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THE

CANADIAN CRIMINAL LAW DIGEST

BEING A CONSOLIDATED DIGEST OF THE
CASES UNDER THE CRIMINAL CODE
REPORTED IN VOLUMES
1 TO 30, INCLUSIVE,
OF THE

CANADIAN CRIMINAL CASES

1893-1920

TOGETHER WITH THE IMPORTANT CRIMINAL
LAW DECISIONS PRIOR TO THE ENACTMENT
OF THE CRIMINAL CODE, AND DECISIONS
UNDER THE LIQUOR LAWS AND OTHER
QUASI-CRIMINAL STATUTES BOTH
FEDERAL AND PROVINCIAL.

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INDEX

OF

THE NAMES OF CASES DIGESTED

A.-Ang.]	Column
A. B., Re	236, 618
Abeel, Re	562
Abeles, R. v.	100
Abeles v. The King	547
Abrahams, R. v.	667, 668
Ackers, R. v.	335, 886, 1185, 1230, 1276
Ackerson, R. v.	91, 873
Adams, R. v.	827
Adamson, R. v.	339, 943
Addison, R. v.	188
Adolph, R. v.	1134
Adonchuk, R. v.	1269
Agnew v. Stewart	322
Ah Gin, R. v.	186, 1117
Ah Jim, R. v.	10, 462, 581
Aho, R. v.	389, 406, 410
Ah Pow, R. v.	575, 576
Ah Sam, R. v.	583
Ah Sing, R. v.	1112
Ah Wooey, R. v.	991
Ah Yin, R. v.	60, 87, 332, 578
Aikens, R. v.	220, 1232
Aikins v. Simpson	336, 500, 501
Aitcheson, R. v.	140, 953
Aitken, R. v.	1238
Akerley, R. v.	22, 985
Alberti, R. v.	1281
Aldrigh v. Humphrey	110
Alexander & Shouldice, R. v.	633, 1024, 1129
Alford, R. v.	75, 205, 949
Algiers v. Tracy	652
Allbright, R. v.	838
Allen, R. v.	99, 472, 651, 980, 1374
Allen v. The King	469, 965, 978
Allerton, R. v.	1374
Allingham, R. v.	216
Alle[illegible], R. v.	1051, 1372
Alt[illegible] v. Majury	248
Alward, R. v.	664
Amer, R. v.	855
Ames, R. v.	38, 206, 371
Amsden v. Rogers	496
Amyot, R. v.	1058
A. & N., R. v.	998
Anderson, R. v.	425, 726, 981, 1283
Anderson (John), Re	504
Anderson v. Johnson	919
Anderson v. Johnston	121
Anderson & Kinrade, Re	210, 323
Anderson & Sparks, R. v.	1157
Andrews, R. v.	458, 1096
Angelo, R. v.	100, 420

Arc.-Bea.]	Column
Arcand v. Montreal Harbour Commissioners	192
Archanbault (Edmond), Ex parte	115
Archibald, R. v.	129, 141, 601, 1127
Armitage, Ex parte	1000
Armitage (John), Ex parte	297
Armour v. Boswell	241, 971
Armstrong, Ex parte	759
Armstrong, R. v.	315, 487, 713, 935, 1203, 1238, 1377
Arnoldi, R. v.	1062
Arscott, R. v.	251, 609
Arscott v. Lilley	243, 251, 610
Ashcroft, R. v.	196
Ashley, Ex parte	301, 662
Askwith, Re	1369
Askwith, R. v.	814
Atkinson, R. v.	831, 845, 1004, 1045, 1177
Atlas, R. v.	181, 466
Attorney-General (Can.) v. Atty.-Gen. (Ont.)	293, 999
Attorney-Gen'l v. Beaulieu	396
Attorney-Gen'l v. Hamilton Street Ry.	299
Attorney-Gen'l v. Niagara Falls International Bridge Co.	988, 989
Attorney-Gen'l v. Scully	13, 93, 141, 1092
Attwood, R. v.	341, 445
Aubin, Ex parte	156, 627
Audette v. Daniel	313
Auerbach, R. v.	93
Austin, R. v.	71, 350, 387, 594, 719, 1236
Authier, R. v.	1327, 1328
Ayer, R. v.	31, 711, 812
Aylward, Ex parte	720
Ayotte, Re	1371
Ayotte, R. v.	462
Ayoup, R. v.	89
Bachrack, R. v.	6, 453, 686
Bail, R. v.	557
Bailly, R. v.	156, 399, 1090
Bain, R. v.	1005
Bainbridge, R. v.	688, 1120
Baird, Ex parte	763
Baird, R. v.	88, 1067
Ballard, R. v.	1140
Ballentine, R. v.	716
Banks, R. v.	193, 327, 415, 945
Bannerman, R. v.	558
Barb, R. v.	799
Barber, R. v.	940
Barber Asphalt Paving Co., R. v.	744, 1197

Bar.-Bel.]	Column
Barberie, Ex parte	191
Bareham v. The King	591
Barker, R. v.	84, 424
Barlow, R. v.	230
Barnes, R. v.	263, 1103, 1262
Barnfield, R. v.	934
Barnett, R. v.	1294
Baron, R. v.	132
Barre, R. v.	30, 45, 620, 663
Barrett, R. v.	961
Barrett's Bail, Re	153
Barrett's (Frederick) Bail, Re	399
Barron, Re	1163
Barron, R. v.	462, 475, 858, 1120
Barsalou, R. v.	233, 249, 459, 460, 690, 739, 885
Barsky v. Serling	357, 1198
Bartels, Re	522, 622
Barthos, R. v.	743, 1350
Basker, R. v.	310
Baskett, R. v.	417
Bassett, R. v.	1346
Bastien, R. v.	1308
Batson, Ex parte	769, 1044
Batson, R. v.	770
Batson (O. A.), R. v.	381
Batterman, R. v.	1106, 1361
Battista, R. v.	84, 745, 1360
Baugh, R. v.	421, 1339, 1378
Banni, R. v.	785
Baxter, R. v.	744, 1030
Beagan, R. v.	201, 332
Beale, R. v.	193, 194
Beamish, R. v.	43, 615
Beamish v. Richardson	174, 175
Beardsley, R. v.	138, 491
Bear's Shin Bone, R. v.	1029
Beauchamp v. Montreal	949
Beaudoin, R. v.	264, 636
Beaudry v. Lafontaine	1056
Beaulieu, Re	303, 698
Beaulieu, R. v.	1338
Beauvais, R. v.	1306
Beaver, R. v.	486, 992
Beboning, R. v.	348, 665, 1309
Bechtel, R. v.	493
Beck, Re	52, 640
Becker, R. v.	190, 327, 1368
Beckett, R. v.	1327
Beckwith, R. v.	444, 673
Bedard, R. v.	20
Bedard v. The King	1203, 1352
Bedere, R. v.	1078
Bedford, R. v.	1115
Belanger v. Mulvena	1031
Bela Singh, R. v.	51, 436
Beemer, R. v.	758, 1190
Beer, R. v.	925, 968
Begeotas, R. v.	807
Beland v. Boyer	705
Belanger, R. v.	598, 672
Bell, R. v.	661
Bell v. Lott	288, 1355
Bell v. Parent	710
Bellefontaine, R. v.	49
Belmont, R. v.	1026
Belyea, Ex parte	22

Bel.-Bor.]	Column
Belyea, R. v.	120, 1162
Bender, R. v.	1115
Benford, R. v.	798
Benham, R. v.	341
Benjamin, R. v.	689, 881
Benner, R. v.	1250
Bennett, R. v.	201, 332, 491, 964
Benoit, R. v.	594
Bent, R. v.	455
Beranek, Re	27
Berenstein, R. v.	53
Berman v. Kocurka	663
Bernard, R. v.	1042
Bernier, R. v.	592
Berrigan, R. v.	247, 335, 551, 659
Berry, R. v.	226, 592
Bertin, Ex parte	206, 258
Bertles, R. v.	538
Bertrand, R. v.	375
Bertrand v. Angers	1031
Bestwick v. Bell	1086
Betchel, R. v.	978, 979
Bethel, R. v.	492
Bevan, R. v.	423, 791
Bezaucon v. G. T. P. Development Co.	71
Bhagwan Singh, Re	636
Biddinger, R. v.	923
Bidgood, R. v.	826
Bigamy Sections of Code, Re	167, 295, 385
Bigelow, R. v.	195, 198, 778, 779, 817, 840, 1169
Biggs, R. v.	707, 903
Birchenough, R. v.	697
Bischinski v. Montreal	1288
Bishop, Ex parte	1126, 1208
Bishop, R. v.	1081
Bithell v. Butler	1053
Bittle, R. v.	294
Black, R. v.	618
Black (James William), Re	606
Blackley, R. v.	900
Blackstone, R. v.	557
Blaine, Ex parte	785
Blyais, R. v.	11, 407, 1080, 1133
Blank (William), R. v.	768
Bleiler, R. v.	170, 470, 1232
Bloom, R. v.	373, 1025
Bloomfield, R. v.	592
Blucher, R. v.	617
Blyth, R. v.	443
Blythe, R. v.	1, 88, 734, 962
Boardman, R. v.	1073
Bogh Singh, R. v.	434, 748, 1014
Boileau, R. v.	1028
Boisseau v. People's Amusement Co.	1291
Bole, R. v.	153, 399
Bombardier, R. v.	63, 1045
Bond, R. v.	356
Bond v. Conmee	183, 240, 757, 970, 1353
Bongard, Re	512
Bonin, R. v.	1264
Bonner, R. v.	601
Bonnevie, R. v.	418, 1044, 1128, 1290
Book, R. v.	265, 1202
Boomer, R. v.	498, 1227
Booth, R. v.	1002, 1131
Borin, R. v.	818

Bor.-Budd] Column
Borrer, R. v. 954
Bosak, R. v. 359
Boscowitz, R. v. 291, 571
Bothwell v. Burnside 87, 330, 946
Bouchard, R. v. 630, 726
Bouchard v. Sorguis 53
Boucher, Re 39, 126
Boucher, R. v. 609
Bougie, R. v. 74, 255, 366, 614, 1065
Bourque, Ex parte 750
Bourrett, R. v. 1131
Boutilier, R. v. 907, 1168
Bowack, Re 39, 612
Bowers, R. v. 616, 1305
Bowes, R. v. 451
Bowman, R. v. 80, 648
Boyd, R. v. 460, 543, 885
Boyce, Ex parte 708
Bradley, R. v. 806
Bradsbury, Ex parte 783
Brady, R. v. 57, 542, 575, 750, 752, 761, 1239, 1359
Brady (Effy), Re 1223, 1351
Bracci, R. v. 360
Braithwaite, Re 869, 1186
Brault v. St. Jean-Baptiste Ass'n 296, 913
Braun, R. v. 942
Brazeau, R. v. 898
Breckenridge, R. v. 25, 1145, 1160
Breen, R. v. 702, 839
Brennan, R. v. 87, 720, 958
Brewster, R. v. 1099
Bridges, R. v. 1135
Brierly, R. v. 291, 443
Brimacombe, R. v. 61
Brindamour, R. v. 949, 422, 888, 1103
Brindley, R. v. .. 132, 368, 484, 1067, 1205
Brine, R. v. 1138
Brine (Herbert), R. v. 1296
Brinkley, R. v. 169, 554, 740
Brisbois, R. v. 208, 622
Britnell, R. v. 412, 715, 994
Broad, R. v. 682
Broadfoot, R. v. 261, 625, 1186
Brook, R. v. 82
Brooker, R. v. 1287
Brooks, R. v. .. 486, 939, 1101, 1103, 1142
Broom, Re 923, 1278
Brouse, R. v. 716
Brousseau, R. v. 173
Brown, R. v. .. 51, 304, 342, 377, 394, 454, 554, 754, 848, 926, 932, 957, 1042, 1149, 1219
Brown (James), R. v. 972
Brown v. Dalby 1120
Brown and Diggs, R. v. 48, 705, 888
Browne, R. v. 163
Bruce, R. v. 431
Brunet, R. v. 7, 161
Bryans, R. v. 123
Bryce v. Wilks 275, 728
Brynes, R. v. 149
Bryson, R. v. 61
Buchanan, Re 19, 49, 1060
Buchanan, R. v. 127, 276, 597, 669
Buck, R. v. 534, 535, 688
Budd, Ex parte 1175

Bul.-Cas.] Column
Bullock, R. v. 1145
Bunet v. The King 877
Bunting, R. v. 278, 294, 852
Burdell, R. v. 175, 407, 410, 887, 1307
Burgess, R. v. 905
Burke, R. v. .. 203, 254, 342, 470, 704, 613, 668, 856, 1033, 1126, 1139, 1180
Burns, R. v. .. 95, 175, 483, 805, 1006, 1049, 1245
Burn's Bail, Re 17, 155
Burr, R. v. 89, 440, 1123
Burroughs v. Paradio 51
Burtress, R. v. 329, 1065, 1244
Buteau, R. v. 718
Buteau v. Hamel 651
Butler, R. v 756
Butterfield, R. v. 464, 790
Byng, R. v. 804
Byrne v. Arnold 244, 892, 1270
Bythell, R. v. 287

Cadby, Ex parte 506, 560
Cadden, R. v. 543
Cadotte v. Lazarovitcz 724
Cady, R. v. 801
Cahill, R. v. 767
Cahoon, R. v. 804
Callaghan, R. v. 97, 1005
Callahan, R. v. 967
Cameron, R. v. .. 150, 235, 684, 897, 1245
Cameron (Adeline), R. v. 170
Cameron (H. B.), R. v. 612, 656
Campbell, R. v. .. 10, 215, 355, 417, 538, 639, 715, 791, 797, 992, 1240
Campbell (Amos), R. v. 271, 545
Campbell (Colin), Ex parte 1272
Campbell v. McIntosh 1206
Campbell v. Walsh 383, 704, 870
Campey, R. v. 553
Canadian Northern Ry. Co., R. v. 78, 1075, 1176
Canadian Pacific Ry. Co., R. v. .. 142, 303, 304, 485, 549, 550, 917, 1076, 1183
Canadian Pacific Ry. Co. v. Waller .. 412
Canadian Society v. Lauzen 23, 58
Canes, R. v. 683, 958
Cannon, Re 171, 523
Cantin, R. v. 227
Cardell, R. v. 1061
Cardo, R. v. 1078
Carlin, R. v. 96, 281, 886
Carlisle, R. v. 617, 777
Carmichael, Ex parte 130, 257
Carmichael, Re 611
Carmichael, R. v. 101, 1317
Carmichael & McDonald, R. v. 997
Carriere, R. v. 1143
Carroll, Ex parte 640, 1269
Carroll, R. v. 45
Carson, R. v. 556
Carswell, R. v. 92, 820, 1316
Carter, R. v. 223
Carter (Laura), R. v. .. 368, 616, 657, 1248
Carver, R. v. 1047
Carvery, R. v. 1009
Case, R. v. 702, 1127
Cashen, R. v. 582

Cas.-Col.] Column

Casson, Ex parte 763
Caswell, R. v. 181, 940, 1233
Cavanaugh v. McIlmoyle 779
Cavelier, R. v. 612
Cavicchi, R. v. 803
Central Supply Ass'n, R. v... 283, 487, 1234
Ceramer, R. v. 437
Chadderton, R. v. 956
Chamberlain, R. v. 1003
Chamryk, Re 27
Chandler, R. v. 299, 551
Chandler, Re 1092
Chandler v. Atty-Gen'l 887
Chapman, R. v. 294, 376
Chapman & London, Re 853, 1056
Chappus, R. v. 220, 228
Charcoal, R. v. 664
Charlier, R. v. 319
Charron, R. v. 742, 1248
Chartrand, R. v. 134
Chasson, R. v. .. 104, 414, 447, 457, 458, 880
Cheevers, Ex parte 150
Cheng Fun v. Campbell 115, 654, 1258
Chestnut, R. v. 25, 869
Chew Deb, R. v. 1059, 1365
Chicoyne, R. v. 809
Chilcott, R. v. 566
Ching How, Re 628, 1231
Chipman, R. v. 892, 1180
Chisholm, R. v. 177, 929, 1371
Chitnita, R. v. 1019
Chlopek, R. v. 412, 552
Choinard, R. v. 1295
Choney, R. v. 431
Chubbs, R. v. 970
Ciarlo, R. v. 352, 415
Cienci, R. v. 816
City of —— (Indexed under name)
Clark, R. v. .. 369, 484, 540, 758, 771, 908, 990, 1043, 1050, 1066, 1109, 1147, 1193, 1303, 1345, 1371
Clarke, R. v. .. 82, 122, 284, 450, 732, 801, 815, 1224, 1326
Clarke v. Rutherford 129
Clegg, R. v. 488, 1341
Clement, R. v. 316
Clements, R. v. 615, 827, 858, 1370
Clermont v. Legace 128
Clifford, R. v. 663, 718
Cloutier, R. v. 110
Cluff, R. v. 181
Coady, R. v. 1026
Code, R. v. 209, 334, 1212, 1236
Cody, R. v. 831, 1026
Coffon, Ex parte 703, 769
Cohen, Ex parte 513
Cohen, Re 513, 547, 686
Cohen, R. v. 1118
Cohen's Bail, Re 396
Cohon, R. v. 1008, 1102, 1143
Cokely, R. v. 552
Cole, R. v. 152, 266, 1007
Cole v. Cook 939
Colahan, R. v. 1211
Coleman, R. v. 405, 1066, 1355
Collector of Revenue v. Auger 140
Collector of Revenue v. Boisvert .. 746, 794

