provides that every Justice of the Peace administering an oath without authority is guilty of a misdemeanor. A Justice may receive the solemn declaration of any person voluntarily making the same before him, in the form in the schedule to the Act, in attestation of the execution of any written deed or instrument, or allegations of fact, or of any account rendered in writing.

Prior to the passing of this Act, a Magistrate taking an affidavit without authority, was guilty of a misdemeanor, and a criminal information would lie against him for so doing. *Jackson* v. *Kassel*, 26 Q.B. (Ont.), 346.

The provision of the 23 Vic., chap. 2, s. 28, that all affidavits required thereunder, may be taken before "any Justice of the Peace," does not empower a Justice of the Peace to administer the oath anywhere in the Province; it merely authorizes him to do so in the place where he acts as such Justice. *R.* v. *Atkinson*, 17 C.P. (Ont.), 295.

OATHS OF ALLEGIANCE.

The Act respecting oaths of allegiance, Rev. Stat. Can., chap. 112, prescribes the form of the oath of allegiance, and enacts that all Justices of the Peace and other officers lawfully authorized, either by virtue of their office or special commission from the Crown for that purpose, may administer the oath of allegiance under the Act in any part of Canada.

OBSCENE BOOKS.

The sale of an obscene book is a misdemeanor, even although a good ulterior object is intended to be served thereby. *R.* v. *Hicklin*, L.R. 3, Q.B., 360. The obtaining obscene prints and libels for the purpose of afterwards publishing and disseminating them, is an act done in commencing a misdemeanor, and therefore an indictable offence. *Dugdale* v. *R.* 1 E. & B., 435.

In Ontario the Rev. Stat., chap. 184, s. 489, s.s. 33, empowers Councils to pass by-laws for preventing the posting of indecent placards, writings, or pictures, etc.

OFFICE, OFFENCES BY PERSONS IN.

Every one, who is an officer or servant of, or a person employed by the Minister on any public work under the Minister, and who wilfully and negligently violates any by-law, order or regulation of the Department, if such violation causes injury, or risk of injury, to any property or person, or renders such risk greater than it would have been but for such violation, although no actual injury occurs, is guilty of a misdemeanor. Rev. Stat. Can., chap. 36, s. 27. There is a similar provision in the Act respecting the Department of Railways and Canals, Rev. Stat. Can., chap. 37, s. 17, in respect to disobedience of regulations by officers or servants, as well as in the Act respecting Government Railways. Rev. Stat. Can., chap. 38, s. 59.

Under the Rev. Stat. Can., chap. 32, s. 213, it is felony to oppose, molest or obstruct any officer of Customs in the discharge of his duty, or to wilfully or maliciously shoot at, or attempt to destroy any vessel belonging to Her Majesty, or to maim or wound any officer of the army while employed for the prevention of smuggling.

So every person who wilfully obstructs any officer or employee of a Government Railway, in the execution of his duty, shall, on summary conviction, be liable to a penalty not exceeding forty dollars. Rev. Stat. Can., chap. 38, s. 63.

So obstructing or impeding an inspector, or other officer acting in execution, of "The Animal Contagious Diseases Act," renders

the offender liable to a penalty not exceeding one hundred dollars, and the inspector may apprehend the offender and take him before a Justice, but, without the order of the Justice, he is not to be detained longer than twenty-four hours. Rev. Stat. Can., chap. 69, s. 38.

ONTARIO.

In the Province of Ontario, by virtue of chap. 74, of the Rev. Stat., in reference to penalties or punishments imposed under the authority of any statute of the Province, the procedure before Justices of the Peace is assimilated to that prevailing under the Statutes of Canada.

Section 4 gives the right of appeal from any conviction or order made by a Justice of the Peace, under the authority of any statute in force in Ontario, and relating to matters within the legislative authority of the Legislature of Ontario.

The words "conviction or order" in this section, must be held to mean the same as in the Rev. Stat. Can., chap 178, s. 76; and an order does not mean an order of dismissal of a complaint, nor can the prosecutor of such complaint appeal, under this section. *Re Murphy*, 8 P.R. (Ont.), 420.

A statute giving an appeal does not take away the right to a *certiorari*, and it seems that it would not have this effect, even if it provided that the decision of the Court appealed to should be final.

In the case of a conviction for an offence not being a crime, such as a breach of a by-law, though the conviction is affirmed on appeal to the Sessions, the writ of *certiorari* is not taken away by this statute. *Re Bates*, 40 Q.B. (Ont.), 284; *R.* v. *Washington*, 46 Q.B. (Ont.), 221.

Under the Con. Stats. U. C., chap. 114, no appeal lay to the Quarter Sessions, in the case of any conviction for a *crime*, the Act only applying to a conviction for any matter cognizable by a Justice of the Peace, and not being a crime. *Re Lucas*, 29 Q.B. (Ont.), 81; *Re Meyers*, 23 Q.B. (Ont.), 613.

Under this section, the right of appeal from convictions or orders

is limited to those made under any statute in force in Ontario, relating to matters within the legislative authority of the Legislature of Ontario. As to the legislative authority of the Legislature of Ontario, see the British North America Act, 1867, sections 91 & 92; see also *R.* v. *Taylor*, 36 Q.B. (Ont.), 183; *R.* v. *Boardman*, 30 Q.B. (Ont.), 553; *ante* pp. 457, 458.

Under section 5 of the Act, the practice and proceedings on appeal shall be the same as the practice and proceedings under the statutes of the Dominion of Canada then in force, and witnesses, not examined at the trial before the Magistrate, may, on the application of either party, be examined on the appeal. *R.* v. *Washington*, 46 Q.B. (Ont.), 221.

The notice of appeal and the entry into recognizance, if required by statute, as conditions precedent to the right of appeal, must be proved or admitted, whether it is intended to try or only to move to respite the hearing; for, until it is made to appear to the Court that the appeal is duly lodged at the proper Sessions, as well as that due notice has been given and recognizance entered into, where so required by the Act, applicable to the appeal, jurisdiction to hear or adjourn will not attach. But a respondent may waive proof of appeal or admit it so as to make proof unnecessary.

A mere technical objection to entertaining the appeal will be waived by the respondent asking an adjournment, but an objection of substance as to the jurisdiction of the Court cannot be so waived. *Re Myers*, 23 Q.B. (Ont.), 611. And if notice of appeal has not been given in time, or the recognizance entered into, or other matter required to be done before the appellant can proceed with his appeal, the objection could probably be taken at any time, for it would shew that the Court had no jurisdiction to entertain the appeal. *R.* v. *Crouch*, 35 Q.B. (Ont.), 433-9. Where, however, notice of appeal was duly given, and admitted by the respondent, and the recognizance also duly entered into and filed with the Clerk of the Peace, but on the appeal coming on for hearing, and after the jury were sworn, the respondent's Counsel objected that there was no proof of the recognizance, but afterwards continued the case, and did not renew the objection at the

close, it was held that the respondent's Counsel had admitted that the necessary recognizance had been entered into. (*Ib.*)

On appeal from a conviction to the General Sessions of the Peace, the notice of appeal and the recognizance were produced by the Clerk of the Court from its files, exhibited to the Court, and placed in its custody, and evidence was given of the service of the notice of appeal. The recognizance purported to be executed by the convicting Justice, and appeared to have been in the custody of the Clerk of the Peace from its date. This was held sufficient proof to found the jurisdiction of the Court to try the appeal in the absence of evidence shewing the recognizance to be false. The recognizance being in the same Court, enrolment was held unnecessary, though if sought to be used in another Court, production of an exemplification of enrolment would perhaps be necessary. *R.* v. *Essery*, 7 P.R. (Ont.), 290. Where the recognizance was filed by the appellant instead of being sent to the Clerk of the Peace by the Justice who took it, and the condition therein was to appeal to the "General or Quarter Sessions," and not to the "Court of General Sessions of the Peace," it was held nevertheless a sufficient compliance with the statute. (*Ib.*)

Where a rule *nisi* for a *mandamus* to the Sessions commanding them to hear an appeal, called upon the Court of Quarter Sessions in and for the United Counties, etc., instead of the Justices of the Peace, for the United Counties, and the rule had been enlarged in the prior term, on objection to the rule on the above ground, it was replied that the enlargement waived the objection, and this seems to have been acquiesced in by Counsel and by the Court. *Re Justices* 13 C.P. (Ont.), 159. In fact, it seems that in all cases formal and technical objections are waived by an enlargement *R.* v. *Allen*, 5 P.R. (Ont.), 453-8.

Under the (Ont.) 32 Vic., chap. 32, s. 36, an appeal from a conviction for selling liquor without license was required to be tried by the chairman of the Quarter Sessions without a jury. *Re Brown*, 6 P.R. (Ont.), 1.

Under this section the Court has a discretion to grant a jury, and if a jury is not demanded by either appellant or respondent the Court will proceed to try it. See *ante*, p. 285.

The general principle of appeals is that judgment is to be rendered upon the same facts that were before the inferior tribunal. See *R.* v. *Justices*, 5 O.S., 74.

Under the Con. Stats. U.C., chap. 114, there was no power of adjournment. The appeal was required to be heard at the Court of Quarter Sessions appealed to, for the Act provided that the Court should at *such sessions* hear and determine the matter of such appeal. *Re McCumber*, 26 Q.B. (Ont.), 516.

So the costs of an appeal from a Justice's conviction, as well as the appeal itself, had to be determined at the Sessions appealed to. *R.* v. *Murray*, 27 Q.B. (Ont.), 134.

Under this section, however, there is a power of adjournment, the practice being the same as on appeal to the General Sessions, from a conviction before a Justice of the Peace, made under the authority of a statute of Canada. See *ante*, pp. 280-283.

The Rev. Stat. Ont., chap. 75, relates to the procedure on appeals to the Judge of a County Court from summary convictions.

S, on the 9th of February, 1875, was convicted before Justices of an offence against the Act, for the sale of spirituous liquors. On the 27th he obtained a *certiorari* to the Justices to return the conviction into the Queen's Bench, which was not served until the 9th of July. In the meantime, on the 3rd of March, he procured a summons from the County Judge by way of appeal from the conviction, under the act, alleging as a ground for obtaining it so late that the delay arose wholly from the default of the Justices. He persisted in his appeal, notwithstanding the *certiorari*, but the Judge refused to adjudicate upon the merits, holding that it had not been made to appear to him that the delay arose wholly from the default of the convicting Justices, and therefore, that he had no jurisdiction, the summons not having been procured within ten days after the date of the conviction. On the 13th of September, the Justices returned to the *certiorari*, that before its delivery to them they had, at the request of S, transmitted the conviction and papers to the County Judge upon the appeal, under the Act. See section 3, thirdly. In November, S, having procured the papers to be returned by the

County Court Clerk at Barrie, to the Magistrate's Clerk at Orillia, moved to quash the return to the *certiorari*, and for another writ, or for an attachment for not having returned the conviction in obedience to it, or for an order to return the conviction forthwith, or to amend the return by including the conviction therein. In support of this motion, it was urged that the Magistrates wrongfully put it out of their power to return the writ, by transmitting the papers to the Clerk of the County Court, when they must have known that the time for transmitting the papers had expired, and that the appeal was too late.

The application was refused, for S, having procured the transmission of the papers for his own appeal, could not insist that it was wrong; it was apparent that he had abandoned the *certiorari* in order to carry on his appeal, and when he served the writ he knew that the Justices had not the papers to return.

The County Court Judge has jurisdiction to issue a summons in appeal at any time within one month, if it appears to him that the delay in transmitting the proceedings is wholly the default of the Justices, and the Court expressed an opinion that the Justices could not properly have refused to transmit the papers, on the ground that the appeal was not made in time; but that on the recognizance being furnished, they should transmit them at least within the month, leaving it to the County Court Judge to decide as to the cause of delay. *R.* v. *Slaven*, 38 Q.B. (Ont.), 557.

The Revised Statutes contain a provision for the transmission, by the Clerk of the County Court, of the proceedings and evidence, after the matter is finally disposed of, to the Clerk of the Peace. See section 3, thirdly. This provision was introduced since *R.* v. *Slaven*, *supra*, was decided.

ONTARIO FACTORIES ACT.

The Rev. Stat. Ont., chap. 208, s. 5, enacts that it shall not be lawful to employ in a factory, any child, young girl or woman, so that the health of such child, young girl or woman is likely to be permanently injured. The party offending is, upon summary conviction, liable to imprisonment for a period not exceeding six

months, or to a fine of not more than $100, with costs of prosecution, and in default of immediate payment of such fine and costs, then to imprisonment. By other sections of the Act, further provisions are made in reference to the employment of children, young girls or women, and it is required that every factory be kept in a cleanly state, and free from effluvia arising from any drain, privy or other nuisance. See sections 6, 7, 11.

Under section 14, it is not lawful to keep a factory so that the safety of any person employed therein is endangered, or so that the health of any person employed therein is likely to be permanently injured. A violation of this provision renders the offender liable to imprisonment for a period of not more than twelve months, or to a fine of not more than $500, with costs of prosecution.

The parent of any child or young girl, employed in a factory, in contravention of this Act shall, unless such employment is without the consent, connivance or wilful default of such parent, be guilty of an offence in contravention of this Act, and liable to a fine of not more than $50, and costs of prosecution.