Col.-Cra.] Column

Collector of Revenue v. Demers 791
Collector of Revenue v. Paquet 746
Collector of Revenue v. Plourde 815
Collector of Revenue v. Verret 140
Collette, R. v. 1348
Collette v. The King. 89, 250, 625, 1128, 1173
Collier, R. v. 226
Collins, Re 519, 1008
Colline, R. v. .. 487, 595, 733, 752, 799, 938, 975, 976, 1166, 1191, 1271
Collins v. Horning 75
Collison v. Kokatt 69
Collyns, R. v. 179, 459, 1300
Colton, R. v. 795
Comeau, R. v. 442, 744, 1124, 1316
Condola, R. v. 821
Conklin, Re 707
Conlin, R. v. 276, 1299
Connolly, R. v. .. 136, 279, 280, 448, 921, 1078, 1094, 1097, 1354
Connor, R. v. 1054
Connors, R. v. 449, 1370
Conrod, R. v. 788
Contler, R. v. 881
Conway, Ex parte 753, 1239
Conway, R. v. 1248
Cook, R. v. .. 210, 315, 320, 435, 745, 813, 889, 997, 1130, 1337
Cook (Annie), R. v. 1070, 1215
Cook (John), Ex parte 365, 578, 1244
Cooksley v. Nakashiba 1159
Cooksley v. Toomaten Oota 80, 1159
Coolen, R. v. 130, 702, 1249
Cooper, R. v. 326
Cooper (Elizabeth & Jane), Re 322
Coote, R. v. 673, 845, 868, 1008, 1144
Corbett, R. v. 255, 652
Corby, R. v. 404
Corcoran, R. v. 1109
Cordray, R. v. 804
Corey, R. v. 341
Cormier, Ex parte 645, 868, 1182
Cornell, R. v. 345, 500
Cornwall v. The Queen 896
Corrigan, Ex parte 255, 968
Corrigan, R. v. 1256
Corriveau, Ex parte 150
Corriveau v. Simard 793
Corwin, Ex parte 1353
Cote, R. v. 617, 1249
Cote v. Morin 642
Coulombe, R. v. 705, 740, 1329
Coulson, Ex parte 194, 762
Coulson, R. v. 183, 192, 933, 1235
Coulter, R. v. 1017
County Court, R. v. 1154
Couture, R. v. 935
Couture v. Fortier 415
County Judge, R. v. 924
Coventry, R. v. 235, 483, 933
Covert, R. v. 225, 315, 833, 1083, 1378
Cowan, Ex parte 75, 205
Cox, R. v. 149, 296, 597, 606, 1292
Coyne, R. v. 1028
Crabbe, R. v. 606
Cragg v. Lamarsh 58
Craig, R. v. 560, 971, 1272, 1274

Cra.-Def.]	Column
Crandall, R. v.	1225
Crawford, R. v.	215, 744, 1264, 1362
Creamer, R. v.	166, 1137
Creelman, R. v.	395
Creighton, R. v.	348, 800, 901
Criminal Code, Re	142, 685
Cronin, R. v.	29, 123
Cronon, R. v.	126
Cronkhite, Ex parte	91, 339
Crooks, R. v.	1261
Cross, R. v.	375, 507, 675, 1150
Cross (A. E.), Re	391, 906
Cross v. Wilcox	1333
Crossen, R. v.	996, 1244
Crouch, R. v.	1191
Crouse, Re	633, 847, 1060
Crowell, R. v.	1208
Crowley, R. v.	335
Crozier, R. v.	972
Cruikshanks, R. v.	350, 1026, 1072, 1201
Cruttenden, R. v.	1328
Cummings, R. v.	492
Cummings v. The King	237
Cummins v. Moore	933
Cunerty, R. v.	195, 787
Cunningham, R. v.	497, 559, 560, 1096
Curran, R. v.	68, 808
Currie, R. v.	343
Curry, Ex parte	346, 379, 857
Curry, R. v.	237, 348, 494, 1014
Curry v. The King	992
Curtley, R. v.	8
Cushing, R. v.	41
Cyr, R. v.	348, 363, 1028, 1352

Dag.-Doy.]	Column
Dagenais, R. v.	262, 1224
Daigle, Ex parte	383, 1215
Daigle, R. v.	159, 435, 546, 706, 943, 1040
Daigneault v. Emerson	381, 767
Daley, R. v.	432, 734, 977, 1310
Dalke, R. v.	931
Dalton, Re	1136
Daly, R. v.	1345
Dambois, Ex parte	212
Daniel, R. v.	678
Daoust, R. v.	321
D'Aoust, R. v.	233, 460, 1043, 1371
Darroch, R. v.	374
Darracq, Re	529, 629
Daun, R. v.	1123
Davey, R. v.	219
Davidson, R. v.	202, 375, 388, 660, 814, 1106, 1269, 1333
Davidson v. Garrett	323
Davis, R. v.	219, 538, 631, 635, 715, 807, 981, 1024, 1091, 1264
Davis v. Feinstein	164, 220
Davitt, R. v.	60, 568
Davy, R. v.	857, 1335
Day, R. v.	99, 285, 428, 874, 1154
Deakin, R. v.	90, 442, 978, 1373
Dealtry, R. v.	838
Dean, Re	874, 1312
Dean, R. v.	72, 746
Debard, R. v.	170
Deering, Re	532
Defries, R. v.	280, 612
Degan, R. v.	260, 1194
Degenais, R. v.	262, 1224
DeLaDurantaye, R. v.	1269
Delisle, R. v.	569
Delisle (John), R. v.	510, 928
DeLoe, R. v.	418
DeMarco, R. v.	469, 977
DeMesquito, R. v.	436, 983
Demetrio, R. v.	98, 493, 1232, 1351
Denault v. Robida	43, 204, 1192
Dennis & McCurdy, Re	320
DePaoli v. The King	436
Derrick, R. v.	883
Desaulniers v. Hird	917
Desjardins v. Berthiaume	904
Despatie, Ex parte	1344
Dewar, Ex parte	1041, 1114, 1171
DeWolfe, R. v.	131, 237, 485, 1146
Dhama, R. v.	222
Dias, R. v.	811
Dicery (Dickey), R. v.	338, 359
Dici, R. v.	743
Dick, R. v.	18, 146, 713
Dick v. The King	356, 627, 1038
Dickey, Re	514
Dickinson v. The World	471, 905, 978
Dickout, R. v.	932
DiFrancesco, R. v.	986
DiLena, R. v.	77
Dimack, R. v.	1291
Dimond, R. v.	1188, 1289
Dion v. Champagne	214, 872
Disney, R. v.	25
Dixon, Ex parte	551
Dixon, R. v.	448, 483, 643, 938, 1322
Dodds, R. v.	573
Doe (John), Re	255, 893
Doherty, Ex parte	7, 187, 256, 615, 709, 762, 1179
Doherty, Re	1064
Doherty, R. v.	102, 329, 765, 1274
Dolan, Ex parte	1279
Doliver Mountain Mining & Milling Co., R. v.	61, 333
Dominion Bowling, etc. Club, R. v.	950, 1161
Dominion Coal Co., R. v.	57, 1207
Dominion Drug Stores, R. v.	20, 72, 78, 231, 821, 1340
Donald, R. v.	599
Donely v. Semple	954
Donelly, Re	1055
Donnacona Paper Co., R. v.	1289
Donohue v. Recorders Court	18, 336, 1058, 1176
Donovan, Ex parte	1273
Doty, R. v.	1120
Doucet, Ex parte	221
Dougall, R. v.	454, 880, 1336
Douglas, R. v.	352, 405, 459, 652, 1149, 1368, 1369
Dowd, R. v.	10, 173, 578
Dowling, R. v.	1180
Downie v. The Queen	1005
Downie v. Vancouver Engineering Works	24
Doyle, Ex parte	224, 323
Doyle, R. v.	361, 414, 474, 670, 685, 1010

Dra-Eva.]	Column
Drake, R. v.	161
Prapeau v. Recorder's Court	956
Drew v. The King	1007
Driscoll, Ex parte	377, 786
Drouin, R. v.	464, 962
Druggist Sundries Co., R. v.	797
Drummond, R. v.	417, 1099, 1102
Druyer, R. v.	167, 409
Dube, R. v.	1342
Dubois, R. v.	180, 489
Dubuc, R. v.	49, 212, 335, 1137, 1171, 1214
Duckworth, R. v.	92, 984, 1377
Duclos (Alexander), Re	621
Duering, R. v.	1134
Duff, R. v.	167, 478, 675, 743, 1085
Duffy, Ex parte	130, 1034
Dufresne, R. v.	311
Dufresne v. The King	714, 873
Dugan, Ex parte	455, 759
Dugas, R. v.	720
Duggan, R. v.	392, 975
Dumont, R. v.	496
Duncan v. Cairns	1001
Dungey, R. v.	1033
Dunham v. St. Croix Soap Co.	573
Dunlop, R. v.	85, 561, 854
Dunn v. Gibson	248
Dunning, R. v.	190, 440, 1081, 1365
Dupont, R. v.	128, 1100, 1127
Dupuis v. Blouin	1288
Durlin, R. v.	83, 117, 1198
Durocher, R. v.	392, 455, 541, 679
Durrand v. Forrester	922, 1036

Ead-Eva.]	Column
Ead v. The King	1103
Earl, R. v.	882, 972, 973
Earley R. v.	1090, 1160, 1255
Eastman v. Reid	242
Eaton, T. Co., R. v.	548, 1328
Eaves, R. v.	1344
Eberts v. The King	736
Ebets v. The King	84
Edelston, R. v.	63, 1196
Edgar, Ex parte	749
Edmonstone, R. v.	1360
Edmonds, R. v.	1313
Edwards, Ex parte,	403, 775
Edwards, R. v.	158, 159, 906, 1067, 1243, 1254, 1309
Egan, R. v.	11, 1209
Elderman, R. v.	79, 403, 951, 714, 744, 1187
Eliasoph, R. v.	696, 1037
Elliot, R. v.	1324
Elliott, Re	1201
Elliott, R. v.	43, 184, 282, 429, 751, 759, 855
Ellis, Re	1224
Ellis, R. v.	584, 1350
Ellis v. Baird	38
Ellis v. The Queen	54, 318
Emery, R. v.	224, 340, 374, 718
Emmerson, Ex parte	193, 194
Esmonde, R. v.	137
Ethier v. Minister of Inland Revenue	723, 1203
Ettinger, R. v.	764, 1273
Evans, Ex parte	638

Eva.-Fou.]	Column
Evans, R. v.	320
Ewan, Ex parte	1369
Ewing, R. v.	1298

Fabri, R. v.	374
Fanning v. Gough	704, 790, 1115
Farduto, R. v.	434, 736, 966
Farquhar v. Robertson	325
Farrar, R. v.	610, 1216, 1234
Farrell, R. v.	15, 93, 414, 478, 490, 621, 812, 841, 1012, 1125
Fauchauk v. Gerget	222
Faulkner, R. v.	90, 143, 678
Faux, R. v.	953
Fedorenko, Re	525, 526
Fehr, R. v.	1332
Feinberg, Ex parte	510
Felitz v. Howland, R. ex rel	318
Fellowes, R. v.	279, 974
Fellows, R. v.	391, 446, 883
Felton, R. v.	1119
Fenson v. New Westminster	86, 741
Feore, R. v.	883
Ferguson, Ex parte	1373
Ferguson, Re	609
Ferguson, R. v.	214, 339, 1090, 1161
Ferguson v. Adams	244
Ferris, R. v.	396
Ferris v. Irwin	1297
Fick, R. v.	730, 971, 1077
Field, R. v.	426
Fielding, R. v.	2, 489
Fields, R. v.	924
Fife, R. v.	251
Finkle, R. v.	427, 971
Finlay, R. v.	996
Finnessey, R. v.	11, 463, 1081
Fish, R. v.	914
Fisher, Re	320, 949, 1135
Fitzgerald, R. v.	1, 80, 149, 192, 669, 744, 1053, 1230
Fitzpatrick, Ex parte	256, 767
Fitzpatrick, R. v.	1132
Flanagan, Ex parte	766
Flannagan, Ex parte	144, 297, 347, 380, 1191
Flannigan, R. v.	1241
Fleming, R. v.	1021
Fleming & Wallace, R. v.	1053
Flora, R. v.	1025
Flynn, R. v.	370, 580, 1251
Flynn (Daniel), R. v.	669
Foley, R. v.	1266
Fong Quing, etc., R. v.	833
Fong Soon, R. v.	85, 656
Fontaine, R. v.	166, 167, 408, 443, 495, 647
Ford, R. v.	133, 740
Ford, R. v.	1359
Forget v. Ostigny	575
Forgnes v. Gauvin	785, 1048
Forsythe, R. v.	179, 354
Forsyth v. Goden	104
Fortier, Ex parte	153
Fortier, R. v.	579
Foster, R. v.	202, 777, 935
Foulkes, R. v.	1149
Fouquet, R. v.	660, 961, 975

Fou.-Geo.] Column

Fournier, Re 639
Fournier, R. v. 339, 1051, 1361
Fournier v. Attorney-General 46, 320, 868, 911
Fox, R. v. 449, 835
Frain, R. v. 1115
France, R. v. 361, 365, 577, 684, 709
Francy, R. v. 866, 1164
Frank, R. v. 358, 490
Frankforth, R. v. 1168
Fraser, R. v. .. 49, 263, 631, 826, 1051, 1072, 1319
Frawley, R. v. 191, 279, 690, 837, 1063
Frazer v. Soy 122
Frecker, Ex parte 104, 606, 753
Freeman, R. v. 576
Frejd, R. v. 627
French, R. v. 13
Friel v. Ferguson 109, 242, 243, 700
Frizell, R. v. 1072
Fuerst, R. v. 635, 1265
Fulton, R. v. 691, 1301
Fulton v. James 646

Gaffin, R. v. 887, 1019
Gage, R. v. 451, 639, 1221, 1325
Gagnon v. The King 680
Gainor, R. v. 231
Gale, Ex parte 1018
Gallagher, Ex parte .. 380, 381, 756, 860, 863, 1183, 1184
Gallagher, R. v. 213
Gallagher v. Vennesland 52
Galloway, R. v. 563, 863, 911
Gamble-Robinson Trust Co., R. v. .. 26
Ganes et al., R. v. 126
Garland, Ex parte 1034, 1089
Garneau, R. v. 405, 414, 660
Garner v. Coleman 239
Garnham, Re 1001
Garrow, R. v. 5
Garten, R. v. 546
Gartshore, R. v. 316
Garvin, R. v. 271
Gates v. Devenish 244
Gates (Horace D), Re 514
Gates v. Renner 50
Gaul, R. v. 131
Gaul v. Ellice 288, 332, 1209
Gauthier, R. v. 1093
Gauthreaux's Bail, Re 396
Gavin, R. v. 656, 657, 762, 1064, 1208
Gaynor, Ex parte 512
Gaynor & Greene, Ex parte 302
Gaynor & Greene, Re 44, 281, 516, 517, 518, 520
Geddes, R. v. 954
Geo (Michael), R. v. 23, 664
Gehrke, R. v. 207
Geiser, R. v. 202, 1159
Gelinas v. Jolin 340, 784
Geller v. Loughrin 309, 782
Gemmell, R. v. 542
Gentile, R. v. 161
Genz, R. v. 792
George, R. v. 1142
George (Arthur), R. v. 1304

Geo.-Gra.] Column

George v. The King 82, 1307
Georget, R. v. 69
Gerald, R. v. 34
Gerasse, R. v. 591
Gevry, Re 1211
Gibbons, R. v. 459, 787, 938, 1097, 1140, 1298
Gibbons v. Metcalf 279
Giberson, Ex parte 18, 32, 111, 213, 857, 871, 1205, 1275
Giberson, R. v. 1137
Gibson, R. v. 471, 497, 613, 750, 1095, 1116, 1235, 1324
Gibson (James), R. v. 1032, 1141
Gibson v. Adams 81
Giesinger, R. v. 1119
Gilbert, Ex parte 333, 1066
Gilbert, R. v. 63
Gilbert v. The King 450 732
Giles, R. v. 476, 573, 1097
Gill, R. v. 260, 711
Gillespie, R. v. 266, 267, 613, 1368
Gillis, R. v. 1020
Gilmore, R. v. 673
Ginsberg, Re 1378
Giovanetti, R. v. 858
Giroux, R. v. 1158
Giroux v. The King 102, 1157
Girard, R. v. 597
Girvin, R. v. 443, 564
Gladstone v. Dew 557
Glass, R. v. 1297
Glassey, R. v. 49, 272
Gloucester, R. v. 220
Glover v. Sam Kee 953
Glynn, R. v. 11, 1342
Gogan, Ex parte 221, 848
Golden, R. v. 439, 563, 1035
Goldsberry, Ex parte 207
Goldsberry, R. v. 619, 620
Gold Seal Co. v. Atty.-Gen'l 316
Goldstaub, R. v. 275, 568
Goodfellow, R. v. 282, 674
Goodman, Re 421, 532, 533
Goodman, R. v. 122, 1241
Goodspeed, Re 1048
Goodwin v. Hoffman 247, 1185
Gorbet, R. v. 595
Gordon, R. v. 1140
Gordon v. Denison 244
Gordon v. Dental College 349, 1072
Gorman, Ex parte 380, 657, 1208
Gosselin, R. v. 449
Gottfriedson, R. v. 154
Gottesman, Re 641
Gougen, Ex parte 1028
Gouillioud, R. v. 1050
Gould, R. v. 503, 559
Goulet, R. v. 621, 1039, 1193
Gourlay, R. v. 909
Governor of City Prison, R. v. 659
Gow, R. v. 259, 665
Goyer, R. v. 1031
Graf, R. v. 261, 441, 1256
Graham, R. v. 10, 41, 193, 194, 322, 328, 415, 473 704, 1079
Grand Trunk Ry. Co., R. v. .. 986, 955, 1076

Gra.-Han.] Column

Grant, R. v. 837
Grantillo v. Caporici 125
Grantyers, R. v. 477
Gratton, R. v. 1071
Graves, R. v.
32, 99, 625, 646, 736, 844, 874, 940, 966, 979, 980, 1196, 1230, 1358
Gray, R. v. 59
Great West Laundry Co., R. v. .. 268, 927
Green, Ex parte 659
Green, R. v. 67, 1361
Green v. Henneghan 1206
Green v. McLeod 404
Greene, Re 296, 1282
Greenwood, R. v. 136
Greer, R. v. 1096
Gregg, R. v. 19, 94, 1129
Greig, R. v. 161
Grenier, R. v. 897, 898, 1018
Grey, Ex parte 334, 1229
Grimmer, R. v. 750, 891
Grinder, R. v. 407, 643
Grobb, R. v. 463, 888
Gross & Miller, R. v. 92, 1329
Groulx, R. v. 675, 1084
Groulx v. Sicotte 55, 1220
Grundy, Ex parte 113, 1181
Guay, R. v. 420, 1155
Guerin, R. v. 408
Guertin, R. v. 712
Guillet v. The King 1308
Guilmette, R. v. 360
Gulex, R. v. 820
Gunder, R. v. 439
Gunn, R. v. 788
Gurofsky, R. v. 548
Gusetu, Re 636

H— v. H. 649
Hackam, R. v. 231, 340
Hagel & Westlake, R. v. 1375
Hagerman, R. v. 477, 557
Haines, R. v. 1241
Halifax Electric Light Co., R. v. .. 267, 295
Hall, Re 503, 505, 555, 611, 1107
Hall, R. v. 154, 394, 537, 639, 753, 860
Hall v. Pettingell 145, 1176
Ham, R. v. 593
Hambly, R. v. 479
Hamelin, R. v. 114
Hamilton, R. v.
3, 5, 101, 102, 137, 352, 397, 416, 483, 554, 670, 952, 972, 1098, 1316
Hamilton (Alexander), R. v. 151
Hamilton v. Calder 241, 1112, 1333
Hamilton v. Massie et al. 108
Hamlink, R. v. .. 64, 89, 335, 412, 1059, 1179, 1229
Hammond, R. v. .. 322, 448, 646, 738, 1369
Hamren, R. v. 1282
Hanberg, R. v. 496, 1124
Haney v. Mead 1057
Hanley, R. v. 850, 1189
Hannay, R. v. 1036
Hannigan v. Burgess 757, 1216
Hanning, Ex parte 141, 672, 1032
Hanrahan, R. v. 578

Har.-Hir.] Column

Hardigan v. Graham 127
Hardy v. Lachance 724
Harkness, R. v. ... 10, 424, 581, 1103, 1348
Harper, Re 609
Harrington, R. v. 712, 868
Harris, Ex parte 209
Harris, Re 939
Harris, R. v.
21, 410, 422, 482, 883, 1097, 1132, 1193, 1236, 1260, 1349
Harrison, R. v. 98, 122, 536, 1149, 1157
Harron, R. v. 995
Harsha, Re 521, 522
Hart, R. v. 326, 378, 1366
Hartlen, R. v. 1042, 1341
Hartley, R. v. 826, 1220
Harty, R. v. 482, 542
Harvie, R. v. 48
Harvey, R. v. 475
Harwood v. Williamson 65
Hasha, Re 563
Hassal, R. v. 1317
Hatch, R. v. 135, 501, 1372
Hatt, R. v. 70, 645
Haverstock, R. v. 1109, 1303
Hawbolt, R. v. 86, 330, 765
Hawes, R. v. 74, 129, 1100
Hawkes (Jennie), R. v. 358, 727
Hawthorne, R. v. 778, 906
Hayes, R. v. 24, 202, 598, 599
Hayes v. Thompson 814, 947
Haynes, R. v. 737
Hays, R. v. 270
Hayward, R. v. 1305
Hazell, R. v. 816
Hazelwood, R. v. 632
Hazen, R. v. 708, 837
Hazza, R. v. 1291
Hebert v. Hebert 133, 1214
Hebert, Ex parte 198, 908, 1184
Hebert, R. v. 959, 1148
Heckman, R. v. 1018
Heffernan, R. v. 14, 1112
Helliwell, R. v. 588
Hendershott & Welter, R. v. .. 352, 404, 957
Henderson, R. v. 491, 564, 813
Hendrie, R. v. 10, 270, 582
Henry, R. v. 55, 637, 865, 1195
Herbert, Ex parte 1370
Herod, R. v. 457, 957
Herrell, R. v. .. 192, 197, 378, 809, 838, 1043, 1226
Hespeler v. Shaw 185, 1281
Hewa, R. v. 70
Hewitt v. Cane 916
Hewson, R. v. 796
Hicks (Roger), R. v. 631, 1264
Hickson, R. v. 904
Higgins, R. v. 132, 148, 740, 969, 1341
Hilchie, Ex parte 565, 1094
Hill, Ex parte 182
Hill, R. v. 406, 484
Himmelspach, R. v. 804
Hincks, R. v. 162, 970
Hing Hoy, R. v. 593
Hirondelle, R. v. 833
Hirschman v. Beal 1318

Hoa.-Hun.]	Column
Hoaglin, R. v.	1158
Hoare, R. v.	100, 221, 770, 795
Hodge, R. v.	8, 1084
Hoffman, R. v.	228, 820
Hogarth, R. v.	585, 1104, 1242
Hogg, R. v.	172
Hogle, R. v.	1302
Hogue, R. v.	360, 1340
Holderman, R. v.	546, 982
Holland, Re	921
Holland, R. v.	23, 295, 737
Holley, R. v.	1033, 1093
Hollingsworth, R. v.	1299
Holliwell, R. v.	1265
Holman & Rea, Re	1023, 1039, 1059
Holmes, R. v.	2, 482, 648, 673, 740, 859
Holmes & Brecken, R. v.	683
Holowaskawe, R. v.	1163
Holyoke, R. v.	217, 807, 1023, 1278
Honan, R. v.	422, 1263
Hong Guey, R. v.	914
Hong Lee, R. v.	261, 862
Hoodles, R. v.	1088
Hoolahan v. Malcpart	56, 629
Hoo Sam, R. v.	433, 735
Hoover v. Craig, etc.	1335
Hoo Yoke, R. v.	600, 674, 1050, 1118
Hope, R. v.	541
Hopkins v. Smith	232
Hopkinson v. Perdue	131, 485
Hoppe's Bail, Re	157
Hopper, Ex parte	751
Horning, R. v.	203, 647
Hornstein, R. v.	356
Horsman, Ex parte	211, 774, 1185
Horton, R. v.	614, 1065
Hoskins, Re	337
Hostetter, R. v.	130
Hostetter v. Thomas	59
Hostyn, R. v.	347, 1210
Houghston's Case	191
Houle, R. v.	142, 486, 676
House, R. v.	252
Houston, Re	317
Howard, Ex parte	750
Howard, R. v.	786
Howard v. Crangle, Ex parte	759
Howarth, R. v.	190, 293, 385, 409, 1328
Howe, R. v.	1106, 1155, 1266
Howell, R. v.	1257
Howes, R. v.	882, 1117
Howland, R. v. ex rel. Felitz	54
Howley, R. v.	1013, 1015
Hubbard, R. v.	687
Huber, R. v.	789
Hubley, R. v.	338, 1224
Huckle, R. v.	1049, 1130
Hudgins, R. v.	1275
Hudson Bay Co., R. v.	915
Hudson Bay Co. v. Dion	1047
Hudson Bay Co. v. Hefferman	316
Hughes, Ex parte	1138
Hughes, R. v.	46, 178, 194, 414, 691, 802, 856, 1074, 1336
Hulburt, R. v.	195
Humphrey v. Archibald	456
Hung Gee, R. v.	217, 587

Hup.-Jun.]	Column
Huppel, R. v.	541
Hurd, R. v.	434, 1337
Hurley, R. v.	823
Hurst, R. v.	119, 275, 568
Hutchins, R. v.	170, 419
Hutton, R. v.	1314
Huyezink, R. v.	1314
Hyder, R. v.	985
Hyndman, R. v.	46, 139, 1197
Illsley, R. v.	548, 565
Iman Din, R. v.	83, 133, 343, 470, 1152
Ing Kon, R. v.	209, 822
Ing Kon v. Archibald	247, 334, 823, 1229
Ingram, R. v.	172
Inkster, R. v.	453, 983
Irish, R. v.	818
Irvine, R. v.	171, 1328
Irwing, R. v.	15, 1169
Iwanachuk, R. v.	161
Ivy, R. v.	668, 916
Jack, R. v.	59, 997, 1027, 1060
Jackson, R. v.	95, 229, 428, 552, 635, 682, 1352
Jacobs, R. v.	77, 143
Jacobs (Agnus), R. v.	689
Jagat Singh, R. v.	984
James, R. v.	264, 386, 452, 569, 579, 642, 706, 1267, 1270
Jamieson, R. v.	326, 574
Jamieson & County of Lanark, Re	669
Janneau, R. v.	1222
Jenkins, R. v.	488, 976
Jennings, R. v.	101, 102, 413
Jerrett, R. v.	455, 1366
Jessamine, R. v.	726
Jewell, R. v.	1083
Jim, R. v.	571
Jodrey, R. v.	345, 355, 1147
John v. The Queen	1078
John Irwin Co., R. v.	910
Johnson, Ex parte	718
Johnson (Gertie), Re	369
Johnson, R. v.	39, 134, 145, 203, 357, 373, 590, 629, 630, 657, 913, 942, 1127, 1197, 1198, 1199, 1278, 1322, 1323, 1373
Johnson v. Allen	391
Johnson v. Attorney-General	155
Johnson & Carey, R. v.	26
Johnson v. Musselman	36
Johnston, Re	522, 563
Johnston, R. v.	62, 65, 83, 281, 585, 658, 742, 770, 885, 914, 1002
Johnston v. Atty.-Gen'l	1129
Johnston v. MacDougall	98, 867, 1114
Johnston v. O'Reilly	207, 1182
Johnston v. Robertson	246, 623, 1068
Jones, Ex parte	378
Jones, R. v.	214, 336, 478, 731, 881
Jordan, R. v.	59, 773, 1045, 1088
Jordan v. McDonald	245
Joseph, R. v.	58, 60, 1089
Jourdan, R. v.	661
Jousseau, R. v.	374
Judge (Michael), R. v.	1015
Jung Lee, R. v.	587, 1264

Jos.-Kuz.] Column

Jun Goon, R. v. 101, 343, 1156
Justices of Queens, R. v. 838

Kalabeen, R. v. 425
Kalke, Ex parte 623
Kalke, Re 488, 522
Kallas, R. v. 802
Kane, Ex parte 135, 223, 876, 1279
Kane, R. v. 931
Karn, R. v. 5, 177, 739, 743, 1102
Karp, R. v. 1319
Kaulbach, R. v. 792
Kavanaugh, Ex parte 195, 764
Kavanagh, R. v. 342, 616, 1127
Kay, R. v. 113, 430, 960
Kearney & Denning, R. v. 1348
Keefer, R. v. 1142
Keeler, R. v. 147
Keenan, R. v. 217
Keeper of Halifax Jail, R. v. 642, 835
Keeping, R. v. 367, 614, 1246
Kehr, R. v. 12, 1113, 1343
Keirstead, R. v. 727, 1054
Keizer, R. v. 98, 116, 155, 677
Kelly, Re 129, 512
Kelly, R. v. 92, 126, 474, 533, 534, 599, 693, 694, 695, 903, 1109, 1317, 1339
Kelly & Glassey v. Scriven 797
Kempel, R. v. 12, 499
Kennedy, Re 1175, 1277
Kennedy, R. v. 720, 761
Kennedy v. Couillard 307, 348, 1286
Kennedy v. Kokoliades 307, 309, 1285
Kent, Ex parte 257
Kent v. Olds 57
Kerr, R. v. 65, 736
Kimbrough, R. v. 1319
King, The, v.—(Indexed under name of defendant).
King (J. W.), Re 329, 657
King, R. v. 58, 125, 253, 805
King (Charles), R. v. .. 406, 462, 961, 1095
Kingston v. Wallace 109, 708, 1334
Kinman, R. v. 135, 1153
Kirwin, R. v. 263, 1072
Klein, R. v. 1258
Klein v. Katz 918
Klemp, R. v. 377, 826
Kleparczuk, R. v. 985
Kneeland, R. v. 1347
Knight, R. v. 265
Knowles, R. v. 337, 373
Knowles & Wilson, R. v. 218
Kokoliades v. Kennedy 307, 309, 336, 1197, 1215, 1286
Kolember, R. v. 636, 875
Kolenczuk, R. v. 1352
Kolotyla, R. v. 214, 1350
Komiensky, R. v. 544, 1144
Kong, R. v. 435
Kong Wo, Re 1218
Koogo, R. v. 64, 845, 1177
Krafchenko, R. v. 453, 967
Kroesing, R. v. 943
Kurtemi, R. v. 797
Kuzin, R. v. 1376