Under sections 18 and 19, employers must send notice to the inspector in case of death or bodily injury, from fire or accident, sufficient to prevent the person injured returning to work within six days after the injury.

Every person, who wilfully makes a false entry in any register, notice, certificate or document, required by this Act, to be left or served or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to imprisonment for a period not exceeding six months, or to a fine of not more than $100, with costs of prosecution. (*Ib.* s. 22.)

Where the inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding $30, and where the inspector is obstructed in a factory, the employer shall be liable to a fine not exceeding $30, or where the offence is committed at night, $100. (*Ib.* s. 24, s.s. 7.)

Justices of the Peace may grant a warrant, authorizing the

inspector to enter any room or place actually used as a dwelling, if they have reasonable cause to suppose that any enactment of the Act is contravened in any such room or place as aforesaid. (*Ib.* s. 26.)

Under section 38 of the Act, information must be laid within two months, or where the offence is punishable at discretion by imprisonment, within three months after the commission of the offence. The description of the offence in the words of the Act, or in similar words, shall be sufficient in law.

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence, in the Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived, shall be required on the part of the informant.

By section 39 of the Act, all prosecutions may be brought before any two of Her Majesty's Justices of the Peace, in and for the County where the penalty was incurred, or the offence was committed, or wrong done, and in cities and towns where there is a Police Magistrate, before such Police Magistrate. The ordinary procedure in the case of summary convictions is to apply in this case.

PATENTS.

The Rev. Stat. Can., chap 61, s. 54, provides that any patented article, sold, or offered for sale, must be stamped with the date of the patent applying thereto, and non-compliance entails a penalty not exceeding one hundred dollars. Under section 55, it is a misdemeanor for a person, who is not the patentee of an article, sold by him, to stamp or mark it with the name, or any imitation of the name of the patentee; or for any person to offer for sale as patented, any article not patented, for the purpose of deceiving the public. And wilfully making any false entry in any register or book, or any false or altered copy of any document relating to the purposes of the Act, is a misdemeanor. (*Ib.* s. 56.)

PAWNBROKERS.

The Rev. Stat. Can., chap. 128, contains the law on this head. Under section 6, every pawnbroker, who in any case stipulates for, or takes a higher rate of interest than the Act prescribes, is liable to a penalty not exceeding fifty dollars. By section 7, every person who counterfeits, forges or alters any note or memorandum given by a pawnbroker for goods, pledged, or causes or procures the same to be done, or utters, vends or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, shall be liable, on summary conviction, to imprisonment for any term not exceeding three months.

The law in Ontario is contained in the Rev. Stat., chap. 155.

A person cannot be considered a "pawnbroker" by engaging in a single act of receiving or taking a pawn or pledge, as this would not be exercising the trade of a pawnbroker. *R.* v. *Andrews*, 25 Q.B. (Ont.), 196.

The same rule prevails under the Quebec Act, 34 Vic., chap. 2, s. 69; see *Perkins* v. *Martin*, 25 L.C.J., 36.

Prior to the passing of the recent Act it was held, in Ontario, that a pawnbroker might legally charge any rate of interest agreed on between him and the pledgor. *R.* v. *Adams*, 8 P.R. (Ont.), 462.

PEACE ON PUBLIC WORKS.

The Rev. Stat. Can., chap 151, is the Act respecting the preservation of peace in the vicinity of public works. Where necessary, the Act may be brought into force by proclamation within the limits of any public works. After the Act comes in force, every weapon in the hands of every person employed on the works must be delivered up, or in default the same may be seized, and the offender incurs a penalty not exceeding four dollars, and not less than two dollars, for every weapon found in his possession (*Ib.*, s. 3). The sale of intoxicating liquor is prohibited (*Ib.*, s. 13). All the provisions of every law respecting the duties of Justices of the Peace in relation to summary con-

victions and orders, and to appeals from such convictions, and for the protection of Justices of the Peace when acting as such, or to facilitate proceedings by or before them, in matters relating to summary convictions and orders, shall, in so far as they are not inconsistent with this Act, apply to every Justice of the Peace mentioned in the Act. (*Ib.*, s. 21).

PERJURY AND SUBORNATION OF PERJURY.

The Act governing these offences is the Rev. Stat. Can., chap. 154. Both offences come within the provisions of section 140, of Rev. Stat. Can., chap. 174, and therefore the prosecutor must be bound by recognizance to prosecute, or the provisions of the section otherwise complied with.

Perjury is the crime committed by one, who, when a lawful oath is administered to him in some proceeding, in a Court of Justice, of competent jurisdiction, swears wilfully, absolutely and falsely, in a matter material to the issue or point in question.

Subornation of perjury is an offence in procuring a man to take a false oath amounting to perjury, who actually takes such oath.

On a charge of perjury it is not necessary to prove that the subject matter of the perjury was material to the issue, in which the perjury was committed. *R.* v. *Ross*, 28 L.C.J., 261. The statute provides that all evidence and proof whatsoever, shall be deemed and taken to be material with respect to the liability of the defendant, whether such evidence is given or made orally, or by or in any affidavit, affirmation, declaration, examination or deposition. (*Ib.* s. 5.) Therefore, a false affirmation of a Quaker or other person who is by law authorized to make an affirmation or declaration in lieu of an oath, may amount to perjury as well as oral evidence in open Court. See the Interpretation Act, Rev. Stat. Can., chap. 1, s. 7 (28).

Before perjury can be assigned it must be shown that the person administering the oath had authority to do so. See *R.* v. *Lloyd*, 19 Q.B.D., 213.

The Interpretation Act, Rev. Stat. Can., chap. 1, s. 7 (29),

provides, whenever, by an Act of Parliament, or by a rule of the Senate or House of Commons, or by an order, regulation or commission, made or issued by the Governor-in-Council, under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, such oath may be administered, and a certificate of its having been made, taken or administered, may be given by any one named in any such Act, rule, order, regulation or commission, or a Justice of the Peace having authority or jurisdiction within the place where the oath is administered.

When an oath is administered without any authority, the person taking such oath cannot be convicted of perjury. *R.* v. *Martin*, 21 L.C.J., 156; *R.* v. *McIntosh*, 1 Hannay, 372. The person administering the oath must be exercising his jurisdiction at the time the oath is administered. *McAdam* v. *Weaver*, 2 Kerr, 176.

It is a well-known rule that the testimony of a single witness is not sufficient to convict on a charge of perjury. Two witnesses, at least, must contradict what the accused has sworn, or, at any rate, one must so contradict, and other evidence must materially corroborate that contradiction.

The offence of perjury consists in taking a false oath in a judicial proceeding, and whether the oath is taken in a judicial proceeding before a Court, at common law, or acting on a statute, it is equally an oath taken in a judicial proceeding, and punishable as perjury. *R.* v. *Castro*, L.R., 9 Q.B., 350.

Any oath or affirmation administered under the authority of any Act of the Provincial Legislatures, entails the same consequences, with respect to perjury, as if the oath were administered under the authority of an Act of the Parliament of Canada. Rev. Stat. Can., chap. 154, s. 2.

So it is perjury to swear falsely in any Province in any affidavit to be used in any other Province. (*Ib.*, s. 3).

The swearing falsely by a voter, at an election of aldermen for the City of Toronto, that he was the person described in the list of voters, not being made perjury by any express enactment, was

held not an oath upon which, by the common law, perjury could be assigned, not being in any judicial proceeding or anything tending to render effectual a judicial proceeding. *Thomas* v. *Platt*, 1 Q.B. (Ont.), 217. But this would now be perjury under the statute, as the offence is not now confined to evidence given in judicial proceedings.

PERSON.

The Act respecting offences against the person is the Rev. Stat. Can., chap. 162.

PERSONATION.

Under the Rev. Stat. Can., chap. 8, s. 89, every person who, at any election of a member of the House of Commons of Canada, applies for a ballot paper in the name of some other person, whether living or dead, or a fictitious person, or having voted at any election, applies at the same election for a ballot paper in his own name, is guilty of personation and liable to a penalty, not exceeding two hundred dollars, and to imprisonment for a term not exceeding six months. Section 90 makes it a misdemeanor for a candidate to corruptly induce any person to personate any voter. Under section 103, every one who aids, abets or procures the commission, by any person, of the offence of personation, is liable to a penalty not exceeding two hundred dollars, and to imprisonment for a term not exceeding six months.

If, at a Parliamentry election, a man applies to the presiding officer for a ballot paper in a name other than his name of origin, or in the name by which he is generally known, but in a name which appears on the register of voters, and which was inserted therein by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not guilty of the offence of personation. *R.* v. *Fox*, 16 Cox C.C., 166.

PETROLEUM.

Under the Petroleum Inspection Act (Rev. Stat. Can., chap.

02, s. 22), various penalties are imposed for different offences against the Act. Under the 26th section, a penalty of one hundred dollars is imposed on every person altering any Inspector's brands or marks or counterfeiting any such brand or mark, or emptying any package marked or inspected, or improperly using or hiring or lending any inspector's brands.

PETTY TRESPASS.

In Ontario, the Rev. Stat., chap. 101, governs this offence, and summary proceedings may be taken before one Justice of the Peace.

This Act does not apply where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of. Whether he so acted is a fact to be adjudicated upon by the convicting Justice, on the evidence produced before him. When he so adjudicates, the Court will not review his decision on *certiorari*. *R.* v. *Malcolm*, 2 Ont. R., 511. See also Rev. Stat. Ont., chap., 195.

PILOTAGE.

The Rev. Stat. Can., chap. 80, contains the law on this head. Every penalty, imposed by the Act, may be recovered in a summary manner before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace under the Summary Convictions Act, Rev. Stat. Can., chap. 178. (*Ib.*, s. 101.)

PIRACY.

This offence at common law consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there.

The Imp. Stat. 12 & 13 Vic., chap. 96, extends to Canada, and makes provision for the trial of this offence. It may be observed that our Great Inland Lakes are, for the purposes of this offence, considered as the high seas, and our Magistrates can take cognizance of piracy committed on the lakes, although in American

waters, and in the same manner as if committed on the high seas. *R.* v. *Sharp*, 5 P.R., (Ont.), 135. See also Rev. Stat. Can., chap. 174, s. 8.

POLICE.

The Rev. Stat. Can., chap. 184, is the Act respecting the police of Canada.

POST OFFICE.

The Rev. Stat. Can., chap. 35, s. 79, provides that every one who steals, embezzles, secretes or destroys any post-letter is guilty of felony. So stealing from a post-letter is felony. (*Ib.* s. 80). So is unlawfully issuing a money-order with a fraudulent intent (*Ib.* s. 85), or forging any postage stamp or money order. (*Ib.* sections 86 & 87.) Under section 92, enclosing any explosive substance in any letter, packet or other available matter, sent by post, is a misdemeanor. So removing from any letter any postage stamp with a fraudulent intent is a misdemeanor. (*Ib.* s. 94.) So it is a misdemeanor for any mail-carrier to be drunk on duty. (*Ib.* s. 97). And posting immoral books or pictures or advertisements of swindling enterprises is a misdemeanor. (*Ib.*, s. 103.)

PRISONS.

The Rev. Stat. Can., chap. 183, is the Act respecting Public and Reformatory Prisons.

In addition to the provisions in the Act, first mentioned, the Rev. Stat. Can., chap. 174. s. 97, provides for the removal of prisoners from an insecure to a secure prison.

PRIZE-FIGHTING.

The Act respecting this offence (Rev. Stat. Can., chap. 153), defines a prize fight to mean an encounter or fight with fists or hands, between two persons, who have met for such purpose, by previous arrangement made by or for them. To send or accept any challenge to fight, or to train for the same, or act as trainer

or second to any person who intends to engage in a prize-fight, or to engage as principal in a prize-fight, is a misdemeanor.

Mere voluntary presence at a fight does not as a matter of law necessarily render persons so present, guilty of an assault, as aiding and abetting in such fight. A prize-fight is, however, illegal, and all persons aiding and abetting therein, are guilty of assault, and the consent of the persons, actually engaged in fighting, to the interchange of blows, does not afford any answer to the criminal charge of assault. *R* v. *Coney*, 8 Q.B.D., 534.

PROCEDURE ON APPEALS TO THE JUDGE OF THE COUNTY COURT IN ONTARIO.

(*See* ONTARIO.)

PROCESS.

The Rev. Stat. Can., chap. 165, s. 35, makes it felony to act or profess to act under any false process of Court, or anything purporting to be such process, knowing it to be false.

In order to convict a person of the offence of acting or professing to act under any false colour, or pretence of the process of the Court it is not necessary to show that the document used bore any resemblance to the actual genuine process of that Court; it is enough if he falsely and fraudulently pretends that process has issued, and that in what he does, he is acting under such process. *R.* v. *Evans*, 7 Cox C.C., 293.

A document, appearing on the face of it, to be a mere notice by a plaintiff to a defendant, to produce accounts on the trial of a cause, though headed, "In the County Court of L," and entitled as if in a cause in that Court, does not "purport" to be any process of the County Court, and will not support an indictment so alleging it. *R.* v. *Castle*, 7 Cox C.C., 375.

PROSTITUTES.

See ante, p. 193. *See also* VAGRANCY.

PUBLIC LANDS.