Kwo.-LeC.] Column

Kwong Wo, Re 786
Kwong Yick Tai, R. v. 49, 875

Labbe, R. v. 46, 139, 411, 740
Labourdette, R. v. 696
Labrie, R. v. 21, 608
Lacasse v. Fortier 230, 1189
Lacelle, R. v. 30, 103, 1122, 1148
Lachance, R. v. 120, 692
Lackey, R. v. 126
Lackman, R. v. 567
Lacombe, R. v. 878
Lacombe v. Lachine 120
Laconte, R. v. 371
Lacroix, Re 1192
Laderoute, R. v. 820
Ladleur v. Vallee 262, 872
Laing Packing, etc. Co. v. Duval .. 313, 633
Lai Ping, R. v. 96, 429, 991
Laird, R. v. 29, 779, 1216
Laity, R. v. 314, 1286
Lake, Re 187
Lake, R. v. 706, 1028, 1372
Lalanne, R. v. 1097
Laliberte v. The Queen 454, 854, 1076
Lalonde, R. v. 11, 258, 347, 618, 884
Lalonde v. The King 1342
Lambert, Re 1282
Lambert, R. v. 785
Lamontagne v. Lanctot 717, 1278
Lamoreux, R. v. 647, 1084
Lamothe, R. v. 31, 372, 1256
Landry, Ex parte 185
Langlois, R. v. 48, 117, 587, 1200
Lant, R. v. 1105
Lapham, R. v. 501
Lapierre, R. v. 234, 669
Lapointe, R. v. 248, 719, 829, 1199
Laprise, R. v. 124
Larin v. Boyd 132
Lartie, R. v. 909, 1017
Lascelle & Wholehan, Re 52, 1028
Latimer, Re 520
Laughton, R. v. 311, 951
Laurin, R. v. 323, 354, 389, 461
Lautz, R. v. 1040
La Vesque, R. v. 998, 1116
Lavie v. Hill 824
Lavin, R. v. 253
Lavoie, R. v. 385
Law, R. v. 222, 465, 900, 1268
Law Bow, R. v. 1210, 1226
Lawlor, R. v. 224
Lawrence, R. v. .. 153, 289, 1018, 1140, 1368
Lawson, R. v. 596
Lazier, Re 509
Lazier, (M. B.), Re 561
Leach, R. v. 843, 1045, 1069, 1213
Leach and Fogarty, Re 47, 782
Learment, R. v. 779, 788
Leary, R. v. 942
LeBel, Ex parte 17, 306, 1173, 1277
Leblanc, Re 263, 345
Leblanc, R. v. 1088
Le Blanc, Ex parte 763
Le Blanc, R. v. 830, 882, 995, 1095
Le Clair, R. v. 799

Lec.-Lor.]	Column
Leclair, R. v.	648, 1074, 1347
Leclerc, R. v.	718
Leclerc v. Mart	135
Leconte, R. v.	135
Lecours v. Hurtubise	41
Le Dante, R. v.	738
Leduc, R. v.	35, 835
Lee, R. v.	594, 934, 1043, 1226, 1285
Lee Chu, R. v.	623, 1012
Lee Chung, R. v.	114, 1104
Lee Guey, R. v.	584, 742, 1254
Lee Him, Re	654, 922
Lee How, R. v.	344, 907
Lees, Ex parte	189, 317
Lee San, Re	653
Leeson, Ex parte	380
Leeson, R. v.	946
Leete, R. v.	1305
Lee Tuck, R. v.	1013
Lefebvre v. Knott	1325
Legere, Ex parte	1315
Leggatt v. Brown	273
Legros, R. v.	1011, 1068, 1255
Leitch, R. v.	819
Lemelin, R. v.	100, 686
Lennox, R. v.	699
Leonard v. Pelletier	204, 1348
Lepine, R. v.	353, 695
Leschinski, R. v.	626, 868, 1259
Letain, R. v.	475, 985
Letang, R. v.	543, 1099
Lethbridge, City of v. Hanson	229
Levecque, R. v.	1234, 1345
Leverton, R. v.	548, 688
Levesque, R. v.	1181
Levi, Re	506
Levine, R. v.	1352
Levinger, R. v.	292
Levy & Gray, R. v.	1319
Lew, R. v.	90
Lewis, Re	321, 430, 516
Lewis, R. v.	201, 710, 817, 928
Ley, R. v.	705, 745
Leys, R. v.	625
L'Heureux, R. v.	356, 1222
Lightburne, R. v.	296, 409, 803
Limerick, R. v.	718, 1041
Lindsay, Ex parte	773, 1017
Lindsay, R. v.	984
Liston, R. v.	21
Little, R. v.	34, 95, 195
Littlejohn, R. v.	1052
Livingstone v. Massey	1295
Lizotte, R. v.	113, 410, 703
Lloyd, R. v.	1077
Locke, R. v.	165
Lombard, R. v.	1046
Lonar, R. v.	1243
London, R. v.	989, 1056
Long, R. v.	233, 1101
Long (William), R. v.	1330
Longheed, R. v.	907, 1122
Lon Kai Long, Ex parte	253, 362
Lon Kai Long, R. v.	328
Lord's Day Act, Re	142, 685
Lorenz, Re	236, 515
Lorenzo, R. v.	16, 1171

Lor.-Mar.]	Column
Lorette, R. v.	956
Lorrain, R. v.	913
Lorrimer, R. v.	382, 410, 773, 861, 1184
Louie, R. v.	380
Louie Chong, R. v.	134
Loui Kai Long, Ex parte	357
Lovitt, R. v.	162, 487, 976
Lowery, R. v.	622
Luigi, R. v.	17, 1172
Lumgair, R. v.	451, 914
Lum Man Bow, R. v.	1085
Luparello, R. v.	982
Luttrell, R. v.	586, 1104
Lynch (Thomas), Re	260, 1182
Lynch-Staunton, R. v.	801
Lynn, R. v.	47, 676, 869, 1039, 1105, 1356, 1357
Lyon, R. v.	938, 1086
Lyons, R. v.	46, 138, 545, 769, 891, 1022, 1164, 1227
Mabee, R. v.	752
Mabey, R. v.	273
MacCaffery, R. v.	1100, 1300
Macdonald, Ex parte	255
MacDonald, R. v.	189, 200, 261, 428, 615, 625, 766, 1138, 1257
Macdougal, R. v.	411, 993
Macdougall, R. v.	675, 901
MacEwan v. Toronto Gen'l Trusts Co.	945
Machekequonable, R. v.	926
MacKay, R. v.	384, 1319
Mackay v. Hughes	324
Mackey, Re	640
Mackey, R. v.	265, 640, 681
Maclaren, R. v.	810
MacLean, R. v.	405, 407, 800, 887
Mack Sing, R. v.	70
Madden, Ex parte	114, 710, 1183
Madden (Robert), Re	326
Madden, R. v.	291
Magnolo, R. v.	564
Maguire, R. v.	148
Magyar, R. v.	390, 449, 961
Maher, R. v.	949
Mah Hung, R. v.	736, 889
Mah Kee, R. v.	370, 580
Mahoney v. Leschinski	815
Mah Sam, R. v.	586, 677, 1260
Maillaux, R. v.	447, 596, 738
Mainville, Ex parte	379, 857
Major, R. v.	378
Major v. McCraney	1162, 1299
Malcolm, R. v.	1334
Mali, R. v.	262, 411, 628, 1251, 1262
Malott, R. v.	1354
Malloy, R. v.	55, 296, 885
Malott, R. v.	289, 854
Mancion, R. v.	203, 1335
Manconi, R. v.	90, 973
Manning, R. v.	350
Manschrick, R. v.	1119
Manzi, R. v.	1188
Marceau, R. v.	373
Marcinko, R. v.	215, 373
Marcott, R. v.	565, 739
Marker, R. v.	52

Mar.-McD.] Column

Marquis, R. v. 204, 1251
Marsa, R. v. 313
Marsh, R. v. 757
Marshall, R. v. 22, 76
Marsil v. Lanctot 719, 923, 968, 1027
Martel, R. v. 547
Martin, Re 514
Martin, R. v. 300, 361, 438, 665, 709, 732, 796, 912, 922, 1095, 1133, 1312
Martin v. Fournier 339
Martin & Garlow, Re 1090
Martinello & Co. v. McCormick 825
Martinuik, R. v. 433, 1025
Mason (David), Ex parte 40
Mason, R. v. 149, 273, 390, 499, 689, 940, 1006, 1021
Massey, R. v. 1293
Massey-Harris Co., R. v. 270, 301
Matheson, Ex parte 846
Matheson, R. v. 823, 830, 898, 1199
Mathurin, R. v. 598, 886
Maurfina v. Sauve 112
May, R. v. 154, 737, 982
Mayer v. Vaughan 1029, 1030, 1112
McAdam, Ex parte 1188
McAllan, R. v. 186
McAllister, R. v. 741, 810, 1374
McAnn, R. v. 197, 329, 1065
McArthur, R. v. 335, 1169
McArthur's Bail, Re 151, 398
McAuley, R. v. 1061
McAuliffe, R. v. 662, 677, 1019
McBerny, R. v. 738, 1141
McBride, R. v. 483
McCabe, R. v. 93, 1177
McCafferty, R. v. 426
McCarthy, R. v. 139
McCatherin v. James 118
McClain, R. v. 358, 413, 1105, 1376
McClair, R. v. 680
McCleary, Ex parte 815
McCleave, Ex parte 287, 381, 766
McCleave v. Moncton 288
McClements, Ex parte 606, 1206
McClung, R. v. 883
McColl, R. v. 1323
McCormack, R. v. 1348
McCorquindale, Ex parte 211, 1170
McCoy, Ex parte 762, 768
McGraw, R. v. 154, 975
McCraw v. The King 1372
McCready, Re 488, 523
McCullough, R. v. 409
McCumber & Doyle, Re 54
McCutcheon, R. v. 287, 993
McDermott, R. v. 68
McDevitt, R. v. 566, 743, 849
McDonald (David), Ex parte .. 1251, 1307
McDonald (Thomas), Re 329
McDonald (William), Re 702
McDonald, R. v. 91, 183, 261, 411, 454, 479, 480, 559, 560, 816, 830, 855, 998, 1137, 1273, 1315, 1334
McDonald (John), R. v. 254, 893
McDonald (Joseph), R. v. 658, 720
McDonald (Thomas), R. v. 1137
McDonald & Vanderberg, R. v. 498

McD.-McN.] Column

McDonald (William), R. v. 111
McDonald v. The King 359
McDougall (Alfred), R. v. 1145
McDougall (Donald), R. v. 599
McDowell, R. v. 480
McElderry, R. v. 963
McElligott, R. v. 127, 656
McElroy, R. v. 218, 1308
McEvoy, R. v. 799
McEwen, Ex parte 1205
McEwen, R. v. 76, 381, 802, 1254
McFarlane, R. v. 1225
McGarry, R. v. 822
McGillivray, Re 646, 1182
McGillivray v. Muir 500
McGivney, R. v. 494
McGrath, Ex parte 825
McGraw, R. v. 446
McGregor, R. v. 196, 206, 298, 347, 1222
McGuiness v. Dafoe 111
McGuire, Re 908
McGuire, R. v. 334, 407, 598, 1068, 1102, 1162, 1212
McHugh, R. v. 665
McIlroy, R. v. 979
McInroy, R. v. 321
McIntish, R. v. 234
McIntosh, R. v. 55, 93, 939, 1175
McIntosh v. The Queen 1304
McIntyre, Ex parte 217, 775, 864, 1195
McIntyre, R. v. .. 648, 814, 1002, 1046, 1099
McInulty, R. v. 495
McIver, R. v. 1066
McKay, R. v. 67, 213, 1304
McKeen v. Colpitts 1114
McKenzie, R. v. 39, 185, 208, 291, 386, 836, 869, 1186, 1212, 1227, 1272
McKenzie v. Gibson 103
McKenzie v. Mewburn 238, 240, 318
McKeown, R. v. 1358
McKinley, R. v. 360
McKinnon, Ex parte 190
McKinnon, R. v. 771, 907, 1211
McKinnon (Sarah), Ex parte 762
McLatchy, R. v. 227
McLean, R. v. 111, 778, 1022, 1247
McLellan, R. v. 333, 1054, 1075, 1252, 1290, 1307
McLellan v. McKinnon 1217
McLennan, R. v. 44
McLeod, R. v. 7, 74, 81, 298, 327, 806, 859, 1086, 1253
McLinehy, R. v. 1369
McMahon, R. v. 444
McManus, Ex parte 109, 749
McManus, R. v. 1190
McMichael, Ex parte 112
McMichael, R. v. 12, 285, 1327
McMicken, Re 344, 1023, 1336
McMullin, R. v. 768
McMurrer, Re 116, 262, 626, 869
McMurrer, R. v. 47, 362, 781
McMurrer v. Jenkins 47
McNamara, R. v. 458, 532, 889
McNevin, R. v. 558
McNulty, Re 467, 735, 964

McN.-Mon.] Column

McNutt, Re 56, 312, 791
McNutt, R. v. 81, 701, 788, 789, 846
McPherson, R. v. 221, 795
McQuiggan, R. v. 166, 681
McShadden v. Lachance 59, 331
McSloy, R. v. 937
McTier, Re 524
Mecceklette, R. v. 623, 747, 1194
Medres v. The King 1316
Meehan, R. v. 921, 1034, 1363
Meikle, R. v. 1111
Meikleham, R. v. 207, 818, 1181
Melanson, Ex parte 772, 1182, 1275
Mellon, R. v. 664
Meloche v. Deguire 232
Melvin, R. v. 797
Menard, R. v. 731, 1306
Menary, R. v. 133, 735, 827
Mennel, R. v. 940
Mercier, R. v. 176, 201, 371, 372, 1038, 1347
Mercier v. Plamondon 201
Meriden Brittania Co. v. Walters 321
Merker & Daniels, R. v. 592
Messenger v. Parker 1191, 1367
Metropole Co. v. Recorder's Court ... 786
Meyer v. Vaughan 112
Meyers, R. v. 3, 948
Meyers & Wonnacott, Re 39, 1057, 1363
Michael, Judge, R. v. 1015
Michaud, Ex parte 380
Michaud, R. v. 676, 735, 1075
Michigan Central R. R. Co., R. v. 271, 419, 1071
Milford, R. v. 565
Milkins, R. v. 790, 866, 1228
Miller, R. v. 16, 94, 120, 339, 624, 862, 1073, 1184
Miller v. Lea 128
Minchin, R. v. 57, 472, 473
Minchin v. The King 1313
Mines, R. v. 1032, 1167
Minister of Inland Revenue v. Thornton 52, 723
Miranda, Ex parte 219
Mischowsky, R. v. 82
Misse, R. v. 1349
Mitchell, Ex parte 775, 1172
Mitchell, R. v. 145, 627, 894, 1178, 1278
Mitchell & West, R. v. 1014
Moisan, R. v. 553
Moke, R. v. 425, 967, 1340
Molleur, R. v. 900, 975
Monaghan, R. v. 197
Monahan, Ex parte 213, 776, 819, 867, 1174
Monahan, R. v. 687
Mondelet, R. v. 3
Monkman, R. v. 996
Monsell, R. v. 566
Montgomery, R. v. 1311
Montminy, R. v. 357, 692
Montreal Bar Ass'n v. Dominion Mercantile Protective Ass'n 46, 1174
Montreal v. Fortier 947, 1282
Montreal v. Garon 948
Montreal v. Lacroix 248, 467

Mon.-Ner.] Column

Montreal v. Turgeon 955
Monvoisin, R. v. 156
Moodie, R. v. 176
Mooney, R. v. 1035, 1136
Moore, Re 524
Moore, R. v. 801, 848
Moras, R. v. 1010
Morencey, R. v. 642
Morgan, R. v. 138, 256, 556, 615, 638, 1132, 1139, 1246, 1247, 1268, 1302, 1344, 1367
Morgan v. McFee 274
Morin, R. v. 229, 681
Morin v. The Queen 1097
Morisette v. Parish of St. Francois Xavier 1094
Morison, Ex parte 212, 774
Morningstar, R. v. 246
Morris, R. v. 864, 1185, 1214
Morrison, R. v. 82, 683, 741, 985, 1016, 1228
Morrow, R. v. 697, 890, 1338, 1360
Morse, R. v. 13
Morton, R. v. 1026, 1131
Mortson, R. v. 185, 326
Mosier, R. v. 608, 856
Mott v. Mylne 239, 539
Mount (Charles), R. v. 811
Mousseau v. Montreal 103
Moylan, R. v. 903
Moylett, R. v. 584
Mullady and Donovan, R. v. 148
Mullen, R. v. 491, 885, 1082
Mulvihill, R. v. 19, 85, 1105, 1375
Muma, R. v. 468, 1081
Munro, R. v. 250, 363, 607
Munroe, R. v. 1046, 1351
Munson, R. v. 1001
Murchie, Ex parte 1062
Murdock, R. v. 30, 198, 614
Murphy, Ex parte 877
Murphy, Re 507, 613
Murphy, R. v. 94, 148
Murphy (Margaret), Re 655
Murrans, R. v. 839
Murray, R. v. 342, 358, 612, 645, 890
Murray & Fairbairn, R. v. 745, 973
Murray & Mahoney, Re 694
Murray & Mahoney, R. v. .. 475, 890 985, 1106, 1339
Murtagh, R. v. 43, 551
Muschik, Re 265
Myshrall, R. v. 23, 485