Under the Rev. Stat. Can., chap. 54, s. 137, every person who

in any part of the Dominion lands interrupts, molests, or hinders any Dominion Land Surveyor, while in the discharge of his duty as a surveyor, is guilty of a misdemeanor. Under section 138, every person who knowingly and wilfully pulls down, defaces, alters, or removes any mound, post, or monument erected, planted or placed, in any original survey, is guilty of felony. Under s.s. 2 of this section, it is a misdemeanor to wilfully pull down or destroy any other landmark.

The misdemeanor mentioned in this section, can only be committed in relation to boundaries or landmarks, which have been legally placed by a land surveyor, with all the formalties required by said statute to mark the limit or line between two adjoining lots of land. *R.* v. *Austin*, 11 Quebec, L.R., 76.

PUBLIC MEETINGS.

The Rev. Stat. Can., chap. 152, s. 1, respecting the preservation of the peace at public meetings, empowers any Justice of the Peace, within whose jurisdiction any public meeting is appointed to be held, to demand from any person attending such meeting, or on his way to attend the same, any offensive weapon which such person has in his possession, and it is a misdemeanor to refuse the delivery. So persons who, during any part of the day upon which such meeting is appointed to be held, come within two miles of the place appointed for such meeting armed with any offensive weapon, are guilty of a misdemeanor. (*Ib.* s. 5.) A conviction for battery under the same circumstances, entails a penalty not exceeding one hundred dollars. (*Ib.* s. 4.)

PUBLIC MORALS.

The Rev. Stat. Can., chap. 157 s. 7, provides that every one who, by false pretences, false representations, or other fraudulent means (*a*) procures any woman or girl to have illicit carnal connection with any man other than the procurer, or (*b*) inveigles or entices any such woman or girl to a house of ill-fame or assignation, for the purpose of illicit intercourse, or prostitution, or who

knowingly conceals in such house any such woman or girl so inveigled or enticed, is guilty of a misdemeanor and liable to two years imprisonment. A warrant may be issued to search for any such woman or girl, whenever there is reason to believe that she has been inveigled or enticed to a house of ill-fame or assignation as aforesaid.

It would seem that under section 7 (2) of this Act, the Justice has a judicial as well as a ministerial function, and that if the Justice upon the *bona fide* information of an applicant, decides that there are reasonable grounds for suspicion, and issues a search warrant, no action for malicious prosecution will lie against such applicant for having given the information to the Justice. See *Hope* v. *Evered*, 16 Cox C.C., 112

The prisoner will be liable, under section 5 of the Act, though the girl in question be the prisoner's daughter, and the premises in respect of which the charge is made be the home where she resides with the prisoner. *R.* v. *Webster*, 16 Q.B.D., 134.

PUNISHMENT.

Every one, who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding twenty dollars, or to imprisonment, with or without hard labor, for a term not exceeding three months, or to both. Rev. Stat. Can., chap. 181, s. 24, s.s. 3.

When an offender is convicted of more offences than one before the same Court or person at the same sitting, or when any offender under sentence, or undergoing punishment for one offence is convicted of any other offence, the Court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another. (*Ib.* s. 27.)

RAILWAYS.

The Rev. Stat. Can., chap. 109, provides for the proper working of railways. Under section 25, s.s. 5, it is a misdemeanor to place baggage, freight, merchandize or lumber cars in rear of the pas-

senger cars. So every person who is intoxicated while he is in charge of a locomotive engine, or acting as the conductor of a car or train of cars, is guilty of a misdemeanor. (*Ib.*, s.s. 8.) The same rules apply to government railways. Rev. Stat. Can., chap. 38, s.s. 57 & 58.

Section 26 provides, that when a train is overdue for half-an-hour, the time when it may be expected must be posted up or written with white chalk on a blackboard, and for wilful neglect a penalty of five dollars may be recovered before two Justices of the Peace.

Section 29 provides, that every violation of the Act, for which no punishment or penalty is provided, is a misdemeanor.

Section 99 provides, that every company shall cause all thistles and other noxious weeds growing on the cleared land or ground adjoining the railway and belonging to such company, to be cut down and kept constantly cut down or to be rooted out, and a penalty of two dollars per day is imposed for neglect.

Under section 57 of the Act, any two Justices of the Peace, or a Stipendiary or Police Magistrate, may appoint or dismiss railway constables. In the Province of Quebec such appointment or dismissal must be by the Judge of the Court of Queen's Bench or Superior Court, or Clerk of the Peace, or Clerk of the Crown, or Judge of the Sessions of the Peace. A similar provision is made by the Rev. Stat. Can., chap. 38, s. 54, s.s. 4, in reference to constables on Government railways.

Under the Quebec Railway Act, a Justice of the Peace has jurisdiction to entertain a complaint against a company for obstructing a highway The Dominion Act has not the effect of abrogating the provisions of the Quebec Act with respect to the local railways to which the Dominion Act applies. *Re Quebec Central Ry.*, 11 Quebec L.R., 193.

RAILWAY PASSENGER TICKETS.

The Rev. Stat. Can., chap. 110, provides that all persons selling tickets must be duly authorized, and that the company must redeem unused tickets or refund the unearned portion, if this is

claimed within thirty days from the expiration of the time for which the ticket was issued. Every person offending against the Act is liable on summary conviction before a Justice of the Peace to a penalty not exceeding fifty dollars and not less than twenty dollars and costs, (section 8.) Every complaint respecting an offence against the Act is to be prosecuted under the provisions of the Summary Convictions Act, Rev. Stat. Can., chap. 178. (*Ib.*, s. 11.)

RAPE.

This offence has been defined to be the having unlawful and carnal knowledge of a woman by force and against her will. As to the degree of force required the woman must be quite overcome by force and terror, and there must be as much resistance on her part as is possible under the circumstances so as to make the ravisher see and know that she is really resisting to the uttermost. *R.* v. *Fick*, 16 C.P. (Ont.), 379.

A husband cannot commit a rape upon his wife by carnally knowing her himself. Neither can a boy under fourteen years of age as he is presumed to be physically incapable of committing the offence. But both a husband and a boy under fourteen may be convicted as principals in the second degree and may be punished for being present aiding and abetting.

Where a married woman consented to the prisoner having connection with her, under the impression that he was her husband, the Court held that he was guilty of rape. *R.* v. *Dee*, 15 Cox C.C., 579.

In several other cases the contrary was held and that the party was only liable to be indicted for an assault. *R.* v. *Francis*, 13 Q.B. (Ont.), 116; *R.* v. *Barrow*, L.R. 1, C.C.R., 156.

But it is submitted it is now a rape where the woman is asleep, and for that reason does not resist. See *R.* v. *Young*, 14 Cox C.C., 114.

The crime of rape is the having connection with a woman forcibly where she neither consents before nor after. *R.* v. *Fletcher*, 8 Cox C.C., 131.

Where the woman is an idiot or lunatic the mere proof of the act of connection will not warrant the case being left to the Jury. There must be some evidence that it was without her consent, *e.g.*, that she was incapable of expressing consent or dissent, or from exercising any judgment upon the matter from imbecility of mind or defect of understanding, and if she gave her consent from animal instinct or passion it would not be a rape. *R.* v. *Connelly*, 26 Q.B. (Ont.), 317.

But where the woman is so idiotic as to be incapable of expressing assent or dissent, a party who attempts to have connection with her without her consent, is guilty of an attempt at rape, but if from her state and condition the prisoner had reason to think that she was consenting, he ought to be acquitted whether in the case of rape or an attempt at rape. (*Ib.*) *R.* v. *Barrett*, L.R. 2, C.C.R., 81; see also *R.* v. *Pressy*, 10 Cox C.C., 635.

The prisoner professed to give medical and surgical advice for money. The prosecutrix, a girl of nineteen, consulted him with reference to illness from which she was suffering. He advised that a surgical operation should be performed, and under pretence of performing it, had carnal connection with the prosecutrix. She submitted to what was done, not with any intention that he should have carnal connection with her, but under the belief that he was merely treating her medically, and performing a surgical operation, that belief being wilfully and fraudulently induced by the prisoner, and it was held that he was guilty of rape. *R.* v. *Flattery*, L.R. 2, Q.B.D., 410.

A child under ten years of age, cannot give consent to any criminal intercourse, so as to deprive that intercourse of criminality, under the Rev. Stat. Can., chap. 162, s. 39; and a person may be convicted of attempting to have carnal knowledge of such child, even though she consents to the act done. *R.* v. *Beall*, L.R. 1, C.C.R., 10. But the consent in such case will render the attempt no assault. *R.* v. *Cockburn*, 3 Cox C.C., 543; *R.* v. *Connolly*, 26 Q.B. (Ont.), 323.

In the case of girls between the ages of ten and twelve, on a

charge of assault with intent to carnally know, or indecent assault, or common assault, consent is a defence. (*Ib.*)

On a charge of attempt to commit rape, under s. 41 of the Act, the consent of the girl is immaterial, and therefore evidence of such consent should not be received. *R.* v. *Paquet*, 9 Quebec L.R., 351.

With respect to the crime of rape, and of unlawfully and carnally knowing and abusing infants under the age of ten or between the ages of ten and twelve years, carnal knowledge means penetration to any the slightest degree, the Rev. Stat. Can., chap. 174, s. 226, providing that it shall not be necessary to prove the actual emission of seed, but the carnal knowledge shall be deemed complete on proof of any degree of penetration only.

RECEIVING STOLEN GOODS.

The Rev. Stat. Can., chap. 164, s. 82, makes it felony to receive goods, knowing that they have been feloniously stolen There must be a theft of the goods, and this theft must be a crime, either at common law, or by statute, before a party can be convicted of receiving under our statute. *R.* v. *Smith*, L.R. 1, C.C.R., 266.

Thus where the evidence shewed that the stolen goods were found in the premises occupied by the prisoner, but no proof was adduced as to the person who committed the theft, the Court held that, though there was evidence of guilty possession to go to the jury on an indictment for larceny, a conviction for receiving could not be sustained in the absence of any evidence to shew that the goods had been stolen by some other person, and were unlawfully in the possession of some one else before they came into the prisoner's possession. *R.* v. *Perry*, 26 L.C.J., 24.

It is clear that the goods the party is charged with receiving must be stolen goods. *R.* v. *Hancock*, 14 Cox C.C., 119. A wife, though she may have committed adultery, cannot steal her husband's goods, and therefore the adulterer, receiving from her the goods which she has taken from her husband, cannot be found

guilty of receiving stolen goods. *R.* v. *Kenny*, L.R. 2, Q.B.D., 307.

Manual possession or touch is unnecessary. In order to sustain a conviction for receiving stolen goods, it is sufficient if there be a control by the receiver over the goods. *R.* v. *Smith*, Dears, 494.

A person having a joint possession with the thief, may be convicted as a receiver. *R.* v. *Hobson*, Dears, 400.

It makes no difference whether a receiver receives for the purpose of profit or advantage, or whether he does it to assist the thief. *R.* v. *Davis*, 6 C. & P., 177.

Belief, without actual knowledge, is sufficient to maintain an indictment for receiving goods, knowing them to have been stolen. *R.* v. *White*, 1 F. & F., 665.

A husband may be convicted of feloniously receiving property which his wife has stolen voluntarily, and without restraint on his part. *R.* v. *McCathey*, L. & C., 250 ; 9 Cox C.C., 251.

Recent possession of stolen property is evidence, either that the person in possession stole the property, or that he received it knowing it to be stolen. *R.* v. *Langmead*, L. & C., 427.

By section 83 of our statute, where the original offence is a misdemeanor, the offence of the receiver is made a misdemeanor also. And by section 84, receivers of property, where the original offence is punishable on summary conviction, are liable to punishment, on conviction before a Justice of the Peace, in the same manner as the original offender. Before there can be a criminal receipt of goods under this statute, or at common law, the goods must be *stolen*, or at all events, the stealing, taking, extorting, embezzling, or otherwise obtaining, must amount to a crime at common law, or under the statute. For instance, if after goods are stolen, they get back into the possession of the owner, so as to be no longer stolen goods, a subsequent receipt by the prisoner will not render him liable, the goods having lost the character of stolen goods. *R.* v. *Schmidt*, L.R. 1, C.C.R., 15.

So if the *exclusive* possession still remains in the thief, a conviction for receiving cannot be sustained. It is also necessary

that the defendant should, at the time of receiving the goods, know that they were stolen. *R.* v. *Wiley*, 2 Den., 37.

Independently of the statute, receiving stolen goods, knowing them to be such, is a misdemeanor.

To justify a conviction for receiving stolen property, in the case of goods found, it is not sufficient to shew that the prisoner had a general knowledge of the circumstances under which the goods were taken, unless the jury are also satisfied that he knew that the circumstances were such as constituted a larceny. *R.* v. *Adams*, 1 F. & F., 86.

On an indictment against A for stealing, and B for receiving goods, evidence that, on various former occasions, portions of the commodity stolen have been missed, and that the prisoners have, after such occasions, been found selling such a commodity, and that on the last occasion it was the same, was held sufficient to fix the receiver with a guilty knowledge. *R.* v. *Nicholls*, 1 F. & F., 51.

The prisoner was indicted for receiving stolen goods, knowing them to have been stolen. To prove his guilty knowledge, evidence was given that, being asked by the police as to the prices he had given, he said he did not then know, but his wife would make out a list of them, and next day she, in his presence, produced a list, and this was held admissible in evidence against him, as a statement authorized by the prisoner to be made and handed over in his presence, to the police. *R.* v. *Mallory*, 15 Cox C.C., 456.