Nagazoa v. Niquet 1204
Naoum, R. v. 169, 441
Nar Singh, R. v. 861
Nash, R. v. 495, 1015
Nasmith, R. v. 647
Nazzareno, R. v. 802
Neiderstadt, R. v. 721, 789
Neigel, R. v. 1379
Neil v. McMillan 243
Neilson, R. v. 1136, 1163, 1175
Nelson, R. v. 16, 33, 36, 142, 210, 260, 351, 623, 996, 1130, 1168, 1170
Nerlich, R. v. 287

Ner.-Pac.]	Column
Nero, R. v.	793
Nesbitt, R. v.	531
Neuberger, R. v.	43, 1089, 1210
Nevills v. Ballard	127
Nevison, R. v.	343
Newcombe, R. v.	176, 1361
News Pulp & Paper Co., R. v.	1289
New Glasgow, Re	192
New York v. Israelowitz	536, 567
Nichols, R. v.	186
Nichol v. Pooley	899
Nicol, R. v.	497, 898, 899, 1355
Nier, R. v.	687, 992, 1016
Nimchonok, R. v.	1315
Nimmons, R. v.	643
Nisadaquis, Ex parte	338
Nixon, R. v.	42
Noel, R. v.	485
Nolan, R. v.	265, 799
Nova Scotia Pharmaceutical Soc. v. Riordan	386
Nova Scotia Temperance Act, Re	784
Nowe, R. v.	544
Nugent, Ex parte	192, 774, 1208, 1225
Nugent, R. v.	257, 461, 817, 1160
Nunn, Re	254
Nunn, R. v.	290, 1086
Nurse, R. v.	811, 840, 1235
Oberlander, R. v.	571, 911, 1185
O'Brien, Re	54, 1164, 1272
O'Brien, R. v.	221, 229
Ockerman, Re	507
O'Connor, R. v.	829, 908, 1232
O'Dea, R. v.	1111
O'Deal, R. v.	42
Odell, R. v.	1039, 1323
O'Donnell, Ex parte	256
O'Gorman, R. v.	285, 863, 911, 1150, 1355
O'Grady v. Wiseman,	346
O'Hara v. Dougherty	415, 915
O'Hearon, R. v.	112, 767
O'Kane, Ex parte	612, 1139
Oland, R. v.	780
O'Leary, R. v.	252, 854, 1167
O'Leary v. Therien	35
Olson v. Cameron	63, 1164
Oma, R. v.	27
O'Meara, R. v.	590
O'Neil, Ex parte	302, 780
O'Neil, R. v.	413, 984, 1338, 1341
O'Neil v. Carbonneau	641, 834
O'Neill, Re	163, 452, 528, 629, 1312
O'Neill v. Atty-Gen'l.	295, 346, 404, 481, 577
On Kee, R. v.	820
O'Regan, Ex parte	213, 1175, 1195, 1276
Organ, R. v.	1346
Orr, R. v.	855
Osberg, R. v.	369
Osborne, R. v.	575
O'Shaughnessy, Ex parte	662
O'Shaughnessy v. Montreal	204
O'Sullivan v. Michus	808
Ouimet, R. v.	45, 1283
Ouimet v. Bazin	312
Oxentine, R. v.	973
Oxley, R. v.	930
Pachal, R. v.	179, 1301

Pah.-Pik.]	Column
Pah-cah-pah-ne-capi, R. v.	429
Pahkala v. Hannuksela	66, 337, 1374
Pailleur, R. v.	489, 661
Paint (Ella), R. v.	824
Pagnet v. Lavoie	298
Paisley v. Nelmes	1000
Palagnio, R. v.	655
Palmer, R. v.	338, 794
Panos, R. v.	305, 1284
Papillo v. The King	118, 892
Paquet v. Lavoie	246
Paquin, R. v.	1098
Pare v. Recorder of Montreal	15, 1192
Pariseault, R. v.	564
Parke, Re	701, 1273
Parker, R. v.	557, 912
Parkinson, R. v.	539
Parsons v. Crabbe	246
Patchell, Ex parte	763
Patenaude v. Pacquet Co.	722
Patenaude v. Thivierge	721
Patterson, R. v.	29, 543, 670, 678, 684
Paul, R. v.	470, 713, 965, 1082, 1378
Paul (Baptiste), Re	630, 873, 1200
Paulin, Ex parte	122
Pawliski, R. v.	697
Paxton, R. v.	1096
Payne, R. v.	1041
Pearson, R. v.	945
Peart, R. v.	264
Peck, Ex parte	382, 865
Pelchat, Ex parte	223, 876
Pelkey, R. v.	930, 1053
Pelletier, R. v.	905
Pelley, R. v.	1204
Pelton, Re	312, 873, 1022
Pelton, R. v.	66
Pember, R. v.	951
People's Wine & Spirit Brokers, R. v.	808
Pepper, R. v.	712, 1350
Perley & Hartt, R. v.	755
Perras, R. v.	36, 1192
Perrault v. Montreal Harbour Com'rs	198
Perrin, R. v.	459, 1134, 1225
Perrin v. Joyce	109, 916
Perron, R. v.	224
Perron v. Senecal	1267
Perry, R. v.	1241, 1242
Pertella, R. v.	1104
Pescaro & Jim, R. v.	476
Peterman, R. v.	186
Peters, R. v.	394
Petersky, R. v.	253, 945, 1281
Peterson, R. v.	252, 496, 569, 1016
Petrie, R. v.	577, 1088, 1362
Pettibone R. v.	7
Pettipas, R. v.	98, 1290
Pfister, R. v.	19, 1177
Phillips, Ex parte	759, 1180
Phillips, R. v.	408, 1001, 1011, 1035, 1057
Phinney, R. v.	725, 975, 1101
Picard, R. v.	914, 1187
Piche, R. v.	234, 476
Pickard, R. v.	665
Pieco, R. v.	1125
Pierce, R. v.	97, 167, 303, 729, 910, 955, 956
Pike, R. v.	553

Pil.-Ran. **Column**

Pilgar, R. v. 56, 889
Pillow v. Montreal 289
Pippy, Re 399, 861
Pirie, Ex parte 834
Plante v. Cliche .. 712, 828, 846, 1201, 1215
Playter, R. v. 986, 1049
Plunket, Re 29, 193, 327
Poirier, R. v. 595
Pollard, R. v. 6, 122, 464, 976
Pollock, Ex parte 609
Pollock, R. v. 1329
Polsky, R. v. 998
Pomerleau, R. v. 798
Ponton, R. v. 1354, 1355
Pon Ying v. Edmonton 119
Pope, R. v. 1025, 1047
Popplewell, R. v. 1322
Porhorlink, R. v. 877
Portage la Prairie, R. v. 333, 644, 987
Porte, R. v. 1255
Porter, R. v. 171
Portis, R. v. 555
Port Perry & Whitby, R. v. 730, 974
Portugais, R. v. 42, 1247
Potter, R. v. 274, 805
Poulin, R. v. 940
Poulin v. Quebec 1068, 1212
Pouliot v. Descroiselles 894
Powell v. Hiltgen 107
Powell v. Williamson 108
Power, R. v. 88, 711, 893, 1161
Pownell, R. v. 821
Prasilosky, R. v. 624, 696, 1012, 1037
Preeper, R. v. 423, 882
Prentice, R. v. 546, 1376
Preston, R. v. 1147
Price & Burnett, R. v. 1154
Priest, R. v. 300
Priest v. McGuire 919
Pring v. Wyatt 1113
Proctor v. Parker 15, 1002
Prohibition Act, Re 317
Prokopate, R. v. 68, 1265
Provost, R. v. 548
Publicover, R. v. 793
Pudwell, R. v. 223, 1189
Pure Milk Corp., R. v. 954

Queen, The v. (Indexed under name of defendant)
Quick, R. v. 1285
Quinn, R. v.
14, 144, 1008, 1017, 1044, 1055, 1108, 1166, 1295
Quirk, Ex parte 184, 751
Quirk, R. v. 812
Quong Wing, R. v. 27, 315

Rabinovitch & Clingman, R. v. 1116
Racine, R. v. 42, 1244
Rae, R. v. 159
Raffenberg, R. v. 935
Rafuse, R. v. 170
Rahamat Ali, R. v. 419, 865, 866, 1257
Rahim (Hoessan), Re 872
Ramsay, R. v. 70, 190, 1270
Ramsay's Case, ... 667
Rand, R. v. 1187
Rand v. Rockwell 29, 78, 1271

Ran.-Rob. **Column**

Randolph, R. v. 658, 1242, 1243, 1301
Ranger, R. v. 475
Rapay, R. v. 484
Rapp, R. v. 1130
Ratz, R. v. 12, 980
Rawding, R. v. 1210
Ray, R. v. 166, 454, 920, 1206
Rayworth, Ex parte 328
Reddin, R. v. 145, 212
Redman, R. v. 800
Reedy, R. v. 304, 861, 1137
Regan, R. v. 1205, 1349
Regina v. .. (Indexed under name of defendant)
Regina (City) v. Sharley 311
Regina Trading Co., R. v. 909
Rehe, R. v. 1346
Reiben, Re 321
Reid, R. v. 65, 842, 1253
Reid v. Maybee 106
Reindeau, R. v. 1079, 1080, 1082
Reinhardt Salvador Brewing Co., R. v. 225
Remon, R. v. 364
Renaud, R. v. 211, 1214
Renaud's Application Re 824
Republic of France v. Peugnet .. 403, 527
Rex v. .. (Indexed under name of defendant)
Reynolds, R. v. 489, 645, 733
Rheaume v. Cliche 1204
Rice, R. v. 95, 959, 1359
Richard, Ex parte .. 34, 224, 264, 722, 848, 1187, 1202
Richard, R. v. 544, 582
Richard (Placide), Re 621, 771, 1002
Richard v. Goulet 697, 918
Richard v. The King 1320
Richardson, R. v. 188, 377, 816, 1240
Richardson v. Beamish 174, 175
Richardson v. Gilbertson 174
Richmond, R. v. 1189
Riddell, R. v. 83, 310, 773, 782, 800
Ridenbaugh, R. v. 1249
Riel, R. v. 72, 81, 293, 294, 856, 1330
Riepelle v. Desrosiers 1234
Riley, R. v. 591, 1069, 1347
Rines, R. v. 188
Riopel, R. v. 1079
Rioux, R. v. 1124
Ripplinger, R. v. 1310
Rispa, R. v. 359
Ritchie, R. v. 1086
Ritter, R. v. 1126
Rivet v. The King 474, 1106, 1338
Roach, R. v. 337, 1238, 1337
Robert, R. v. 262, 697, 1037
Roberts, R. v. 1246
Robertson, R. v. 51
Robertson v. McAllister 140, 1179
Robichaud v. LeBlanc 1021
Robidoux, R. v. 1064
Robin v. McMahon 323
Robinet, R. v. 196
Robinson, R. v. 393, 621, 648, 915, 1110
Robinson v. District of Saanich & Aikman 48, 157, 336
Robinson v. Morris 1131

Rob.-Sca.]	Column
Robinson v. Regimbal	627, 655, 871
Robitaille v. Mason & Young	106, 856
Roblin, R. v.	359
Roche, R. v.	330, 946
Rodney, R. v.	437
Rodrigue, R. v.	113
Rogers, Ex parte	828
Rogers, R. v.	277, 789, 1336, 1371
Roher, R. v.	165
Rollings, R. v.	567
Rolston v. James	118
Romano, R. v.	983
Romans, R. v.	1123
Romer, R. v.	348, 745, 1202, 1266
Romp, R. v.	426
Rondeau, R. v.	75, 205, 935
Rosarri, R. v.	820
Rosca, R. v.	124
Rose, R. v.	810
Rose v. Collison	585
Rosen, R. v.	1377
Rosenberg, Re	536, 641
Roske & Messenger, Re	937
Roso, R. v.	468
Ross, Ex parte	193
Ross, R. v.	969, 1003, 1096
Ross (William), Re	604
Rossi, R. v.	432
Rouleau, R. v.	1038
Rousseau, R. v.	1365
Row, R. v.	1005
Rowe, R. v.	562, 570
Rowens, R. v.	160
Rowluk, R. v.	1131
Roy, Ex parte	208, 860
Roy, R. v.	366, 666, 1356
Royds, R. v.	430
Royston, Re	31, 523, 624
Rudland, R. v.	522, 623
Rudolph, R. v.	845, 1070
Ruggles, Re	199
Rulofson, R. v.	1012
Rush & Bobcaygeon Corp., Re	86, 920
Rusko, R. v.	230
Russell, R. v.	582, 721, 1021, 1353
Ruthven, Re	150, 1006
Ruttka, R. v.	231
Ryan, Ex parte	182, 380
Ryan, R. v.	172, 430, 1030, 1307
Ryer & Plows, Re	920, 1221
Rymal, R. v.	540
Sabeans, R. v.	112
Sabine, R. v.	1283
Sadick Bay, R. v.	6
Sala, R. v.	584
Salhani, Re	1364
Sam Chak, R. v.	97, 653
Sam Jon, R. v.	179, 746
Sam Sing, R. v.	177
Sanderson, R. v.	252, 608, 760, 931
Sands, R. v.	374, 496, 637
Sarault, Re	725, 1035
Sauer, R. v.	813
Saunders, R. v.	391, 577, 583
Savaria v. Geoffrion	955
Savoy, Ex parte	306
Scaife, Re	317

Sca.-Sin.]	Column
Scales & Roberts, R. v.	956
Scaynetti, R. v.	832
Schaefer, Re	1332
Scheller, R. v.	495
Scherf, R. v.	733
Schilling, R. v.	33, 350, 659
Schofield & Toronto, Re	1050
Schooley, R. v.	798
Schurman, R. v.	981, 1083
Schuster, R. v.	301, 948
Schwab, R. v.	1308
Scott, R. v.	6, 415, 783, 820
Scott (Martha), R. v.	465, 963
Scott v. Harris	919
Scottstown v. Beauchesne	38
Scribner, Ex parte	376
Scully, R. v.	1092
Seager, R. v.	139, 465
Seddons, R. v.	481, 969, 973
Seeley, Ex parte	860, 1254
Seeley, Re	861, 1256
Seely v. Dalton	572
See Woo, R. v.	466, 585
Seguin, R. v.	80
Seitz, Ex parte	508, 509
Selig, Ex parte	213, 1311
Sellars, R. v.	168, 903
Seneeal, R. v.	720
Seriesky, Ex parte	164, 216, 632, 1023
Sessenwein v. Palmer	951
Shaak, R. v.	375
Shajoo Ram, R. v.	992
Shand, R. v.	995
Sharley, R. v.	952
Sharp (Albert), R. v.	853
Sharpe, R. v.	870, 1260
Shatford, R. v.	34, 165, 340, 849
Shaw, R. v.	291, 316, 741
Shayanez, R. v.	1338
Shea, R. v.	13
Sheehan, R. v.	295, 883, 1349
Shepherd, R. v.	369, 1248
Sheran, Re	409, 932
Shing, R. v.	1071, 1259
Shortall, R. v.	1083
Shuttleworth, R. v.	393
Shyffer, R. v.	115, 1311
Sidney, R. v.	237, 651
Sifton v. Brunet	1379
Sigurdson, Re	70, 91, 1061
Silverman, R. v.	171, 1103, 1372
Simington v. Colbourne	42, 809
Simmonds, R. v.	803, 842
Simmons, R. v.	1213
Simpson, Ex parte	642, 835, 1271
Simpson, R. v.	532
Simpson Co., R. v.	74
Simpson v. Lock	1159
Simpson v. Proestler	1286
Simulauk, R. v.	794
Sinclair, R. v.	228, 283, 287, 1000, 1017, 1269, 1318
Sinden v. Brown	244, 1207
Sing, R. v.	1168
Sing Kee, Re	1362
Sing Kee, R. v.	79, 199, 1228
Sing Kee v. Johnston	946, 1282