As to evidence in cases of this character, see Rev. Stat. Can., chap. 174, s. 203, *ante*, p. 107.

In committing for trial a receiver of stolen goods, the Justice would do well to remember that, under section 20 of the Rev. Stat. Can., chap. 174, the receiver, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be tried in any County in which he has, or has had, the property in his possession, or in any place in which the principal offender may be tried.

RECOGNIZANCES.

Under the Act respecting recognizances, Rev. Stat. Can., chap.

179, s. 1, the surety for any person charged with an indictable offence, may obtain an order to render such person to gaol, and an arrest may be made, under the order. But the Act is not to affect any existing rights of sureties. (*Ib.*, s. 7.) When the aid of the statute is invoked, an affidavit shewing the grounds of the application, with a certified copy of the recognizance, may be laid before a Judge of the Superior or County Court, having criminal jurisdiction. In other cases, the form of complaint, *ante*, page 177, may be used, and the form of warrant there given, would be applicable for the arrest of the person charged. As to recognizances in general, see *ante*, pages 72-3.

RESCUING.

(*See* ESCAPE. *See* also Rev. Stat. Can., chap. 162, s. 34.)

RESERVATION OF POINTS OF LAW.

(*See ante*, pages 136-7-8.)

RESTITUTION OF STOLEN PROPERTY.

(*See ante*, pages 133-4-5.)

An order of restitution may be made, not only when the proceeds are in the hands of the convict, but also when they are in the hands of an agent who holds them for him. *R.* v. *Justices*, 17 Q.B.D., 598; 18 Q.B.D., 314.

RETURN OF CONVICTIONS.

In Ontario the Rev. Stat. Ont., chap. 76, is the Act respecting returns of convictions, and fines by Justices of the Peace.

Under this Act it is a question for the jury, whether, under the circumstances of any particular case, the return made is immediate. In one case, the conviction was made on the 31st of August, and the Magistrates withheld the return until the 15th of September, expecting to receive the fine every day, and intending to return it with the conviction, and, as soon as it became apparent to the Magistrates that the fine would not be paid, the conviction

was returned. The jury having found that the return was reasonably immediate, a verdict for the defendants was upheld. *Longeway* q.t. v. *Avison*, 8 Ont. R., 357.

REVENUE.

The Consolidated Revenue and Audit Act, Rev. Stat. Can., chap. 29, provides that every officer or person acting in any office or employment, connected with the collection or management of the revenue, who (*a*) receives bribes, (*b*) conspires to defraud the Crown, (*c*) permits any violation of the law by any other person, (*d*) wilfully makes any false entry, or wilfully makes or signs any false certificate or return, (*e*) fails to report any known violation of the law, (*f*) demands a reward for condoning an offence,—shall be dismissed from office, and is guilty of a misdemeanor. (*Ib.*, s. 69.)

Under section 70, every person who directly or indirectly offers a bribe to any revenue officer to influence his decision, or to induce him to connive at fraud is guilty of a misdemeanor, and so also is the officer receiving the bribe.

In regard to Inland Revenue, the Rev. Stat. Can., chap. 34, s. 86, provides that every person is guilty of a misdemeanor who puts into any packages, barrels, or casks, which have been stamped, marked, or branded, under the Act, any article or commodity subject to excise, on which the duty has not been paid. So it is a misdemeanor to refuse or neglect to aid any officer of Inland Revenue in the execution of his duty. (*Ib.*, s. 91.)

Under the 94th section, it is felony to break the lock or seal, used for the security of the revenue under this Act, or to abstract any goods from any place, where the same are retained by an officer of Inland Revenue, or counterfeit any label, stamp, or seal, or to perforate any vessel used for containing spirits, on which the duty has not been paid.

So obstructing officers of Inland Revenue in the discharge of their duty, is a misdemeanor. (*Ib.*, s. 98.) And assaulting or threatening to assault such officers, and thereby resisting molesting or obstructing them is felony. (*Ib.*, s. 99.)

Taking away goods which have been seized or detained is felony. (*Ib.*, s. 100.)

If the amount of the penalty or forfeiture incurred for any offence under the Act does not exceed five hundred dollars, the same, whether the offence is made a misdemeanor or not, may be sued for and recovered, before a Police or Stipendiary Magistrate, or any two Justices of the Peace having jurisdiction in the place where the cause of prosecution arises, or wherein the defendant is served with process under the "Act respecting Summary Proceedings before Justices of the Peace," by whom the complaint against the offenders shall be dealt with, on the oath of one credible witness. The penalty may be levied, by distress and sale, or by imprisonment on default of payment; and no other Justices of the Peace, except those before whom the prosecution is brought, can be allowed to sit or take part therein. (*Ib.*, s. 113.)

RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

Three or more persons, who having assembled, continue together with intent unlawfully to execute any common purpose, with force and violence, and who wholly or in part execute such purpose, in a manner calculated to create terror and alarm, are guilty of a riot and liable to four years' imprisonment. Rev. Stat. Can., chap. 147, s. 13.

The 11th section of the Act defines an unlawful assembly as three or more persons, who, having assembled, continue together with intent unlawfully to execute any common purpose, with force and violence, or in a manner calculated to create terror and alarm. The punishment is two years' imprisonment.

As to a rout, three or more persons, who having assembled, continue together with intent unlawfully to execute any common purpose, with force and violence, or in any manner calculated to create terror and alarm, and who endeavour to execute such purpose, are, although such purpose is not executed, guilty of a rout, and liable to three years' imprisonment. (*Ib.*, s. 12.) It differs from a riot only in the circumstance that the enterprise is not actually executed.

Sections 9 and 10 of the Act prohibit the unlawful and forcible destruction of buildings, by persons riotously and tumultuously assembled, to the disturbance of the public peace.

A single person cannot be convicted of riot, in respect of any acts of his alone and independently of and not in concert with others.

A procession having been attacked by rioters, the prisoner, one of the processionists, and in no way connected with the rioters, was proved, during the course of the attack, to have fired off a pistol on two occasions, first in the air and then at the rioters. So far as appeared from the evidence, the prisoner acted alone and not in connection with any one else. It was held that a conviction of the prisoner jointly with a number of others for riot could not be sustained. *R.* v. *Corcoran*, 26 C.P. (Ont.), 134.

The difference between a riot and an unlawful assembly is this: The former is a tumultuous meeting of persons upon some purpose which they *actually execute* with violence, and the latter is a mere assembly of persons upon a purpose, which, if executed, would make them rioters, but which they do not execute nor make any motion to execute. *R.* v. *Kelly*, 6 C.P. (Ont.), 372.

An example will more clearly show the difference between these three crimes: A hundred men armed with sticks meet together at night to consult about the destruction of a fence which their landlord has erected; this is an unlawful assembly. They march out together from the place of meeting in the direction of the fence; this amounts to a rout. They arrive at the fence, and, amid great confusion, violently pull it down; this is a riot.

To constitute a riot the object need not be unlawful if the acts are done in a manner calculated to inspire terror. But there must be an unlawful *assembling*, therefore, a disturbance, arising among people already met together, will be a mere affray, unless, indeed, there be a deliberate forming into parties. The object must be of a local or private nature, otherwise, as if to redress a public grievance, it amounts to treason.

The gist of the offence is the *unlawful manner of proceeding*,

that is with circumstances of force or violence. Therefore assembling for the purpose of an unlawful object, and actually executing it, is not a riot if it is done peaceably.

If a man knowingly does acts that are unlawful, the presumption of law is that he intends the natural consequences of these acts, and ignorance of the law will not excuse him.

To constitute an unlawful assembly, it is not necessary that the purpose for which the persons assembled together was to do an unlawful act; an intention to do a lawful act in a violent and turbulent manner, is as much a breach of the law as if the intended act were illegal. It is the manner in which the act is intended to be done that constitutes the offence. *R.* v. *Mailloux*, 3 Pugsley, 493-513.

On a charge of riot, persons are not liable merely on account of their having been present and among the mob, even although they had the power of preventing it, unless they by word or act helped, incited or encouraged it. *R.* v. *Atkinson*, 11 Cox C.C., 330.

All parties assembling, to obstruct the officers of the law, are guilty of an unlawful assembly, whether a riot takes place or not, and in case of homicide, in consequence of such unlawful assembly, all persons may render themselves personally responsible. *R.* v. *McNaughten*, 14 Cox C.C., 576.

The prisoners assembled, with others, for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it, and the Court held that they could not be rightly convicted of an unlawful assembly. *Beatty* v. *Gillbanks*, 9 Q.B.D., 308.

Section 1 of the Act provides that if twelve or more persons are unlawfully, riotously and tumultuously assembled, to the disturbance of the peace, a Justice of the Peace may, by proclamation, require them to disperse, and if they afterwards continue together for one hour for the same purpose, they are guilty of felony. But there may be a riot, and the liability to punish-

ment therefor exists, although this proclamation is not made. The proclamation, if neglected, only renders those who would be punishable as rioters, liable to the greater punishment under this section. See *R.* v. *Furzey*, 6 C. & P., 81.

A Justice of the Peace is not justified in causing a meeting to be forcibly dispersed, on the ground merely that he believes and has reasonable and probable grounds for believing, that the meeting was held with an unlawful intent, unless the meeting be in itself unlawful. *O'Kelly* v. *Harvey*, 10 L.R. Ir., 285.

ROBBERY.

(*See* LARCENY).

SAVINGS BANKS.

The Rev. Stat. Can., chap. 121, is the Act respecting Government Savings Banks. Under section 19, altering the books or embezzling funds is felony. Under section 20, it is a misdemeanor to falsely pretend to be the owner of a deposit in such bank.

The Rev. Stat. Can., chap. 122, s.s. 32 and 33, contain similar provisions in reference to chartered savings banks not belonging to the Government.

SCOTT ACT.

The Parliament of Canada had power under the British North America Act to pass the Canada Temperance Act. *Russell* v. *The Queen*, 7 Appeal Cases, 829.

The introductory part of the annual Statutes of Canada, containing a statement that an order-in-Council had been made, bringing the Canada Temperance Act into force in a county, is not evidence of the making of such order. *Ex parte Mercer*, 25 Sup. Ct., N.B., 517.

Before a person can be legally convicted of selling liquor under the Act, it must be proved before the Magistrate that the second part of the Act is in force, by the production of the *Canada Gazette*, containing the proclamation. *R.* v. *Risteen*, 22 Sup. Ct., N.B., 51. The fact of the Act coming into force must be proved

as any other fact necessary to give jurisdiction. *R.* v. *Bennett*, 1 Ont. R., 445; *R.* v. *Walsh*, 2 Ont. R., 206.

Section 95 of the Act, provides that after a poll has been held in any county, the Governor-General-in-Council may declare that the second part shall be in force, and take effect in such county "upon, from and after the day on which the annual or semi-annual licenses, for the sale of spirituous liquors, then in force in such county, will expire." In the County of Kings, Nova Scotia, the poll had been held, and the Governor-in-Council declared, by proclamation, that the second part of the Act should be in force and take effect "upon, from, and after the day on which the annual or semi-annual licenses, now in force in said county, will expire." There were then no licenses in the county, and there had been none for years previously. It was held that no day had been fixed, either by the statute or by proclamation, for bringing the second part of the Act into force. *R.* v. *Lyons*, 5 Russell & Geldert, 201.

The adoption of the Act is on the day of polling, though the scrutiny return and order-in-Council may be some time after. *R.* v. *Halpin*, 12 Ont. R., 330.

The word "County," as used in the Act, means county for municipal and not for electoral purposes. *R.* v. *Shavelear*, 11 Ont. R., 727, see section 99.

Defendant was, in the Village of Parry Sound, convicted by the Stipendiary Magistrate of the district, for a sale in the Township of Humphrey, of intoxicating liquors, contrary to the Act. The Township of Humphrey was within the territorial limits of the County of Simcoe, and the Act being in force in the county, was held also to be in force in the district. The Township of Humphrey formed also part of the District of Parry Sound, for certain judicial purposes, and the Court held that the Stipendiary Magistrate for the said district had jurisdiction to try offences against the Act committed in the Township of Humphrey. *R.* v. *Monteith*, 15 Ont. R., 290.

The case of *R.* v. *Shavelear*, *supra*, did not decide, when the territorial limits of a county for municipal purposes differ from

its limits for judicial purposes, that the former should be the limits within the meaning of the Act.

The 100th section of the Act prescribes the punishment for keeping or selling liquor, contrary to the provisions of the Act.

This section provides no mode for enforcing the payment of the fine imposed, but the provisions of the 62nd and 66th sections of the Rev. Stat. Can., chap. 178, are applicable to convictions under the 100th section of the Canada Temperance Act, and therefore, in default of goods, imprisonment, not exceeding three months, may be imposed. *Ex parte Pourier*, 23 Sup. Ct., N.B., 544.

In a conviction for a first offence under section 100 of the Act, the form (J, 1) given by the Summary Convictions Act, Rev. Stat. Can., chap. 178, s. 53, awarding distress for non-payment of the fine, and in default thereof imprisonment, must be adopted, and not the form (J, 2.) Where in such case the latter form is adopted, it is not amendable under the 117th and 118th sections of the Canada Temperance Act. *R.* v. *Sullivan*, 24 Sup. Ct., N.B., 149.

A person buying liquor is not guilty of an offence under the Act, and cannot in respect of a sale thereof made to him be regarded in point of law as an aider, abettor, counsellor, or procurer within the meaning of section 12 of the Rev. Stat. Can., chap. 178, for buying liquor is not made an offence by the Act. *R.* v. *Heath*, 13 Ont. R., 471.

Where the keeper of an hotel or boarding-house goes out and purchases liquor for her boarders, with money given her for that purpose, thus acting merely as a messenger, and without making any profit, she cannot be convicted of an offence under the Act. *R.* v. *McDonald*, 19 Nova Scotia Reps., 336.

Under the 100th section, the Justice has a discretion to impose a penalty exceeding fifty dollars. *R.* v. *Cameron*, 15 Ont. R., 115.

Section 103 of the Act prescribes the persons before whom prosecutions may be instituted in the different Provinces of the Dominion.

A Justice of the Peace for the County of Pictou, in Nova Scotia,

who was also a Stipendiary Magistrate for a portion of the County, namely, the Town of New Glasgow, but who did not sit and act as such Stipendiary Magistrate in the particular case, was held eligible as one of the two Justices of the Peace required under this section, but if he had sat as Stipendiary Magistrate, then, under section 104, he should sit alone. *R.* v. *Graham*, 6 Russell & Geldert, 455.

The defendant was convicted at the Town of Perth, in Ontario, by the Police Magistrate for the South Riding of the County of Lanark, for selling in the said Town of Perth intoxicating liquor contrary to the Act. The authority of the Police Magistrate was derived from a commission appointing him for the South Riding of Lanark, as constituted for purposes of representation in the Legislative Assembly of Ontario. The Town of Perth was situated wholly in the said South Riding. It was held that the Magistrate was not a Police Magistrate for the Town of Perth, which could not be held to be a town having a Police Magistrate within the meaning of this section, by virtue of such appointment, and that the conviction should have been before the Mayor or two Justices of the Peace, and was therefore void. *R.* v. *Young*, 13 Ont. R., 198.

The Town of Paris is an incorporated town, wholly within the County of Brant. The defendant was convicted before a Police Magistrate, whose commission was for the County of Brant, for unlawfully selling intoxicating liquor in the Town of Paris; it was held that the Magistrate's appointment did not authorize him to act for the Town of Paris, and that the conviction should have been before the Mayor or two Justices of the Peace. *R.* v. *Bradford*, 13 Ont. R., 735; see also *R.* v. *Clark*, 15 Ont. R., 49; *R.* v. *Riley*, 12 P.R. (Ont.), 98.

Section 104 of the Act provides that if the prosecution is brought before a Police Magistrate, etc., no other Justice shall sit or take part therein.

Section 105 provides that if the prosecution is before two other Justices of the Peace, the summons shall be signed by at least one of them, and no Justices, other than such two Justices, shall sit

or take part therein, except in the case of their absence, or the absence of one of them, and not in the latter case except with the assent of the other of them.

Section 6 of the Rev. Stat. Can., chap. 178 (*see ante* p. 214), does not apply to prosecutions under the 105th section of the Canada Temperance Act, and where a prosecution is brought before two Justices under the latter section, the information must be laid before both Justices. *Ex parte Manzer*, 23 Sup. Ct., N.B., 315.

A prosecution under the Canada Temperance Act was commenced by two Justices, A and B, and a summons issued. At the return of the summons, another Justice of the County, on application of the defendant, issued a summons for A and B to give evidence for the defendant on the hearing, whereupon two other Justices at the request of A and B under the provisions of section 105 of the Act, heard the case and convicted the defendant. The Court held that the word "absence" in section 105 did not necessarily mean actual absence from the trial, but would apply to a case where the original Justices had for some cause become incapable of acting on the hearing. *Byrne* v. *Arnold*, 24 Sup. Ct., N.B., 161.

Under section 105 of the Act, it is imperative that an information thereunder be laid before two Justices, and that they both be named in the summons; where, therefore, a summons stated that an information had been laid only before the Justice who signed it, and yet called upon the defendant to appear before another Justice named, as well, it was held that the Justices had no jurisdiction, and that the defendants appearing did not confer it. *R.* v. *Ramsay* 11 Ont. R., 210; followed in *R.* v. *Johnson*, 13 Ont. R., 1.

But where the information is laid before the two Justices who try the case, and the defendant appears and pleads, he thereby submits to the jurisdiction, and the Justices having jurisdiction over the subject of investigation, the rule laid down in *R.* v. *Ramsay*, *supra*, does not apply. See *R.* v. *Walker*, 13 Ont. R., 83.

And where in a prosecution, under the Act, the information on its face purported to be laid before D and A, two Justices of the

Peace, and both signed the summons which required the defendant to appear before two Justices of the Peace, not however naming D and A, this was held no objection, as the complaint was heard and adjudicated upon by D and A. *R.* v. *Sproule*, 14 Ont R., 375.

A summons under the Act, recited the information which was taken by two Justices to have been "laid before the undersigned," who was one of the Justices only, and required the defendant to appear before him or before the Justice, who should be at the time and place named to hear the complaint, it was held that the name of the Justice who was not a party to the summons need not be stated in it. *R.* v. *Durnion*, 14 Ont R., 672.

The summons for an offence under the Act stated that the defendant was charged with the offence before one Justice. The information was laid before two Justices, one of whom issued the summons. The defendant appeared on the summons when two Justices were present, and cross-examined the witnesses for the Crown, and called witnesses on his own behalf; and it was held that the fact of so issuing the summons was a mere irregularity, which was waived by appearing on the summons. It was held also that the Justices, before whom the case was to be tried, need not be named in the summons. *R.* v. *Collins*, 14 Ont. R., 613.

The 107th section of the Act provides that where there is no other provision, every offence against the second part of the Act may be prosecuted in the manner directed by the "Act respecting summary proceedings before Justices of the Peace." (Rev. Stat. Can., chap. 178.)

Under the Canada Temperance Act, in the case of a second offence, there is no mode of raising or levying the penalty, and this 107th section, combined with sections 53 and 62 of the Rev. Stat. Can., chap. 178, gives power to award distress, and, in default of sufficient distress, imprisonment. *R.* v. *Doyle*, 12 Ont. R., 347.

The 108th section of the Act gives power to issue a warrant to search for liquor, in respect of which an offence has been committed, where there is reasonable cause to suspect that such liquor is in any dwelling house or other place.

The search warrant, under this section, is a proceeding in aid, and not an original proceeding, under the Act. A prosecution under the Act must be actually pending, when, and in the course of which, the warrant issues to make the search, and the search warrant cannot be legally issued to found a charge to be made, in case liquor is found on the premises; but if the search warrant is illegally issued, evidence obtained under it may be used against the defendant. *R.* v. *Doyle*, 12 Ont. R., 347.

But before the search warrant can be legally issued, the party accused must be summoned to answer the charge, and the proceedings must be *bona fide*, and not instituted merely for the purpose of complying with the provision in the statute as to the issue of a search warrant. Where such a prosecution is pending, the Justice has jurisdiction to issue a search warrant for the sole purpose, on conviction of the offender, of forfeiting the liquor by means of which he committed the offence. *R.* v. *Walker*, 13 Ont. R., 83.

The information on which the search warrant is issued must state the cause for suspicion therein sworn to, and the particulars of the offence, whatever they may be. *R.* v. *Walker*, 13 Ont. R. 83. The search warrant must be signed by two Justices of the Peace, or an Official having the power of two Justices, though the information may be laid before one of two Justices, before whom a prosecution under the Act is brought.

The fact that the search warrant was executed by the informer, who was also Chief Constable, was held not to be a ground for quashing a conviction. *R.* v. *Heffernan*, 13 Ont. R., 616.

The 109th section of the Act, enables the Magistrate convicting to order that liquors seized on a search warrant be destroyed.

Pending a prosecution against defendant for selling intoxicating liquor contrary to the provisions of the Act, an information was laid by the prosecutor to obtain a search warrant, and upon search, a barrel of beer connected with a beer pump, and all the usual appliances for the sale of liquor, were found on defendant's premises. An amendment of the charge was afterwards made, altering it into an information for unlawfully keeping for sale;

a new information was sworn to, and defendant was convicted of the latter offence. The Court admitted that the only liquor which may be destroyed, under section 109, is such as is brought before it on the search warrant, and that before the search warrant can issue, some offence against the Act must be shown to have been committed; yet, nevertheless, it was ruled that when the amendment was made, the effect was to make the pending prosecution one for keeping instead of selling liquor, and there being sufficient evidence to prove the keeping for sale, the destruction of the liquor was authorized. *R.* v. *Heffernan*, 13 Ont. R., 616.

The 110th section of the Act relates to the manner of describing offences in the proceedings taken to punish for keeping or selling.

Where the information was for selling liquor, and the conviction was for "selling intoxicating liquor, and having hotel appliances in the bar-room and premises," the Court held that even if a double offence had been charged in the information, the Magistrate had power to drop one and proceed on the other, but that in this case, a second offence, under section 118 of the Act, was not embraced in the words used. *R.* v. *Klemp*, 10 Ont. R., 143.

Under the Act, when the information charges that the defendant did unlawfully *dispose* of intoxicating liquor, and the conviction adjudges that he did unlawfully *sell* intoxicating liquor, the variance will not be material, for under the special provisions of the Act, as contained in sections 110, 112, 113 and 121, these are convertible terms. In any event, the information could be amended under sections 116, 117 and 118 of the Act. *R.* v. *Hodgins*, 12 Ont. R., 367.

The 111th section provides that when the appliances of a bar are found, and intoxicating liquor is also found, in any place, the liquor shall be deemed to be kept for sale, unless the contrary is proved.

Although, under this section, the presumption that liquor is kept for sale may only arise when the appliances of a bar, and intoxicat-

ing liquor is also found, yet, in a prosecution under the Act, in a Municipality where there is no prohibitory by-law, the fact of a bar and intoxicating liquors being found in the place, with the usual appliances for the sale of such liquors, is some evidence independently of that section of the Act from, and upon which, the Magistrate could act in forming his opinion of the truth of the charge. Where there is no such evidence, the Court will not review the Magistrate's finding on such a question of fact. *R.* v. *Brady*, 12 Ont. R., 358.

An information, charging defendant with having sold intoxicating liquor, was laid before two Justices of the Peace, and immediately afterwards a further information to obtain a search warrant was sworn to by the same complainant before the same two Justices. Thereupon a warrant to search the premises of defendant was issued, and upon the search being made, three bottles were found, each containing intoxicating liquor, and it was shown that there were also found in the defendant's house other bottles, some decanters and glasses, and a bar or counter. On the day following the search, the complainant laid a new information before the same two Justices of the Peace, charging the defendant with keeping intoxicating liquor for sale. Upon the hearing, the Constables who executed the search warrant were the only witnesses examined, and on their evidence the defendant was convicted. It was held that the presumption of keeping liquor for sale, created by section 111 of the Act, arises only where the appliances for the sale of liquor, mentioned in the section, together with the liquor, are found in municipalities in which a prohibitory by-law, passed under the provisions of the Act, is in force. As it appeared in this case that the search warrant had been issued, and the defendant's premises searched, for the mere purpose of possibly securing evidence on which to bring a prosecution, the Justices of the Peace and the informant were ordered to pay the defendant's costs. *R.* v. *Walker*, 13 Ont. R., 83.

Under section 114, on the trial of any proceeding under the Act, the person opposing or defending, or the wife or

husband of such person, shall be competent and compellable to give evidence.

Under this section it was held in *R.* v. *Halpin*, 12 Ont. R., 330, that the accused was not bound to criminate himself; but this decision was overruled in a later case, and the accused is now compellable to give evidence, even to the extent of criminating himself. *R.* v. *Fee*, 13 Ont. R., 590.

The 115th section of the Act defines the procedure, upon any information, for committing an offence against any of the provisions of the Act, in case of a previous conviction or convictions being charged.

There is no power to punish as for a third offence, unless there have been two prior convictions for offences of the same nature, and where neither the record of conviction nor the evidence shows this, the conviction must be quashed. *R.* v. *Clark*, 15 Ont. R., 49.

The Magistrate has power to convict the accused of prior offences in his absence. (*Ib.*)

A conviction for a second offence, under the Act, will be invalid, if it does not appear by the information on which it is founded what the nature of the previous offence is, or where it was committed, or that it was of a similar nature to the fresh offence charged by the information.

Section 115 (*b*) of the Act, does not dispense with strict proof by production of the original record, or otherwise, of previous convictions where it is sought to impose the increased penalty, under section 100, and the certificate mentioned in the section can only be admitted as proof of the number of such previous convictions. *R.* v. *Kennedy*, 10 Ont. R., 396.

It is doubtful whether such certificate is sufficient, *prima facie* evidence of identity of the accused with the person of the same name, so previously convicted. *R.* v. *Edgar*, 15 Ont. R., 142.

The language of this section is peremptory, and therefore to give a Magistrate jurisdiction thereunder, to enquire as to a previous conviction, he must first find the accused guilty of the alleged subsequent offence. (*Ib.*)

A majority of the Supreme Court of New Brunswick held that

a defendant may be convicted of a second offence, under this section, though he is not present at the trial to be asked as to a previous conviction. *Ex parte Groves*, 24 Sup. Ct., N.B., 57.