Sin.-Sta.]	Column
Sinkolo, R. v.	832
Siteman, R. v.	1089, 1290
Skelton, R. v.	672, 1006
Skinner, R. v.	258, 619
Slavin, R. v.	974, 1305, 1331
Slaughtenwhite, R. v.	1359, 1386
Sleeth v. Hulbert	764, 1107, 1113
Sloan, R. v.	1111
Smallpiece, R. v.	579
Smith, R. v. .. 8, 17, 28, 44, 73, 104, 125, 175, 183, 261, 428, 445, 446, 488, 553, 591, 660, 666, 683, 781, 857, 879, 925, 929, 946, 1121, 1136, 1139, 1141, 1174, 1190, 1207, 1216, 1220, 1239, 1277, 1346	
Smith (A. N.), R. v.	225, 1204
Smith (Charles), R. v.	131
Smith (Sarah), R. v. .. 33, 329, 370, 398, 674, 1055, 1167, 1231	
Smith's (Sarah) Bail, Re	153, 894
Smith v. Galpin	792
Smith & Luther, R. v.	12, 468, 1343
Smitheman, R. v.	257, 1128, 1146
Snelgrove, R. v.	355, 742
Snyder, R. v.	139, 1332
Somers, R. v.	327, 1234, 1281
Sonier, Ex parte	194, 701
Sonyer, R. v.	428, 884
Soucie, R. v.	437, 684
Southwick v. Hare	238
Southwick v. Hare et al.	104
Sovereen, R. v.	678, 909, 1046, 1153
Spain, R. v.	437, 941, 1233
Sparham & Greaves, R. v.	388
Sparks, R. v.	952, 1059
Sparkes, R. v.	967
Spates, R. v.	1025
Speed, R. v.	712, 922
Spegelman, R. v.	580, 948
Spellman, R. v.	859
Spence, R. v.	694
Spera, R. v.	1125
Sperdakes, R. v.	1132, 1314
Spicer, R. v.	152, 928
Spiliotopulos v. The King	1289
Spintlum, R. v.	601, 1359
Spires, R. v.	1015
Spires v. Barrick	1125
Spooner, R. v.	366, 614, 1226
Sprague, Ex parte	61, 1089
Spray, R. v.	1124
Sproule, Re	603
Sproule, R. v.	376, 377, 761, 1171, 1270
Spuzzum, R. v.	450, 1081
St. Armand, R. v.	717
St. Clair, R. v.	365, 994, 1245
St. Denis, R. v.	602, 1085
St. Louis, R. v.	327, 328, 701
St. Onge, Ex parte	222
St. Pierre, R. v.	200, 285, 491, 947
Stackhouse, R. v.	394
Stadium The, R. v.	1287
Stafford, R. v.	364, 656, 1064
Staggs, Re	632
Staggs (William), Re ..	471, 531, 545, 715
Stallan, R. v.	151
Stanbro, R. v.	476

Sta.-Teb.]	Column
Standard Soap Co., R. v.	270
Stanhope, R. v.	146
Stark, R. v.	1261
Starkey, R. v.	79, 141, 187, 326, 327, 700
Starr, R. v.	905, 1298
Stather, Ex parte	605
Stauffer, R. v.	419, 1357
Stearns v. Avery	944
Steckley, R. v.	896
Steele, R. v.	379, 558
Steele v. Maber	1052
Steeves, Ex parte	210, 419, 1195
Steeves, R. v.	221, 264
Steffoff, R. v.	432
Stenhouse, Re	237
Stephenson, R. v.	830
Stern, Re	512
Sternaman, R. v.	738, 974
Stevens, R. v.	839, 1090
Stewart, Ex parte	834
Stewart, R. v.	151, 556, 864, 1151
Stewart et al., R. v.	391
Stewart v. Thorpe	944
Stickler, R. v.	32, 865, 1151
Stinson, R. v.	1283
Stinson & Medical Council, Re	936
Stitt, R. v.	4
Stoddard, R. v.	930
Stoddard v. Prentice	319
Stokes, R. v.	1048
Stone, R. v.	294, 376, 525, 526, 784
Stone v. Valee	117, 526
Stone v. World Newspaper Co.	905
Strachan, R. v. ..	183, 351, 778, 1165, 1367
Strang v. Gellatly	81
Strang & Co. v. McEwen & Graber ..	800
Stratford Turf Ass'n v. Fitch	574
Strauss, R. v.	497, 570
Strong, R. v.	21, 276, 1134
Stubbs, R. v.	588, 589
Suck Sin, R. v.	117, 383, 828, 1058
Sullivan, R. v.	160, 338
Sunday Laws, Re	290, 1280
Sunfield, R. v.	390, 976
Superior v. Montreal	41
Swann, R. v.	768
Swarts, R. v.	784
Sweeney, R. v.	872, 1198
Swett, R. v.	219, 636, 1020
Swyryda, R. v.	733
Sylvester, R. v.	747, 1153
Tait, Ex parte	858
Talbott's Bail, Re	397, 1087
Tally, R. v.	20, 716, 717, 1027
Tamblyn v. Westcott	420, 918
Tanghe, R. v.	203
Tanghe v. Morgan	917
Tano, R. v.	305
Tansley, R. v.	98, 421, 850
Taylor, Ex parte	550, 607
Taylor, R. v. ..	137, 151, 393, 685, 875, 1046, 1302
Taylor v. McCullough	241
Taylor v. Scott	604
Teasdale, R. v.	45, 441, 844
Tebo, R. v.	942, 1219

Tee.-Tut.]	Column
Teed, Ex parte	831
Telford, R. v.	461, 929
Tessier, R. v.	1302
Tetreault, R. v.	658, 1151
Thaw (Harry K.), Ex parte	634, 635
Thaw, Re	26
Theal v. Queen	457, 688
Theriault, Ex parte	229
Theriault, R. v.	926, 1098, 1306
Therrien, R. v.	638, 1156, 1157
Therrien v. McEachern	855
Thickens, R. v.	1009
Thomas, Ex parte	422, 535
Thompson, R. v.	114, 143, 218, 227, 361, 745, 832, 862, 1006, 1036, 1150, 1287, 1313
Thompson v. Desnoyers	111, 921
Thompson & Smallpiece, R. v.	902
Thomson v. Wishart	232
Thorburn, R. v.	783
Thornton, R. v.	62, 639, 876
Thurstan, R. v.	600
Tidering, Re	527
Tiderington, Re	48
Tierney, Ex parte	1213
Tierney, R. v.	341, 700, 1069
Tierney v. Choquet	209, 1118
Tisdale, R. v.	499
Titchmarsh, R. v.	219, 1054
Tobin, Ex parte	1063
Todd, R. v.	429, 550
Toland, R. v.	292
Tompkins, Ex parte	30
Topple, R. v.	1297
Toronto R'way Co., R. v.	267, 268, 308, 316, 672, 691, 986, 987, 989, 990, 991, 1133
Toto, R. v.	97
Townsend, R. v.	43, 97, 269, 259, 334, 551, 597, 671, 770, 772, 859, 1090
Townsend v. Beckwith	247, 772
Townshend, R. v.	43, 1159
Toy Moon, R. v.	586, 1229
Trainor, R. v.	688, 1120
Trapnell, R. v.	394, 725
Traves, Re	206
Traynor, R. v.	353, 1032
Treadwell, R. v.	601
Treanor, R. v.	348, 719
Trefry, R. v.	461
Tremblay, Ex parte	616
Tremblay, R. v.	1017, 1091
Tremblay v. Quebec.	288, 306, 950, 1029, 1284
Trepanier, R. v.	434, 1100, 1142
Trepanier v. The King	888, 965
Trevane, R. v.	355
Triganzie, R. v.	125, 456
Troop, R. v.	54, 423, 448, 482
Trottier, R. v.	67, 118, 923, 1091
Tschetter, R. v.	1318
Tucker, R. v.	62, 1211
Tuke, R. v.	558
Tunnheim, R. v.	802
Tupper, R. v.	663
Turnbull, R. v.	76, 1069, 1090
Turpin, R. v.	691, 886
Tuttle v. McDonald	326, 891

Tut.-Wal.]	Column
Tutty, R. v.	438, 562, 1102, 1147
Twiss v. Curry	134
Tystad, R. v.	1230
Ullrick v. Daum	73
Unger, R. v.	1304
Union Colliery Co., R. v.	268, 927
United States v. Browne	23, 521, 620
United States v. Ford	533, 564
United States v. Gaynor	281, 516
United States v. Jackson	534
United States v. Tounder	532
United States v. Webber	424, 493, 530, 630, 728
United States v. Weiss	513
United States v. Wrenn	434, 531, 851
Upton, R. v.	124
Upton v. Brown	84, 313
Urquhart, R. v.	81, 1192, 1281
Vachon, R. v.	550
Vahey, R. v.	1121
Valade, R. v.	931
Valleau, R. v.	934
VanAerman, R. v.	147
Van Buskirk, Ex parte	1222
Vancini, Ex parte	1249
Vancini, Re	300, 1250
Van Fleet, R. v.	834, 850, 1233
Van Horst, R. v.	435
Van Koolberger, R. v.	1258
Van Meter, R. v.	439
Vantassel, R. v.	331, 1209
Van Zyl, R. v.	464, 844
Venot, R. v.	617
Ventricini, R. v.	468, 735, 964
Verdi, R. v.	338, 813
Verdon, R. v.	840
Verral, R. v.	417
Verronneau v. The King	698
Vezina v. Brosseau	1298
Viau, R. v.	403, 425, 1367
Viau v. The Queen	55
Vici, R. v.	1116
Vincent & Fair, R. v.	157
Vissette, R. v.	35
Von Buskirk, Ex parte	381
Wagner, Re	717, 937
Wagner, R. v.	543
Wah Kie v. Calgary, etc.	588
Wah Kie v. Cuddy	1115
Wakelyn, R. v.	494
Waldon, R. v.	314, 1287
Walebek, R. v.	179, 748
Walkem, R. v.	11, 1104
Walker, Ex parte	344, 774
Walker, R. v.	305, 408, 420, 466, 553, 734, 875, 894, 895, 963, 977, 1121
Walkner, R. v.	747
Wallace (Margaret), Ex parte	376
Wallace (William), Ex parte	376
Wallace, R. v.	406, 436, 449, 681, 758, 772, 852, 1233, 1312
Waller, R. v.	51
Walsh, Re	1154
Walsh, et al., Re	656

Wal.-Wig.]	Column
Walsh, R. v. .. 67, 277, 299, 755, 776, 787, 813, 1239, 1250	
Walsh & Crane, R. v.	1287
Walsh v. Frederick	574
Walton, R. v. .. 259, 600, 619, 1093	
Wambolt, R. v.	908, 1169
Ward, R. v.	182, 1155
Warilow, R. v.	418, 1194
Warne Drug Co., R. v.	230
Warren, R. v.	163, 364
Washington, Ex parte	313
Washington, R. v. .. 40, 182, 295, 479, 880	
Wasyl Kapij, R. v. .. 385, 696, 1360	
Watchman, R. v.	220, 1313
Watier, R. v.	943
Watson, R. v.	644
Watt, R. v.	725
Watts, Re	152
Watts, R. v.	511
Weatheral, R. v.	307, 1161
Webb, R. v.	442, 981
Webber, Re	117, 529
Weber, R. v.	227
Webster, R. v.	1251
Wehlan, R. v.	607
Weidman v. Shragge	286
Weinstein, R. v.	4
Weir, Re	351, 481, 503, 852
Weir, R. v. .. 162, 405, 561, 562, 671, 685, 695, 884, 1133	
Weiss, R. v.	679, 680
Weiss & Williams, R. v. .. 146, 218, 633, 1040	
Welford, R. v.	810
Wellman, R. v.	210, 842
Wells, R. v.	305, 308, 863, 871
Welsh, Ex parte	254, 938
Wener, R. v.	1143
Wentworth v. Mathieu	710, 1066
Werner, R. v.	1019
West, R. v.	1179, 1268
Western Wine & Liquor Co., R. v. ..	801
Whalen, Ex parte	755
Whelan, R. v.	934, 1167
Whelan v. The Queen	853, 879
Whiffin, R. v.	330, 1192
Whistnant, R. v.	413
Whitaker, R. v.	182, 945
White, Ex parte	763
White, Re	755
White, R. v. .. 50, 64, 431, 1132, 1166, 1187, 1221, 1267, 1280	
White (Patrick), R. v.	614, 1300
White v. Cavanagh	832
White v. Dunning	119, 706
White v. Hamm	240
White v. Leek	336, 806
White & Perry, R. v.	188
Whiteside, Re	321
Whiteside, R. v.	618
Whiting, R. v.	1069
Whitta, Re	532
Whitting, R. v.	772
Wightman, R. v.	1108
Wigman, R. v.	238

Wil.-Zin.]	Column
Wildfong & Lang, R. v.	1052
Wilkes, R. v.	649
Wilkinson, R. v.	317, 729, 902
Williams v. Robinson	241
Williams, R. v. .. 364, 495, 795, 805, 1070, 1099, 1138, 1252	
Williamson, R. v.	76
Willis, Ex parte	824, 1116
Willis, R. v.	795
Willis & Pople, R. v.	19, 1336
Willson, R. v.	640
Wilson, Ex parte .. 38, 211, 383, 1063, 1114, 1170, 1137	
Wilson, R. v. .. 20, 91, 286, 339, 453, 567, 692, 904, 930, 980, 992, 1267	
Wilson (Warren), R. v.	499
Wing, R. v.	1055
Wing v. Sicotte	206, 780
Wing Toy, Re	653
Winslow, R. v.	1020, 1300
Wipper, R. v.	15, 765
Wirth, R. v.	41
Wishart, R. v.	116, 570
Wolfe, R. v.	649
Wong On, R. v. .. 461, 485, 731, 746, 747	
Wood, R. v.	650
Woodlock, R. v.	490, 776
Woodroof, R. v.	357, 384
Woods, R. v.	168, 388, 1098
Woodstock Electric Light Co., Ex parte	269
Woodworth, R. v.	632
Woodyatt, R. v.	197
Woollatt, R. v.	950
Workman v. Montreal	949
World Newspaper Co., R. v.	1288
Worrell, Re	1266
Wright, R. v. .. 102, 349, 620, 685, 819, 1128, 1135	
Wung Tun, R. v.	924
Wyman, Ex parte	1365
Wyse, R. v.	481, 1121
Yaldon, R. v.	304, 1010
Yancey, R. v.	296, 884
Yates, Ex parte	236, 258
Yates, R. v.	644
Yee (Charlie), R. v.	593
Yee Mock, R. v.	1014
Ying Foy, Re	16, 1036
Yorkema, R. v.	2
Young, Ex parte	1208
Young, R. v. .. 151, 259, 368, 372, 398 723, 899, 1050, 1234	
Young (Hope), R. v.	439
Young v. Carter	136
Young Kee, R. v.	121, 147
Youngs, R. v.	171
Yuman, R. v.	469, 650
Zarkes, R. v.	161
Zdrahal v. Shatney	80, 493, 650, 932
Zickrick, R. v.	200, 1274
Zinck, R. v.	134, 1110

CANADIAN CRIMINAL LAW DIGEST

ABATEMENT.

DEATH OF INFORMANT; APPEAL PENDING.

An appeal under Cr. Code, sec. 880, to the General Sessions does not abate by the death of the informant. R. v. Fitzgerald, 1 Can. Cr. Cas. 420.

DEATH OF INFORMANT; CERTIORARI PROCEEDINGS.

Where an order nisi to quash a conviction has been issued, but before service of same upon the informant (prosecutor) the latter died, the proceedings do not lapse and can be properly continued by serving the magistrates. Ibid., 1 Can. Cr. Cas. 420.

ABDUCTION.

"Against the will of" parent. 1 Can. Cr. Cas. 286.

Evidence of persuasion. 1 Can. Cr. Cas. 284.

LOCALITY OF CRIME; FOREIGN RESIDENCE; RENUNCIATION OF PARENT'S PROTECTION.

When a girl who was resident with her father in a foreign country left without his consent and with intent to renounce his protection, and came to Canada, the father's possession ceased, and, semble, a possession de jure afterwards established by his following her to the place of flight is not the possession contemplated by Cr. Code, sec. 283. R. v. Blythe, 1 Can. Cr. Cas. 263.

[Distinguished in R. v. Yorkema, 16 Can. Cr. Cas. 192, 21 O.L.R. 193; followed in Re Gertie Johnson, 8 Can. Cr. Cas. 243.]

POSSESSION DE FACTO; CR. CODE, sec. 283.

To constitute the crime of abducting a girl out of the possession of and against the will of her father under Cr. Code, sec. 283, there must be an actual or constructive possession, de facto, in the father at the time of the taking. Ibid., 1 Can. Cr. Cas. 263.

FRAUDULENT DETENTION OF WOMAN UNDER TWENTY-ONE WITH INTENT TO MARRY.

Evidence must be given on a prosecution under Code, sec. 314 as amended by the Code Amendment Act of 1909, to prove that a girl under twenty-one alleged to have been fraudulently detained against her parent's will with intent to marry her, is an heiress or is entitled to real or personal property within the terms of the statute; and such property interest must be alleged in an indictment or charge. The King v. Fielding, 14 Can. Cr. Cas. 486.

GIRL UNDER SIXTEEN; PARENTS LIVING APART; FATHER'S LEGAL CUSTODY OF CHILD; REMOVAL OF CHILD AT MOTHER'S INSTANCE.

(1) Where a girl under sixteen is boarding and attending school under her father's direction, and the mother is living at another city apart from the father as housekeeper for the person accused, the accused who with knowledge of the father's objection to his daughter visiting the home of the accused, where her mother and sisters were living, conveys her there with or without her consent is guilty of abduction under Code, sec. 315, if the father's presumptive control over the child as against the mother had not ceased. (2) It is not material that the mother consented to the accused bringing the daughter to her, if the girl was in the father's legal custody and was taken away against his will. (3) The offence of unlawful taking under Code, sec. 315 does not depend on mens rea and the object or intention with which the girl was taken is not material, where the objection of the person having lawful control over her is known to the accused. The King v. Holmes, 16 Can. Cr. Cas. 7.

[Followed in R. v. Yorkema, 16 Can. Cr. Cas. 189 at 191.]

GIRL UNDER SIXTEEN; CONSENT NOT MATERIAL; LEAVING HOME TO GO TO ACCUSED AS THE RESULT OF PERSUASION.

(1) The offence of abducting a girl under sixteen, contrary to Code, sec. 315, may be complete if there had been general persuasion on the part of the accused to induce her to leave although she was not asked to leave at the time she did and left her home unattended to go to the accused elsewhere, if the latter thereupon induces her to continue away from the parents' custody. (2) If other testimony shews the offence of abduction, the conviction will be good notwithstanding the evidence of the girl that she left home of her own accord and without persuasion of the accused, as the jury may discredit that portion of the girl's testimony. The King v. Yorkema, 16 Can. Cr. Cas. 189.

ENTICING FROM PARENT OF GIRL UNDER SIXTEEN; CONVICTION FOR ABDUCTION NO BAR FOR SEDUCTION.

The prisoner was convicted under R.S.C. ch. 162, sec. 44, the Act relating to "offences against the person," for unlawfully taking an unmarried girl under the age of sixteen years out of the possession and against the will of her father. On the same day the prisoner was again tried and convicted under R.S.C. ch. 157, sec. 2, the Act relating to "offences against public morals," for the seduction of the said girl being previously of chaste character and between the ages of twelve and sixteen years of age:—Held, that the offences were several and distinct, and that a conviction on the first indictment did not preclude a conviction on the second one. Reginia v. Smith (1890), 19 O.R. 714.

GIRL IN CHARGE OF GUARDIAN; ABDUCTION WHILE NOT IN GUARDIAN'S CUSTODY; TEMPORARY LEAVING.

An indictment for abducting a girl under the age of sixteen, where it appeared that the girl had left her guardian's house for a particular purpose with his sanction:—Held, that she did not cease to be in his possession, within the meaning of the statute 32 and 33 Vict. ch. 20, sec. 56. R. v. Mondelet, 21 L. C. Jur. 154.

CHILD UNDER AGE OF FOURTEEN; FATHER ENTICING CHILD FROM THE MOTHER'S CUSTODY IN CANADA.

Where the Court of a foreign country, in which the husband and wife were then domiciled granted the wife a divorce and the custody of the child, such divorce decree is effective in Canada on the status of the parties so as to support a conviction of the father under Code, sec. 316, for enticing the child while under the age of fourteen years from the custody of the mother. The King v. Hamilton, 17 Can. Cr. Cas. 410.

ELOPEMENT WITH GIRL UNDER SIXTEEN AT HER SUGGESTION.

It is an offence under Cr. Code, sec. 315 to take an unmarried girl under sixteen years of age out of the constructive possession of her father by meeting her by prearrangement and marrying her without the father's consent, and it is no defence that the girl was infatuated with him and asked him to marry her, nor that he might reasonably have thought her to be over sixteen; the effect of the clause declaring it to be immaterial whether the girl is taken "at her own suggestion" or not (sec. 315 (2)) is that a persuasive inducement from the accused is no longer a material ingredient of the offence. R. v. Jarvis, 20 Cox C. C. 249, distinguished. R. v. Meyers, 24 Can. Cr. Cas. 120.

INDUCEMENT OR PERSUASION.

To constitute the crime of abduction of a girl under sixteen years (Cr. Code, sec. 315), it is necessary to prove that the accused had taken an active part, through persuasion or otherwise, to induce the girl to leave. [R. v. Jarvis, 20 Cox C. C. 249, R. v. Olifier, 10 Cox C. C. 402, applied; see also R. v. Blythe, 1 Can. Cr. Cas. 263; Re Johnson, 8 Can. Cr. Cas. 243; R. v. Holmes, 16 Can. Cr. Cas. 7; R. v. Yorkema, 16 Can. Cr. Cas. 189.] R. v. Weinstein, 26 Can. Cr. Cas. 50, 28 D.L.R. 327.

ABETTING.

See Accessory.

ABORTION.

Abortion by physician's operation; proving other offences to rebut defence of justification. 30 Can. Cr. Cas. 50.

SUPPLYING DRUGS FOR PROCURING ABORTION.

The prisoner, with intent to procure abortion, supplied a pregnant woman with two bottlesful of Sir James Clarke's Female Pills, with directions to take twenty-five at a dose, and that it would have that effect. The pills contained oil of savin, an article used to procure abortion, and it was said that a bottleful would contain about four grains, but the evidence was not very clear as to this. It was in evidence that such a quantity would be greatly irritating to a pregnant woman, and might possibly procure an abortion, and that oil of savin in any dose would be most dangerous to give to a woman in that condition:—Held, under the circumstances, there was a supplying of a noxious thing within the meaning of the Act 33 and 34 Vict. ch. 20, sec. 60 (d), with the intent to procure an abortion. Regina v. Stitt (1879), 30 U. C. C. P. 30.

DEATH BY ABORTION; CAUSE OF DEATH; COMMUNICATION OF SMALL-POX.

The theory of the defence was, that the death was caused by the communication of small-pox virus by Dr. M., who attended the deceased; and one of the witnesses for the defence explained how the contagion could be guarded against. Dr. M. had not in his examination-in-chief or cross-examination been asked anything on this subject:—Held, that he was properly allowed to be called in reply, to state what precaution had been taken by him to guard against the infection. The Queen v. Sparham and Greaves (1875), 25 U.C.C.P. 143.

MANSLAUGHTER; INSUFFICIENT POST-MORTEM EXAMINATION.

In a trial for murder by committing an abortion resulting in the girl's death, it appeared that the post-mortem examination

was insufficient, and that, so far as the medical evidence was concerned, it was possible that death might have been occasioned by some undiscovered disease which a post-mortem examination of other organs than those examined might have disclosed, and none of the medical men would swear positively to the cause of death; but there was other evidence tending to shew that death was caused by a criminal operation, and connecting the prisoners therewith:—Held, that such last-mentioned evidence was properly submitted to the jury. R. v. Garrow, 1 Can. Cr. Cas. 246.

VERDICT FOR ATTEMPT ON EVIDENCE OF PRINCIPAL OFFENCE.

Where on an indictment for a principal offence and for an attempt to commit such an offence, the evidence is wholly directed to the proof of the principal offence, the jury's verdict of guilty of the attempt only, will not be set aside although there were no other witnesses in respect of the attempt than those whose testimony, if wholly believed, shewed the commission of the greater offence. R. v. Hamilton, 4 Can. Cr. Cas. 251.

DRUGS FOR PROCURING MISCARRIAGE; UNLAWFUL ADVERTISEMENT; PROOF OF INTENT; WHEN INTERPRETATION A QUESTION FOR THE JURY.

Upon a charge under Code, sec. 179 (c) of knowingly, and without lawful excuse or justification, advertising a drug intended or represented as a means of causing abortion, the trial Judge may withdraw the case from the jury if the advertisement is incapable of such meaning, but if it be held to be capable it is then for the jury to decide whether or not it actually had such meaning, having regard to the context of the objectionable words and to the circumstances of the case. The King v. Karn, 6 Can. Cr. Cas. 479, reversing 5 Can. Cr. Cas. 543. [Referred to in R. v. Phinney (No. 2), 7 Can. Cr. Cas. 286, 36 N.S.R. 295; R. v. Burr, 12 Can. Cr. Cas. 107.]

SEPARATE COUNTS FOR USING AN INSTRUMENT AND FOR "OPERATING" WITH INTENT.

Where a prisoner is charged in separate counts, firstly, with using an instrument to procure an abortion, and secondly, with "operating" for that purpose, a conviction on the second count will be set aside if the jury acquitted on the first and there was no reasonable evidence to be left to the jury that the accused had illegally used other means than an instrument. The King v. Cook, 15 Can. Cr. Cas. 40.

SURGEON'S OPERATION; PLEA OF NECESSARY TREATMENT.

Where the issue at the trial was whether a surgeon had performed an operation to procure a miscarriage or a necessary and lawful operation, the evidence of another woman that he had at another time, previous to the offence charged, operated upon her to procure a miscarriage, is not admissible as proving intent, without evidence of such conduct on the part of the surgeon as would justify the inference of a systematic pursuit of the same criminal object. The King v. Pollard, 15 Can. Cr. Cas. 74.

SUPPLYING YELLOW JASMINE OR OTHER DRUG.

(1) Yellow jasmine or gelsemium is a drug or noxious thing the supplying of which for illegal purposes may constitute an offence under Cr. Code, sec. 305. (2) The requirements of section 305 of the Criminal Code, prohibiting the unlawful supplying or procuring of any drug or other noxious thing with knowledge that it is intended to be unlawfully used or employed with intent to procure a miscarriage, are satisfied if the substance supplied be a drug, even though the quantity supplied be so small as to be incapable of doing harm; if not a drug, the substance must be proved to be a noxious thing, and noxious in the quantity supplied. [Reg. v. Cramp, 5 Q.B.D. 307, referred to.] (Per Meredith, J.A.) The King v. Scott, 19 Can. Cr. Cas. 370, 4 D.L.R. 850.

CONSPIRACY TO COMMIT CRIME; COMMISSION IN FOREIGN COUNTRY; EVIDENCE.

Where, on a criminal trial for conspiracy to procure an abortion, it appeared that the defendants conspired to procure its performance in Ontario, but finding it difficult to do, went to a foreign country, evidence is admissible as to what occurred there in furtherance of the conspiracy. R. v. Bachrack, 21 Can. Cr. Cas. 257, 11 D. L. R. 522.

EVIDENCE; CORROBORATION.

A conviction for procuring an abortion (Cr. Code, sec. 303), made against the person performing the illegal operation, may be founded on the testimony of the woman on whom the operation was performed, although her testimony is not corroborated, there being no satisfactory requirement of corroboration in such case. R. v. Sadick Bey, 25 Can. Cr. Cas. 259.

EVIDENCE; INTENT; PRIOR SIMILAR OFFENCES.

Where, in answer to a charge of using instruments to cause an abortion, the accused sets up in defence that the instruments were used to prevent septic poisoning in a miscarriage already begun, and he gives his own testimony to that effect, he becomes liable to be cross-examined as to alleged previous criminal acts similar to that alleged and performed in a similar manner, and, on his denial of same, to have his plea of innocent intent negatived by proof of the other similar criminal acts although these occurred two and four years previous to the offence charged. Such evi-

dence would be admissible apart from any evidence of system, and if the defence does not develop until the defendant is in the witness box, he is to be given an opportunity of answering such rebuttal evidence by giving further evidence in sur-rebuttal. [See Annotation on evidence of prior offences to rebut surgeon's justification in abortion charge, at end of this case.] Brunet v. The King, 30 Can. Cr. Cas. 16, 42 D.L.R. 405. See 30 Can. Cr. Cas. 9.

SUPPLYING DRUGS; ATTEMPT.

If there is sufficient evidence to justify a reasonable inference that an accused attempted to obtain noxious substances for the purpose of causing a miscarriage; that he believed he had obtained them, and that he tried to cause the woman to take them, he may be properly convicted of an "attempt" under the Criminal Code. It is immaterial whether the substances obtained in fact contained noxious ingredients or not. R. v. Pettibone, 30 Can. Cr. Cas. 164, 41 D.L.R. 411.

ABSENCE.

OF ACCUSED; JURISDICTION OF MAGISTRATE; CR. CODE 853.

The Criminal Code, sec. 853, authorizing a magistrate to determine the case in the defendant's absence on his default in appearance, must be restricted to the particular charge in the original information and cannot cover a distinctly different charge substituted by amendment in his absence. Ex parte Doherty, 1 Can. Cr. Cas. 84.

[Distinguished in Ex parte Tompkins, 12 Can. Cr. Cas. 552; approved in R. v. Lyons, 10 Can. Cr. Cas. 134; referred to in Ex parte Lebel, 16 Can. Cr. Cas. 367.]

And see Summary conviction.

ABUSIVE LANGUAGE.

SUMMARY JURISDICTION; NOVA SCOTIA STATUTE

One magistrate has no jurisdiction to convict on a charge of using abusive language under R.S. Nova Scotia, 5th series, ch. 103, and 1889, N.S., ch. 36. R. v. McLeod, 1 Can. Cr. Cas. 10.

ACCESSORY.

Before or after the fact. 2 Can. Cr. Cas. 355.

Owner leasing house for purposes of prostitution; Keeping common bawdy house. 3 Can. Cr. Cas. 472.

Evidence of accomplices. 10 Can. Cr. Cas. 128.

ACCESSORY AFTER THE FACT; MURDER; KNOWLEDGE OF THE ACT; INTIMACY WITH PRINCIPAL.

Upon a trial for murder it appeared that the deceased was found dead in his stable in the morning, killed by a gun shot wound. The prisoner was a hired man in his house. His widow, the principal witness for the Crown, testified that she and her husband went to bed by ten o'clock; that afterwards her husband, being aroused by a noise in the stable, got up and went out; that she heard the report of a gun; that a few minutes after the prisoner tapped at the door, which she opened; that he said he had done it, and it was well done; that she asked him if he had killed her husband, and he said he had, and that it was for her sake he had done it; that he told her to keep quiet, and give him time to get into bed, which she did; that she waited a few minutes and then gave the alarm, calling the prisoner and another man who was sleeping in the house, who went out together and discovered the body. She also swore that the prisoner had previously told her he was planning the murder, but that she did not then consider him in earnest. There was evidence, apart from her own, of her improper intimacy with the prisoner; and a true bill had been found against her for the murder. The jury were told that there was no direct evidence corroborating her testimony; the rule requiring the evidence of an accomplice to be confirmed was explained to them; and they were directed that before convicting they should be satisfied that the circumstantial evidence relied upon by the Crown did corroborate her testimony. They convicted; and questions were reserved under C.S.U.C. ch. 112, whether the widow was an accomplice, and whether there was sufficient evidence to submit to the jury:—Held, that, whether she was an accomplice or not, there was no ground for disturbing the verdict. Quære, per Harrison, C.J., whether the widow was an accessory after the fact, and whether if so she was such an accomplice as to require corroboration, according to the rule of practice. Per Morrison, J., and Wilson, J., she was an accessory after the fact. Regina v. Smith (1876), 38 U.C.Q.B. 218.

ABETTING IN MURDER; EFFECT OF UTTERANCES IN AFFRAY; LACK OF PROOF AS TO STRIKING OF BLOW.

The prisoner was indicted for aiding and abetting one M. in a murder of which M. was convicted. It appeared that about six in the evening the deceased was with R. and his wife on the river bank, standing near a pile of wood. She saw M. standing behind the pile who, on deceased going up to him, struck deceased with a stick, of which he died, deceased ran, when two other men sprang out and followed him,

but in a few seconds two of them returned and assaulted her and her husband. She could not identify the prisoner. Two other witnesses saw the blow struck and identified M., and one witness swore that about six that evening deceased left his office with R. and his wife and that about twenty minutes after he saw the prisoner, with M. and another, go into the vacant lot where the wood-pile was, M. having a stick in his hand, and heard M. say to the others, "Let us go for him." It was also proved by others that the three were together before the affray and in a saloon together about nine o'clock afterwards:—Held, that there was no sufficient evidence to warrant the prisoner's conviction, for there was no direct proof that he was present when the blow was struck and no evidence whatever that he and the others were together with any common unlawful purpose, and the words spoken were in themselves unimportant. R. v. Curtley, 27 U.C.Q.B. 613.

RECEIVING STOLEN GOODS; LIABILITY OF ACCESSORY AS PRINCIPAL.