I, was convicted on the 16th May, for selling liquor between the 21st January and the 18th April preceding, contrary to the Act. He was subsequently convicted for unlawfully keeping liquor for sale, between the 14th February and the 24th March, in the same year. It was held that, if a man were convicted for selling liquor on a particular day, he could not afterwards be convicted, on the same evidence, for keeping it for sale on that day, though the offences of keeping and selling are distinct, for the selling would be evidence of keeping for sale; but in this case it was held that the onus was on I to prove that the two charges were identical; that the keeping for sale with which he was charged was in fact the selling, of which he had been convicted, and that the mere fact that the days between which he was charged with keeping liquor for sale, were included within the times stated in the conviction for selling, did not sustain the defence of a former conviction, *R.* v. *Marsh*, 25 Sup. Ct., N.B., 371.

The 116th section of the Act provides for the amendment of variances and defects.

Where the original information was amended by changing the date of the offence from the 10th to the 23rd of February, and the parties thereupon agreed that the evidence taken should stand for the purposes of the amended charge, instead of having a repetition of it, the Court held that this course was unobjectionable. *R.* v. *Hall*, 12 P.R. (Ont.), 142.

The 117th section of the Act provides that no conviction or warrant or other process or proceeding, shall be held insufficient or invalid by reason of any variance between the information and conviction, or by reason of any other defect in form or substance, if it can be understood that the same was made for an offence against some provision of the Act within the jurisdiction of the Justice, and if there is evidence to prove such offence, and if no greater penalty is imposed than is authorized by the Act. Under

section 118, applications to quash convictions are to be disposed of on the merits, and the power of amendment is given.

An information was laid before K, who described himself as "one of Her Majesty's Police Magistrates in and for the County of Oxford," and he was similarly described in the summons and conviction. K's commission was issued on the 12th of January, 1887, and appointed him Police Magistrate in and for the County of Oxford. It was urged that Woodstock and Ingersoll were two towns in the county, and that each had at the time of information laid, a population of more than 5,000 inhabitants, so as to have by law each a Police Magistrate, which it must be presumed was the case here, and therefore K could not be Police Magistrate for the county which included these towns, as there could not be more than one Police Magistrate for the same county. A motion to quash the conviction was refused, the Court holding that there was no judicial knowledge of the fact of such towns containing such population, and no knowledge of it by affidavit or otherwise, and that even if there was more than one Police Magistrate, the other might have been appointed subsequently to K, and that the appointment of such other, and not K, would be void. *R.* v. *Atkinson*, 15 Ont. R., 110.

A conviction for selling intoxicating liquor contrary to the provisions of the Act, contained no reference to the Act, did not show where the offence was committed, and merely adjudged that the defendant pay $100 for selling intoxicating liquors. The Court held the conviction bad, and that the information and warrant could not be looked at to see that an offence had been committed. *Woodlock* v. *Dickie*, 6, Russell & Geldert, 86.

Under sections 117 and 118 of the Act, the Court has no power to amend the conviction when the penalty imposed is greater than the Act authorizes, and such conviction is invalid. *R.* v. *Rose*, 22 Sup. Ct., N.B., 309.

An objection that the conviction did not show on its face the absence of either of the Justices, before whom the information was laid, nor the assent of the other, that another Justice should act or take part in the prosecution is one of form merely and cured by this section. *R.* v. *Collins*, 14 Ont. R., 613.

Where a conviction, under the Act, stated that the defendant had sold "spirituous or other intoxicating liquors," and the proof was a sale of brandy, the conviction was amended under section 118, by striking out the words "spirituous or other," which brought the offence within section 110 of the Act, which makes it sufficient to state the unlawful sale of intoxicating liquor, without stating the name or kind of such liquor. *R.* v. *Blair*, 24 Sup. Ct., N.B., 71.

The 119th section of the Act relates to the removal of the conviction by *certiorari*.

It is not necessary that there should be an absence of jurisdiction over the subject matter of the charge. It is sufficient to authorize the issue of the *certiorari*, if on the evidence produced, there is a total absence of proof of the offence charged. Thus, where there was no evidence to show that the beverage partaken of was spirituous or intoxicating, a *certiorari* was granted, and the conviction quashed. *R.* v. *Beard*, 13 Ont. R., 608; and where there is no evidence to warrant a conviction, a *certiorari* may issue. *R.* v. *Kennedy*, 10 Ont. R., 396.

But a *certiorari* cannot issue merely for the purpose of examining and weighing the evidence taken before the Magistrate. This section of the Act takes away the right to it except where the Magistrate is proceeding without jurisdiction. *R.* v. *Sanderson*, 12 Ont. R., 178; *R.* v. *Wallace*, 4 Ont. R., 127. But there must be shewn to have been an offence, for if the conviction is nominally under the Act, but for a supposed offence, which does not appear to be an offence against the provisions of the second part of this Act, the above section would not apply. *R.* v. *Elliott*, 12 Ont. R., 524; see *R.* v. *Ryan*, 10 Ont. R., 254. If no evidence is given of the Act being in force, the proceedings will be quite as defective as if the Act were not in force.

The operation of this section, in taking away the right to a *certiorari*, is confined to the case of convictions made by the special officials named in the section. *R.* v. *Walker*, 13 Ont. R., 83.

In cases where a Magistrate has jurisdiction, *certiorari* is absolutely taken away, but an appeal to the Sessions still exists.

Section 119 of the Act takes away this appeal where the conviction is before a Stipendiary Magistrate. *R.* v. *Ramsay*, 11 Ont. R., 210.

SEAMEN.

The Rev. Stat. Canada, chap. 171, contains various provisions for the protection of seamen. Purchasing or selling a seaman's property, or having the same in possession unlawfully, or in violation of the provisions of the Act, renders the offender liable on summary conviction. (*Ib.*, sections 2 and 3).

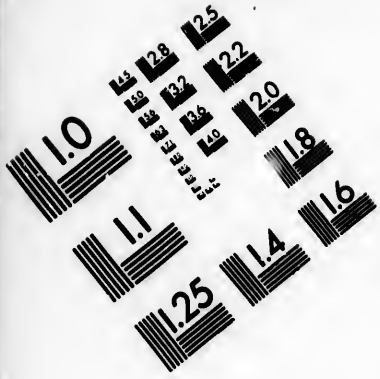
Special provisions are made by the Rev. Stat. Can. chap. 71, in respect of the discipline on board of Canadian Government vessels.

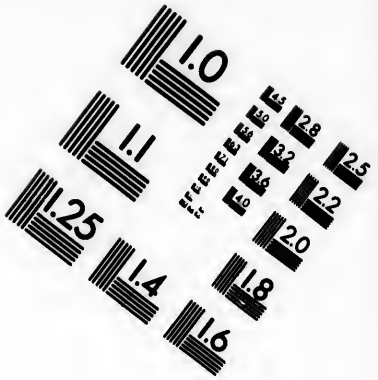
The Seamen's Act, Rev. Stat. Can., chap. 74, contains a large number of provisions governing the conduct of seamen and masters of ships, and of all others coming in contact with them. Various offences are made misdemeanors, and for others a penalty is inflicted. Any wilful breach or neglect of duty or drunkenness, or the doing of any act tending to the immediate loss, destruction, or serious damage of the ship, or of any person belonging to, or on board thereof, is a misdemeanor. (*Ib.*, s. 90).

Stowaways are liable to a penalty not exceeding eighty dollars. (*Ib.*, s. 105).

Any Police or Stipendiary Magistrate, or any two Justices of the Peace, may try and determine, in a summary way, all offences punishable under the Act, (*Ib.*, s. 114), and the provisions of "The Summary Convictions Act," Rev. Stat. Can. chap. 178, are to apply to all such proceedings. (*Ib.*, s. 115). Under section 123 of this Act, on application on behalf of either party, the Court may receive and may cause to be reduced to writing, the evidence of such witnesses for the defence or the prosecution, as are then present or can be produced, and may thereupon discharge such witnesses from further attendance, and may continue the case on some future day, and witnesses about to leave the Province may be examined *de bene esse*.

In reference to seamen in inland waters the Rev. Stat. Can., chap. 75, contains provisions substantially the same.





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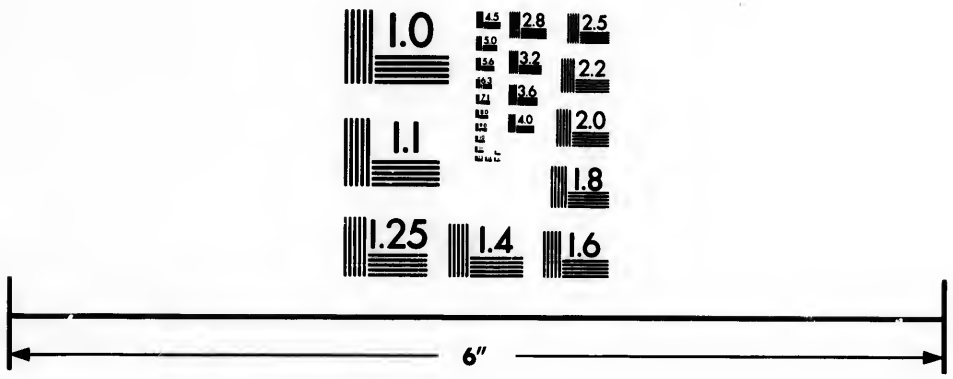

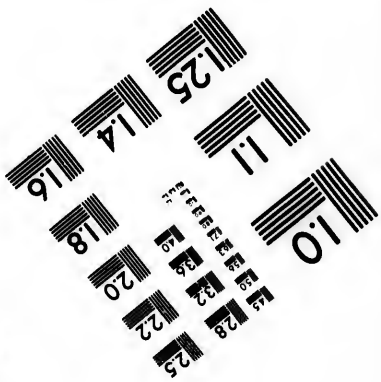

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SEARCH WARRANT.

(*See ante*, pages 54-58).

SESSIONS.

The Court of General or Quarter Sessions has not jurisdiction to try any treason or any felony punishable with death, or any libel, (Rev. Stat. Can. chap. 174 s. 4,) or any offence against sections 21, 22 and 23 of the "Act Respecting Offences Against the Person." (*Ib.*, s. 5.) It may be observed that under 25 Edward 3, chap. 2, s. 7, counterfeiting the Queen's money is treason, and the offence is therefore not triable at the Sessions. See Rev. Stat. Can. chap. 146.

Bribery or undue influence, personation or other corrupt practices in elections to the Dominion Parliament, are not triable at the Sessions, Rev. Stat. Can., chap. 8, s. 116. Neither are offences against the Act preventing lawless aggressions. See Rev. Stat. Can., chap. 146, s.s. 6-8.

The Court of Quarter Sessions does not possess any greater powers than are conferred on it by statute. It has, however, jurisdiction over offences attended with a breach of the Peace. But forgery and perjury not being attended with a breach of the Peace, are not triable at the Sessions. *R.* v. *McDonald*, 31 Q.B. (Ont.), 337-9; *R.* v. *Currie*, 31 Q.B. (Ont.), 582; *R.* v. *Dunlop*, 15 Q.B. (Ont.), 118.

The Court of Quarter Sessions has not power to try an offence under sections sixty to seventy-six, both inclusive of "The Larceny Act." Rev. Stat. Can., chap 174, s. 6; but the Court has, with the foregoing exceptions, jurisdiction to try all ordinary offences. The unexcepted offences they may try. Thus, the offence of kidnapping under the Rev. Stat. Can., chap. 162, s. 46, may be tried at the Sessions. *Cornwall* v. *the Queen*, 33 Q.B. (Ont.), 106.

A felony created since the passing of the statute 34, Edward 3, chap. 1, which created Courts of Quarter Sessions, is within the jurisdiction of the Sessions, but not an offence less than felony and not being a breach of the Peace, unless expressly empowered

to try it. *Cornwall* v. *the Queen*, 33 Q.B. (Ont.), 116. The Court has power to try all misdemeanors which are a breach of the peace. *Ex parte Bartlett*, 7 Jur. 649.

A bench warrant issued at the Quarter Sessions, tested in open Sessions, and signed by the Clerk of the Peace, was held not invalid for want of a seal. *Fraser* v. *Dickson*, 5 Q.B. (Ont.), 231. And a warrant of commitment under the seal of the Court or signature of the chairman is not necessary. *Ovens* v. *Taylor*, 19 C.P. (Ont.), 49.

Where a statute enables two Justices to do an act, the Justices sitting in Quarter Sessions may do the same act, for they are not the less Justices of the Peace because they are sitting in Court in that capacity. *Fraser* v. *Dickson*, 5 Q.B. (Ont.), 233. It would seem, however, that the chairman of the Sessions cannot make any order of the Court, except during the Sessions, either regular or adjourned. *Re Coleman*, 23 Q.B. (Ont.), 615. The Sessions possess the same powers as the Superior Courts as to altering their judgments during the same Sessions or term, and for that purpose the Sessions is all looked upon as one day. *R.* v. *Fitzgerald*, 20 Q.B. (Ont.), 546; see also *McLean* and *McLean*, 9 U.C.L.J., 217.

SHOOTING.

By the Rev. Stat. Can., chap. 162, s. 11, shooting at any person with intent to murder, is felony. So by section 13, it is felony to shoot at any person with intent to maim, disfigure or disable, or to do some other grievous bodily harm. Attempting to discharge any kind of loaded arms is also an offence of a similar character. But a loaded arm is one that is ready for discharge, and there must be proof that it is so loaded. *R.* v. *Gamble*, 10 Cox C.C., 545.

SLANDER.

Slander is not cognizable before Magistrates, except the words used directly tend to a breach of the peace, as if one man challenge another; in such case, a party may be bound to good behaviour, and even indicted. *R.* v. *Langley*, 2 Salk., 697-8; see Libel, *ante*, p. 456.

SMUGGLING.

Smuggling is the importing or exporting either (*a*) goods without paying the legal duties thereon, or (*b*) prohibited goods. The existing law on the subject is contained in the Rev. Stat. Can., chap. 32, s. 192. See *R.* v. *Bathgate*, 13 L C.J., 299.

SODOMY OR UNNATURAL OFFENCES.

The Rev. Stat. Can., chap. 157, s. 1, now governs these offences. The proof is the same as in rape, with two exceptions. It is not necessary to prove the offence to have been committed without the consent of the person upon whom it was perpetrated. Both parties, if consenting, are equally guilty, but if one of the parties is a boy under the age of fourteen years, it is felony in the other only. By the 2nd section of the Act, to attempt to commit the said crime, or to make an assault with intent to commit the same, or to make any indecent assault upon a male person, is a misdemeanor. Sending a letter proposing the crime, is an attempt to incite. *R.* v. *Rainsford*, 31 L.T., N.S., 488.

STEAMBOAT INSPECTION.

The Rev. Stat. Can., chap. 78, contains various regulations in regard to the equipment and management of steamboats. Section 52 makes it a misdemeanor for the master of any steamboat, wilfully or negligently, at any time, to carry a greater number of passengers than permitted by his certificate. All proceedings are to be under "The Summary Convictions Act," Rev. Stat. Can., chap. 178. (*Ib.*, s. 61.)

SUICIDE.

The attempt to commit suicide by a person of sane mind is a misdemeanor at common law, being an attempt to commit a felony. It is not an attempt to commit murder, suicide having been held not to be murder. *R.* v. *Burgess*, L. & C., 254.

If two persons enter into an agreement to commit suicide together, and the means employed to produce death prove fatal

to one only, the survivor is guilty of murder, as each is a principal. *R.* v. *Jessop*, 16 Cox C.C., 204.

SUMMARY CONVICTIONS IN ONTARIO.

(*See* ONTARIO.)

SUNDAY.

The words, "or other person whatsover," in the Rev. Stat. Ont., chap. 203, are meant to include all persons *ejusdem generis*, with those previously mentioned, but not others, (*Sandiman* v. *Breach*, 7 B. & C., 96); and they cannot be taken to include all persons doing anything whatsoever on a Sunday, but must be taken to apply to persons following some particular calling, of the same description as those mentioned. *Hespeler* v. *Shaw*, 16 Q.B. (Ont.), 104; *R.* v. *Hynes*, 13 Q.B. (Ont.), 194.

A farmer is not within the statute. *R.* v. *Clewarth*, 9 L.T., N.S., 682; *R.* v. *Silvester*, 33 L.J.Q.B., 96.

This statute does not apply to persons in the public service of Her Majesty, and therefore a conviction of a Government lock tender, on the Welland Canal, for locking a vessel through the canal on Sunday in obedience to the orders of his superior was quashed. *R.* v. *Berriman*, 4 Ont. R., 282.

The work prohibited is not confined to manual labour and hence includes the sale of a horse. *Fennell* v. *Ridler*, 5 B. & C., 406. But the work must be in the ordinary calling of the party; (*Smith* v. *Sparrow*, 4 Bing. 84); nor does it include all callings, as for example an Attorney's work. *Peate* v. *Dickens*, 1 C.M. & R., 422. This statute does not prohibit contracts being made on a Sunday, such as a bill of exchange. *Begbie* v. *Levi*, 1 Car. & J. 180; or the hiring of a servant. *R.* v. *Whitnash*, 7 B. & C., 596.

Baking provisions for customers is a work of necessity. (*R.* v. *Cox*, 2 Burr., 787); but baking rolls in the way of business is prohibited. *Cripps* v. *Durden*, Cowp., 640.

A person is liable, under the Act, for plying with his steamboat on Sunday between the City of Toronto and the Island, persons carried between these places not being "travellers," within the

meaning of the exception in the first section. *R.* v. *Tinning*, 11 Q.B. (Ont.), 636.

The defendants, owner and captain respectively of a steamboat, advertised that they would carry excursionists on Sundays. A number of passengers left Buffalo, in the State of New York, on a Sunday morning, and proceeded by rail to Niagara, whence they were carried by the defendant's steamboat to Toronto and back the same day. It was held that these passengers were "travellers" within the meaning of the exception in the first section, and that there was no distinction in such case between travellers for pleasure and for business. *R.* v. *Daggett*, 1 Ont. R., 537.

SURETIES FOR THE PEACE.

This is simply a recognizance entered into by a party with one or more sureties, before a Justice of the Peace out of Sessions, or before the Quarter Sessions, conditioned for his keeping the peace, or being of good behaviour for a certain time.

The party's own recognizance may be taken if it is deemed sufficient, but the expression "sureties" means sufficient sureties, Rev. Stat. Can., chap. 1, s. 7, (30), and therefore whether there are one or more sureties they must be sufficient.

Under section 1 of the Act respecting the improper use of firearms, Rev. Stat. Can., chap. 148, the offender may be required to find sureties for the peace.

In addition to or in lieu of any punishment, otherwise authorized for felony or misdemeanor, any person convicted thereof may be fined and required to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, and being of good behaviour. Rev. Stat. Can., chap. 181, s. 31.

But the authority to require sureties in general is given to Justices by their commission. Therefore, if a Justice of the Peace be satisfied upon oath that a party has reasonable ground to fear, either from the direct threats of another or from his acts or words, that such other person will inflict or cause to be inflicted upon him some personal injury, or that such person will burn his house or cause it to be burnt, the Justice is bound to cause this security

to be given; and the same if the threats be used against the wife or child of the party. But this does not extend to a man's servants, for they may themselves apply for sureties of the peace against persons from whom they fear personal injury; nor does it extend to threats as to a man's goods, for it is not a case within the authority thus given. Nor does it authorize the Justice when the applicant acts from mere malice or vexation. *Butt* v. *Conant*, 1 B. & B., 548.

The form of complaint by the party threatened for sureties for the peace is contained in the schedule to the Rev. Stat. Can., chap. 181, at page 2198.

The complaint states that "he doth not make this complaint against, nor require such sureties from the said A B, from any malice or ill-will, but merely for the preservation of his person from injury." On application being made for sureties of the peace by complaint to the Justice on oath, the Justice has to consider whether the facts stated show a reasonable ground for the party's fear of personal injury; and if there be any ambiguity in the threats, it is for the Justice to give them such a construction as he thinks right, and his decision in that respect will be final, (*R.* v. *Tregarthen*, 5 B. & Ad., 678) if the oath on which the complaint was founded be sufficient to warrant it. *Re Dunn*, 12 A. & E., 599. The Justice cannot on such an application convict the party complained against of an assault. *R.* v. *Davey*, 20 L.J., M.C., 189. If he thinks that sureties ought to be given, and the party complained against be not present, he may issue his warrant to bring him before him. This warrant is executed in the same manner as any other warrant to apprehend a party. As soon as the party is apprehended and brought before the Justice, the complaint is read over to him, and he is asked if he have any cause to show why he should not give the required sureties.

All that he is allowed to do in the way of showing cause is to show that the complaint is preferred from malice only (*R.* v. *Parnell*, 2 Burr, 806), or explain any parts of the complaint that may be ambiguous. *R.* v. *Bringloe*, 13 East, 174. In other respects he is not allowed to controvert the truth of the facts

stated in the complaint, (*R.* v. *Doherty*, 13 East, 171), for in this case there is an exception to the universal principle, that a man may always be heard in his own defence. The reason of the exception is that binding over a person, against whom articles of the peace are exhibited, is not in the nature of a punishment, but is to prevent the apprehended danger of a breach of the peace being committed. *Lort* v. *Hutton*, 45 L.J., M.C., 95.

If the Justice order the sureties to be given, and the defendant either refuse to give them or cannot do so, the Justice should commit him. See form of commitment in default of sureties in the schedule to the Act. The warrant of commitment must specify a time certain during which the party is to be imprisoned, otherwise it will be bad. *Prickett* v. *Gratex*, 8 Q.B., 1020.

The Justice may bind the party over for a limited time or until the next Quarter Sessions. Where a Justice of the Peace bound a party over to keep the peace for two years, the Court held that he did not exceed his authority. *Willis* v. *Bridger*, 2 B. & A., 278. The amount of the security required is entirely in the discretion of the Justice. *R.* v. *Holloway*, 2 Dowl., 525.

A final commitment for want of sureties to keep the peace must be in writing. *Lynden* v. *King*, 6 O.S., 566. Such commitment should show the date on which the words were alleged to have been spoken, and contain a statement to the effect that complainant is apprehensive of bodily fear. *Re Ross*, 3 P.R. (Ont.), 301.

In a commitment for want of finding sureties for the peace, it is not necessary to state that the Justice had information on cath which would justify him in binding the prisoner to keep the peace. *Dawson* v. *Fraser*, 7 Q.B. (Ont.), 391.

Justices should be careful not to require sureties of the peace without sufficient grounds; for if they do so from error of judgment, though they have a general jurisdiction over the subject matter, they render themselves liable to an action. *Fullarton* v. *Switzer*, 13 Q.B. (Ont.), 575.

Section 32 of the Rev. Stat. Can., chap. 181, provides for the release on certain terms of persons imprisoned for two weeks, in default of giving sureties to keep the peace.

SUSPECTED PERSONS.

(*See* Rev. Stat. Can., chap. 157.)

TELEGRAPH COMPANIES.

The Rev. Stat. Can., chap. 168, respecting malicious injuries to property, in section 40, provides that unlawfully and maliciously injuring any battery, machinery, wire, cable, post or other matter or thing whatsoever, being part of any electric or magnetic telegraph, electric light, telephone or fire-alarm, or unlawfully and maliciously preventing or obstructing the using of the same, is a misdemeanor. By section 41, unlawfully and maliciously, by any overt act, attempting to commit any such offence, renders the party liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour.

By the Rev. Stat. Can., chap. 134, persons employed in connection with any telegraph line under the control of the Government of Canada, or which, under any contract or agreement with any person or corporation, is partly under such control, are required to subscribe to a certain declaration before a Justice of the Peace or before a person appointed by the Governor-in-Council to take declarations under this Act, and any person who takes such declaration, and afterwards either directly or indirectly divulges to any person, except when lawfully authorized, any information which he acquires by virtue of his employment, or the contents of any telegram, is, on summary conviction before a Justice of the Peace, liable to a penalty not exceeding one hundred dollars nor less than fifty dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment. See *Leslie* v. *Hervey*, 15 L.C.J., 9.

TEMPERANCE ACT.

(*See* SCOTT ACT).

THREATS.

(*See* MENACES. *See* also VIOLENCE.)

TIMBER.

The Rev. Stat. Can., chap. 64, s. 1, provides that every person engaged in the business of getting out timber must select and register a mark, and put the same in a conspicuous place on each log or piece of timber, under a penalty of fifty dollars. Any person using a mark, of which another person is the registered owner, is liable, on summary conviction before two Justices of the Peace, to a penalty not exceeding one hundred dollars, and not less than twenty dollars. (*Ib.*, s. 7). Under section 87, of the Rev. Stat. Can., chap. 164, it is a misdemeanor to appropriate timber found adrift, or to deface any marks thereon. In prosecutions for these offences, a timber mark duly registered under the provisions of chap. 64, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark. Rev. Stat. Can., chap. 174, s. 228.

TOLLS.

The Rev. Stat. Can., chap. 98, is the Act respecting tolls on Government works for the transmission of timber. All pecuniary penalties imposed by any regulation made by the Governor-in-Council under the Act, may be recovered by the Collector of tolls and dues, if he sees fit, under the "Summary Convictions Act." Rev. Stat. Can., chap. 178. (*Ib.*, s. 7.)

In Ontario the Rev. Stat., chap. 159, relates to tolls.

Under this Act, the first engineer appointed to examine a road alleged to be out of repair, must act throughout the proceedings, unless another is appointed under section 110. But under that section the Judge is the person to be satisfied that the first engineer is unable to make or complete the examination, and his decision on that point cannot be reviewed. A second engineer appointed in January to examine and report "as to the present condition of the road," made an examination and certified, but was unable to report whether the repairs directed by the previous engineer had been performed, as it was covered by snow. In May following, without any further authority, he again examined

and certified that it was in good repair, and the company began again to take tolls. It was held that he was *functus officio* after the first examination, and that the tolls were illegally imposed, and a conviction of the defendant for driving over the road without paying toll was therefore quashed. *R.* v. *Greaves*, 46 Q.B. (Ont.), 200.

TRADE MARKS.

The Trade Mark and Design Act (Rev. Stat. Can., chap. 63, s. 17), makes it a misdemeanor for any person, except the registered owner of a trade mark, to use such mark on any article with intent to deceive the public, and to induce any person to believe that such article was manufactured or produced by the proper owner. So any person who falsely represents any article as bearing a registered design, is liable on summary conviction to a penalty not exceeding thirty dollars and not less than four dollars. (*Ib.*, s. 32.)

Under "The Trade Marks Offences Act" (Rev. Stat. Can., chap. 166, s. 4), forging or counterfeiting any trade mark is a misdemeanor. So under section 5, fraudulently attaching a trade mark is a misdemeanor, and severe punishment is inflicted for a large number of offences specified in different sections of the Act.

TRADE UNIONS.

The Rev. Stat. Can., chap. 131, s. 17, provides that a general statement of the receipts, funds, effects, and expenditures of every trade union registered under the Act, shall be transmitted to the Registrar General of Canada before the first of June in each year. A non-compliance with this section subjects the party to a penalty not exceeding twenty-five dollars for each offence, and wilfully making any false entry in or omission from any such general statement involves a penalty not exceeding two hundred dollars. Under section 19 circulating false copies of rules of a trades union is a misdemeanor. All offences and penalties, under the Act, may be prosecuted and recovered under the "Summary Convictions Act." (*Ib.*, s. 20.)

The proceedings must be before two Justices of the Peace or a Police or Stipendiary Magistrate.

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified in the information, and if so specified and negatived, no proof in relation to the matters specified and negatived shall be required on the part of the informant or prosecutor. The master, or the father, son or brother of a master in the particular trade or business, in or in connection with which any offence under the Act is charged to have been committed, is disqualified from acting as a Justice in any case under the Act, or as a member of any Court for hearing any appeal in any such case. (*Ib.*, s. 21). The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. (*Ib.*, s. 22.)

TREASON.

The Rev. Stat. Can., chap. 146, contains the law respecting treason and other offences against the Queen's authority. The 25 Edward 3, is still in force, the ninth section of the Canadian Act providing that nothing therein contained shall lessen the force of or in any manner affect anything contained in the statute of 25 Edward 3.

Under this statute, "when a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir, or if a man do violate the King's companion or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir, or if a man do levy war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving them aid or comfort in our realm or elsewhere, and thereof be probably (or proveably *provablement*) attainted of open deed by people of their condition:" "And if a man counterfeit the King's great or privy seal, or his money, and if a man bring false money into this realm, counterfeit to the money of

England, as the money called Lushburg or other like to the said money of England, knowing the money to be false; to merchandize or make payment in deceit of our said Lord the King and his people; and if a man slea the Chancellor, Treasurer, or the King's Justices of the one bench or the other, Justices in eyre or Justices of assize, and all other Justices assigned to hear and determine being in their places, doing their offices," he shall be guilty of treason.

To compass, imagine, invent, devise or intend the death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of our Sovereign Lady the Queen, her Heirs or Successors, by any overt act or deed, is treason, punishable with death. Rev. Stat. Can., chap. 146, s. 1.

VAGRANCY.

This offence is now governed by the Rev. Stat. Can., chap. 157, s. 8. A conviction under (*i*) should show a request made on the woman at the time of her arrest to give an account of herself, and that she did not give a satisfactory account, and that therefore the arrest was made. A conviction in the words of the statute, "not giving a satisfactory account of herself," does not imply or show such prior demand or request to give an account, and is therefore bad. *R.* v. *Levecque*, 30 Q.B. (Ont.), 509.

The Act declares certain persons or classes of persons to be vagrants, amongst others, (*i*) "Common prostitutes or night-walkers, wandering in the fields, public streets, or highways, lanes or places of public meeting, or gathering of people, and not giving a satisfactory account of themselves." Also "keepers of bawdy-houses and houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves."

This Act does not, in its true construction, declare that being a prostitute, etc., makes such persons liable to punishment as such, but only those who, when found at the places mentioned, under circumstances suggesting impropriety of purpose, on request or demand, are unable to give a satisfactory account of themselves."

By way of illustration. If any one of these classes be found on the street after nightfall, and a policeman thought that the prostitute or night-walker was out for the purpose of prostitution, or the bawdy-housekeeper, to entice men or girls to her house, or the frequenter with any improper motive, he might, under this statute, at once demand an account of the purpose for which they were there, and if no satisfactory account were given, at once take such person into custody. If, however, upon such demand, it appeared that the purpose were quite proper, then no cause for arrest would exist under this statute. The object of the Act seems to be to give to the police the power to remove such persons from places where they might be offensive or dangerous to the public, and to throw on them the onus of explaining the purpose or reason why they were in such places. *R.* v. *Arscott*, 9 Ont. R., 541.

It is not the keepers of the houses that are required to give a satisfactory account of themselves, but the frequenters. The former can give no excuse if the charge be true, but frequenters may go there for a lawful purpose, such as to collect a debt or other necessary purpose. Where the conviction and warrant charged that the plaintiff "did unlawfully keep a certain bawdy-house, and house of ill-fame, for the resort of prostitutes, and is a vagrant within the meaning of the statute" not alleging that she did not give a satisfactory account of herself, they were held sufficient, though it would have been otherwise in the case of a frequenter. *Arscott* v. *Lilley*. 11 Ont. R., 153.

A conviction, under the Act, for keeping a house of ill-fame, ordered payment of a fine and costs, to be collected by distress, and in default of distress, ordered imprisonment, and the Court held that there was power to so award imprisonment. *R.* v. *Walker*, 7 Ont. R., 186.

The Act makes no provision for imposing costs, or collecting either fine or costs. But as the provisions of the Rev. Stat. Can., chap. 178, are applicable, costs may be awarded under section 58 of the latter Act, and the fine or penalty, and costs, may be levied under section 62, and following sections. (*Ib.*)

Under (*f*), to cause a disturbance in any street, or highway, by screaming, swearing, singing, or by being drunk, or by impeding, or incommoding peaceable passengers, renders the party liable under the Act.

The defendant was convicted and committed, for that he "unlawfully did cause a disturbance in a public street * * by being drunk, and then was a vagrant, loose, idle and disorderly person within the meaning of the Act. The evidence disclosed that the defendant was drunk, and that he was guilty of impeding and incommoding peaceable passengers, but it negatived his causing a disturbance in the street by being drunk, and the Court ruled that no offence of the nature described in the conviction, and commitment was shown, and the same were quashed. *R.* v. *Daly*, 12 P.R. (Ont.), 411.

A defendant was summarily convicted under the 8th section (*k*), as "a person having no peaceable profession or calling, to maintain himself by, but who does, for the most part, support himself by crime." The evidence shewed that the defendant did not support himself by any peaceable profession or calling, and that he consorted with thieves, and reputed thieves, but the witnesses did not positively say that he supported himself by crime. The Court held that it was not to be inferred from the evidence that he supported himself by crime, and that to sustain the conviction there should have been statements that witnesses believed he got his living by thieving, or by aiding and acting with thieves, or by such other acts and means as shewed he was pursuing crime. *R.* v. *Organ*, 11 P.R. (Ont.), 497.

A prisoner had been convicted by one Justice of the Peace of being a vagrant, and the conviction was held bad, as it did not appear that the Justice was a Police Magistrate. *R.* v. *Clancey*, 7 P.R. (Ont.), 35; for one Justice has no power to convict under section 8, s.s. 3, unless he is such Police Magistrate.

Where there is a Police Magistrate, it should appear that the person convicting is the Police Magistrate himself, or that he is acting for the Police Magistrate by reason of his illness or absence, or at his request. See Rev. Stat. (Ont.), chap. 72, s. 6.

Prisoners charged with an offence meriting and receiving a severer sentence than is commonly imposed for a first conviction for larceny, or even more serious offences, are entittled to insist that such offence shall be proved at least as precisely, and by evidence of as high a degree, in a Police Court as in an Assize Court. Statements of suspicion, hearsay statements, or statements that cheques found on a prisoner arrested for vagrancy, were such as are used by confidence men, are not admissible. *R.* v. *Bassett*, 10 P.R. (Ont.), 386.

This Act does not apply to the case of a person using insulting language to a passer-by, from the window of his residence. *R.* v. *Poulin*, 5 Legal News, 347.

VEXATIOUS ACTIONS.

(*See ante*, p. 346.)

VIOLENCE, THREATS, AND MOLESTATION.

Section 9, of the Rev. Stat. Can., chap. 173, makes it a misdemeanor to unlawfully assault or use any violence or threat of violence to any person in pursuance of any unlawful combination to raise the rate of wages, or of any unlawful combination respecting any trade, business or manufacture. So assaults with intent to obstruct the sale of grain are illegal (*Ib.*, s. 10). So violence or intimidation, with a view to compel any person to abstain from doing anything which he has a lawful right to do, is illegal (*Ib.*, s. 12). If the party objects to be tried by the Justice, the latter may treat it as an ordinary indictable offence (*Ib.*, s. 12, s.s. 3).

It is perfectly legal for workmen to protect their interests by meeting or combining together, or forming unions in order to determine and stipulate with their employers the terms on which they will consent to work for them. But this right to combine must not be allowed to interfere with the right of those workmen who desire to keep aloof from the combination, to dispose of their labour with perfect freedom as they think fit. Nor must it interfere with the rights of the masters to have their contracts

duly carried out. Infraction of such rights will bring the wrong-doer within the pale of the criminal law of conspiracy.

Under the English Act an appeal was entered from a conviction, and due notice given to the prosecutor and convicting Justices, and the latter, as well as the prosecutor, were named as respondents in the appeal, but the Justices did not appear, and it was held that the Court, in quashing the conviction, had no power to award costs against the Justices. *R.* v. *Goodall*, L.R. 9, Q.B., 557.

VOLUNTARY AND EXTRA JUDICIAL OATHS.

(*See* Rev. Stat. Can. chap. 141.)

WAREHOUSEMEN.

Under "The Bank Act," Rev. Stat. Can., chap 120, s. 53, s.s. 7, everyone is guilty of a misdemeanor who wilfully makes any false statement in any warehouse receipt, acknowledgment or certificate. See also Rev. Stat. Can., chap, 164 sections 73 and 75.

Where a false warehouse receipt is given in the name of any firm, company or copartnership, the person by whom such thing is actually done or who connives at the doing thereof, is guilty of the misdemeanor, and not any other person. Rev. Stat. Can., chap. 164, s. 76.

WEAPONS.

(*See* FIRE ARMS.)

WEIGHTS AND MEASURES.

The Rev. Stat. Can., chap. 104, contains the law as to weights and measures.

Under this Act numerous penalties are imposed for different offences. Section 25 creates a penalty for having false or unjust weights scales or measures; section 27, for making or selling the same, and section 29 imposes a penalty for using unstamped weights or measures.

Under section 63 penalties, if under $50, are recoverable before

one Justice, and if over $50, before two Justices of the Peace for the District, County, or place in which the offence is committed, and the provisions of the "Act Respecting Summary Proceedings before Justices of the Peace," (Rev. Stat. Can., chap. 178), shall, subject to the provisions of the Act, apply to all proceedings thereunder.

Under section 31 of this Act, the offender is made liable to imprisonment for a subsequent offence, and this is the only instance in the Act where an offender is made liable to imprisonment. *R.* v. *Dunning*, 14 Ont. R., 55.

But this seems of little importance, as the 63rd section of the Act incorporates the provisions of the Rev. Stat. Can., chap. 178, and under the 67th section of the latter Act, in default of sufficient distress, there may be an award of imprisonment.

Earthenware vessels unstamped, but ordinarily used as containing a certain quantity according to Imperial measure, are "measures;" and if found unjust are liable to be seized, and the dealer, on whose premises they are found, is liable to penalties under the Act, for having them in his possession. *Washington* v. *Young*, 5 Ex., 403; *R.* v. *Oulton*, 3 E. & E., 568. They are not deemed unjust if against the seller himself. *Booth* v. *Shadgett*, L.R. 8, Q.B., 352.

A weighing-machine, which from its construction was liable to variation from atmospheric and other causes, and required to be adjusted before it was used, was held not incorrect upon examination within the meaning of the statute, if examined by the inspector before it had been adjusted. *London & N. W. R. Co.* v. *Richards*, 2 B. & S., 326.

A railway company kept a weighing-machine which for a fortnight had been so out of repair, that when anything was weighed by it the weight appeared to be 4 lbs. more than was really the weight. It was held that the company were liable to conviction for having in their possession a weighing-machine which on examination was found to be incorrect, or otherwise unjust. *Great W. R. Co.* v. *Bailie*, 5 B. & S., 928.

A shopkeeper made use of a pair of scales which had a hollow

brass ball hanging upon the weigh end of the beam, constructed so as to allow shot to be placed in the interior, and easily removable from the beam by merely lifting it off. When the ball was removed and replaced after the shot with which it was partly filled had been taken out, it was found that the scales were unjust, and against the purchaser. It was held that there was evidence that these scales were weighing-machines which were incorrect or otherwise unjust. *Carr* v. *Stringer*, L.R. 3, Q.B., 433.

WIFE, NEGLECTING TO MAINTAIN.

(*See* MAINTENANCE.)

WOMEN, OFFENCES RELATING TO.

(*See* Rev. Stat. Can., chap. 158.)

WOUNDING.

(*See* Rev. Stat. Can., chap. 162.)

WRECKS AND SALVAGE.

The Rev. Stat. Can., chap. 81, s. 36, make it felony to prevent, impede, or endeavour to prevent or impede any shipwrecked person in the endeavour to save his life, or to prevent or impede the saving of any wrecked vessel, or to steal or maliciously destroy any wreck. Various other offences under the Act are made misdemeanors.

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