If the accused were not an aider and abettor or a principal in the second degree in the commission of the theft, the circumstance that he was an accessory before the fact by counselling and procuring the commission of the theft, and therefore liable under sec. 61 of the Criminal Code to be convicted as a principal, does not prevent his conviction for the substantive offence of afterwards receiving the stolen property knowing it to have been stolen. Such an accessory before the fact who afterwards becomes a receiver of the stolen property may be legally convicted both of the theft and of "receiving." R. v. Hodge, 2 Can. Cr. Cas. 350.

THEFT; ASSISTING TO CONCEAL STOLEN PROPERTY.

A person who knowingly assists a thief to conceal stolen money which he is in the actual and proximate act of carrying away, by receiving the money for the purpose of concealing it, is guilty of aiding and abetting in the theft, and may under Cr. Code, sec. 61 (c), be convicted as a principal. Although the theft may be complete by the mere taking and carrying away of stolen property, the subsequent carrying of same to a place of concealment by a person who did not participate in the taking, if done with a guilty knowledge and as a continuation of and proximately at the same time as the theft, is an "aiding and abetting" of the same. An act done which may enter into the offence, although the crime may be complete without it, may be considered as a continuation of the criminal transaction so as to make the participator an aider and abettor, although his participation occurs only after such acts have been done as in themselves would constitute the crime. R. v. Campbell, 2 Can. Cr. Cas. 357.

[Referred to in R. v. Harkness, 10 Can. Cr. Cas. 209, 10 O.L.R. 555.]

MANSLAUGHTER; AIDING AND ABETTING.

Aid rendered to the principal offenders after the commission of the crime is alone insufficient to justify the conviction of the person so aiding, as a principal under Cr. Code 61. R. v. Graham, 2 Can. Cr. Cas. 388.

GAMING; MENS REA.

A broker, who merely acts as such for two parties one a buyer and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the contracting parties to gamble in stocks or merchandise, is not liable to prosecution under section 201, paragraphs (a) and (b), of the Code, nor as an accessory under section 61. R. v. Dowd, 4 Can. Cr. Cas. 170.

"BUCKET SHOPS;" MANAGER OF BRANCH OFFICE; INTEREST IN COMMISSIONS PAID BY CUSTOMERS.

A person who acts as agent for another in managing a branch office for gambling transactions in stocks within Code, sec. 201, knowing that there was no intention of transferring any property or title to property, is liable to conviction as an accessory under Code, sec. 61, although his sole interest in the transaction was in the commissions paid to him for effecting the same. The King v. Harkness (No. 1), 10 Can. Cr. Cas. 193.

GAMING HOUSE; "LOOKING ON;" EVIDENCE OF ACCOMPLICE; CORROBORATION.

A summary conviction based upon the uncorroborated evidence of an accomplice who is shewn to have received money to testify against the accused is properly set aside on appeal. The King v. Ah Jim, 10 Can. Cr. Cas. 126.

[Distinguished in R. v. Frank, 16 Can. Cr. Cas. 237 at 242.]

GAMING; ACQUIESCENCE OF DIRECTOR OR PRESIDENT OF JOCKEY CLUB; FURTHER PARTICIPATION NECESSARY TO CONSTITUTE AN AIDER OR ABETTOR.

Mere acquiescence by a director in prohibited acts of a corporation is not such a participation therein as will constitute him an aider or abettor or make him criminally liable as a party under Code, sec. 61 for the illegal acts of the corporation. The King v. Hendrie, 10 Can. Cr. Cas. 298.

AIDING AND ABETTING A RAPE; RELATIONS OF PROSECUTRIX WITH A WITNESS FOR PROSECUTION; REFUSAL OF BOTH TO ANSWER AS TO ALLEGED ILLICIT CONNECTION PRIOR TO THE RAPE.

On a charge of aiding and abetting an-

other to commit rape if it appears that a man called as a witness for the prosecution had immediately prior to the offence been in the company of the prosecutrix under circumstances making it probable that he had had illicit connection with her, and that the man accused of the rape had taken the prosecutrix away from the witness, the witness may be cross-examined as to his relations with the prosecutrix for the purpose of shewing prejudice against the accused, and for this purpose is bound to answer whether he had had connection with the prosecutrix on that occasion. The King v. Finnessey, 10 Can. Cr. Cas. 347.

RAPE; ABETTOR JOINTLY INDICTED WITH PRINCIPAL; ORDER FOR SEPARATE TRIAL.

Where two prisoners are jointly indicted but an order is made for their separate trial, the one is an admissible witness for the other and is bound to testify although he may prevent his evidence being used against himself at his subsequent trial. The King v. Blais, 10 Can. Cr. Cas. 354.

AIDING AND ABETTING; COUNSELLING AN OFFENCE TO BE COMMITTED IN FOREIGN COUNTRY.

Counselling a woman in Canada to submit in a foreign country to an operation to procure her miscarriage, the submission to which in Canada would be an indictable offence, is not, in itself, indictable in Canada if the operation is performed in a foreign country. The King v. Walkem, 14 Can. Cr. Cas. 122.

CONVICTION OF CLERK WITH WHOM ILLEGAL TRANSACTION MADE.

As by Code, sec. 69 every one is a party to, and guilty of, an offence, who abets any person in the commission of it, a clerk or manager in a money-lender's office, who takes part in an act which amounts to the offence of usury, is guilty as a principal, and it is no defence to the charge that he acted merely as an agent. Lalonde v. The King, 15 Can. Cr. Cas. 72.

[Followed in R. v. Kehr (No. 2), 18 Can. Cr. Cas. 66.]

USURY; CONVICTION OF CLERK WITH WHOM ILLEGAL TRANSACTION MADE.

As by Code, sec. 69 every one is a party to, and guilty of an offence, who abets any person in the commission of it, a clerk or manager in a money-lender's office, who takes part in an act which amounts to the offence of usury, is guilty as a principal, and it is no defence to the charge that he acted merely as an agent. The King v. Glynn, 15 Can. Cr. Cas. 243.

[Followed in R. v. Kehr (No. 2), 18 Can. Cr. Cas. 66.]

CRIMINAL USURY; LIABILITY OF AGENT OR EMPLOYEE; EMPLOYEE OF LENDER AIDING AND ABETTING IN ILLEGAL TRANSACTIONS.

An employee of a money-lender may be convicted of criminal usury under the Money Lenders Act if he carries on the business of money lending for his employer and makes for him contracts for prohibited interest and commissions, or if he aids and abets in the illegal transactions. The King v. Smith and Luther, 17 Can. Cr. Cas. 445.

TRADE COMBINE; OFFICER OF SIGNING CORPORATION; CONVICTION AS PRINCIPAL.

An officer of one of the signing companies who as its representative took part in the negotiations which led up to such agreement, and the issuing of lists of signatories to be sent out to the respective trades, and who endeavoured to have his company conform to such agreement, is personally liable as an aider and abettor in the illegal trade combine and may be punished as a principal. The King v. McMichael, 18 Can. Cr. Cas. 185.

USURY; EMPLOYEE OF ENDORSER; AIDING AND ABETTING.

(1) Sec. 69 of the Criminal Code as to aiders and abettors applies to a charge of criminal usury under the Money Lenders Act, R.S.C. 1906, ch. 122. (2) To support a conviction as an aider or abettor of an offence under the Money Lenders Act, it is not essential that the accused should be a "money lender" as defined by the statute. The King v. Kehr (No. 3), 18 Can. Cr. Cas. 292.

ACCESSORY; ACCOMPLICE.

An accessory before the fact to the crime of murder is an accomplice with his principal within the rule requiring the corroboration of his testimony against the latter. (Per Newlands, and Brown, JJ.) [Rex v. Tate, 21 Cox Cr. Cas. 693, and Rex v. Beauchamp, 25 Times L.R. 330, followed; R. v. Reynolds, 15 Can. Cr. Cas. 210, distinguished.] R. v. Ratz, 21 Can. Cr. Cas. 343, 12 D.L.R. 678.

ACCUSATION.

ACCUSING WITH INTENT TO EXTORT.

Where an information for rape or other offence under Cr. Code 405 is laid with the sole intent to extort money or property from the person against whom the charge is made, the informant thereby "accuses" such person with intent to extort or gain something from him under Cr. Code 405; and commits an indictable offence thereunder. R. v. Kempel, 3 Can. Cr. Cas. 481.

ACQUITTAL.

Plea of autrefois acquit. 7 Can. Cr. Cas. 38, 43.

RIGHT OF ACCUSED TO DEMAND CERTIFIED RECORD OF ACQUITTAL; FIAT OF ATTORNEY-GENERAL UNNECESSARY.

A person tried and acquitted in any criminal Court is entitled to a copy of the record of such acquittal and of the indictment without the fiat of or intervention by the Attorney-General of the Province, and a mandamus will lie to compel the delivery of certified copies or an exemplification thereof upon tender of the proper fees. Attorney-General v. Scully, 6 Can. Cr. Cas. 167.

MANSLAUGHTER; SUBSEQUENT TRIAL FOR INFLICTING BODILY HARM; PLEA OF AUTREFOIS ACQUIT.

An acquittal on a charge of manslaughter is not a bar to a charge of inflicting bodily harm based upon the same circumstances. The King v. Shea, 14 Can. Cr. Cas. 319.

ADDRESS.

Of counsel; Order of.
See Reserved Case; Reply.

ADJOURNMENT.

Note on adjournment of summary proceedings; Limit of eight days; Cr. Code 857 (1) 2 Can. Cr. Cas. 158. Postponement of criminal trials; Cr. Code sec. 901, 23 Can. Cr. Cas. 200.

Adjournment for judgment in summary proceedings. 26 Can. Cr. Cas. 80.

ADJOURNMENT WITHOUT DAY; MAGISTRATE LOSING JURISDICTION.

The Justice adjourned the trial without day, stating in the presence of all parties that he would make up his judgment and notify the parties affected, which he did in time for an appeal from the conviction:—Held, that no conviction could be made, the Justice having lost jurisdiction by the adjournment without day. The Queen v. Morse (1890), 22 N.S.R. 298.

ADJOURNMENT FOR MORE THAN A WEEK; CONSENT OF ACCUSED; JURISDICTION OF MAGISTRATE.

Where the magistrate adjourned the hearing of a case under the Canada Temperance Act, 1878, for more than a week contrary to 32 and 33 Vict. ch. 31, sec. 46 (d), the conviction was quashed but without costs. Semble, the consent of the defendant to the adjournment, if proved, would not have given jurisdiction. Regina v. Hunter, 13 O.R. 82n, followed. Regina v. French (1887), 13 O.R. 80.

CONSENT BY DEFENDANT; ESTOPPEL.

Held, that where an adjournment of the proceedings before the magistrate for more than one week had been made at the request of the defendant, who afterwards attended on the resumed proceedings, taking his chances of securing a dismissal of the prosecution, and urging that on the evidence it ought to be dismissed, defendant had estopped himself from objecting afterwards that such subsequent proceedings on the prosecution were on this ground illegal. Regina v. Heffernan (1887), 13 O.R. 616.

NOT MORE THAN ONE WEEK.

32-33 Vict. ch. 31, sec. 46 (Dom.), provides that the hearing may be adjourned to a certain time and place, but no such adjournment shall be for more than a week:—Held, that the week must, be computed as seven days exclusive of the day of adjournment. Regina v. Collins, 14 O.R. 613.

MORE THAN EIGHT DAYS; CONSENT OF DEFENDANT; EFFECT.

The provision of sec. 857, that no adjournment shall be for more than eight days is matter of procedure and may be waived and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect. Reg. v. Heffernan (1887), 13 O.R. 616.

NOT MORE THAN ONE WEEK; CONSTRUCTION.

Semble, that the provisions of sec. 46 of 32 and 33 Vict. ch. 31 (d), that no adjournment shall be "for more than one week" are directory merely. Regina v French, Regina v. Robertson, 13 O.R. 80, distinguished and not followed. Regina v. Heffernan (1887), 13 O.R. 616.

SUMMARY PROCEEDINGS; ADJOURNMENT SINE DIE.

An adjournment sine die of summary proceedings before a magistrate for the purpose of delivering judgment is illegal, and a conviction thereafter made by the magistrate, in the absence of the accused, is void for want of jurisdiction. R. v. Quinn, 2 Can. Cr. Cas. 153.

[Referred to in Plante v. Cliche, 17 Can. Cr. Cas. 43, 50, 38 Que. S.C. 542, applied in Cairns v. Choquet, 32 P.R. 27; followed in R. v. Smith, 16 Can. Cr. Cas. 432.]

RECITAL OF ADJOURNMENTS OF HEARING; PRESUMPTIONS.

A conviction in the form prescribed by the Criminal Code is not bad because it also contains recitals shewing certain adjournments of the hearing before the justice but not shewing that no adjournment had been made for a longer period than the eight days allowed by Cr. Code, sec. 857, sub-sec. (1), although more than three months had elapsed from the commencement to the end of the proceedings. The hearing before a justice trying a person for an offence punishable on summary conviction may be adjourned from time to time under sec. 853 of the Code, although the accused be not present, provided the adjournments are made in the presence and

hearing of his solicitor or agent. Proctor v. Parker, 3 Can. Cr. Cas. 374.

SUMMARY PROCEEDINGS; ADJOURNMENT OF HEARING.

On the return of a summons in a summary proceeding before justices of the peace, the person summoned must wait a reasonable time after the hour named in the summons, when the justices are at that hour engaged in other official business. The King v. Wipper, 5 Can. Cr. Cas. 17.

SUMMARY CONVICTIONS; HEARING; MAGISTRATE ABSENT; CLERK OF COURT PURPORTING TO FURTHER ADJOURN.

An adjournment of the hearing of a complaint under the summary convictions clauses (Part LVIII. of the Code) cannot be made by the clerk of the Court in the absence of the magistrate to a date more than eight days after that when the last adjournment of the case was ordered by the magistrate. Paré v. Recorder of Montreal, 10 Can. Cr. Cas. 295.

REFUSAL OF ADJOURNMENT ON AMENDMENT OF CHARGE.

Where the accused was summoned for the day following the service of the summons and the charge was then amended as to the date of the offence, the accused was entitled to an adjournment without being put on terms of paying the costs of the day, and the refusal of same was a denial of his right to make full answer and defence (Revised Code, sec. 715). The King v. Farrell, 12 Can. Cr. Cas. 524.

[Followed in R. v. Simmons, 14 Can. Cr. Cas. 6; R. v. Lorenzo, 16 Can. Cr. Cas. 21; referred to R. v. Meceklette, 15 Can. Cr. Cas. 18; Ex parte Monahan, 17 Can. Cr. Cas. 53.]

SUMMARY CONVICTION; REFUSAL OF ADJOURNMENT TO PROCURE COUNSEL; DISCRETION OF MAGISTRATE.

(1) The accused cannot claim an adjournment as a matter of right to enable him to obtain counsel to conduct the defence. (2) Where the magistrates presiding at a summary hearing under the vagrancy clauses for keeping a bawdy house refused an adjournment, asked for the purpose of obtaining counsel, on the accused being first brought before them and forthwith proceeded with the trial at which the accused gave evidence in her own behalf sufficient to sustain a conviction, no injustice can be said to have been occasioned by the refusal to adjourn and the accused will not be released on habeas corpus. The King v. Irwing, 14 Can. Cr. Cas. 489.

OF HABEAS CORPUS MOTION.

Where a habeas corpus has been granted without a certiorari in aid, the Crown opposing should be granted an adjournment of the motion to discharge pending a return to a certiorari granted to the Attorney-General. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

FURTHER ADJOURNMENT OF INQUIRY AGAINST PROTEST OF ACCUSED; DISCRETION OF MAGISTRATE.

A superior Court will not interfere with the magistrate's discretion as to adjourning the inquiry when the discretion is exercised in good faith and he must be allowed a reasonable time after the close of the evidence to reach a decision. Re Ying Foy, 15 Can. Cr. Cas. 14.

SUMMARY PROCEEDINGS; POWER OF ADJOURNMENT BY THE JUSTICE RECEIVING THE INFORMATION; WAIVER OF IRREGULAR ADJOURNMENT MADE BY A THIRD JUSTICE WITHOUT AUTHORITY.

(1) An irregular adjournment of summary proceedings before a magistrate is waived by the accused afterwards appearing for trial without taking objection thereto and adducing evidence. (2) Code, sec. 708 enables the justices before whom the information was laid, to adjourn the hearing of a summary conviction matter although he would not alone have jurisdiction to try the case. (Per Riddell, J.) (3) A justice other than the one who took the information or the two justices or police magistrate having jurisdiction to try the charge may not legally intervene to grant an adjournment of the trial, but his doing so is a mere irregularity which is waived by the subsequent appearance and consent to trial before a magistrate having general jurisdiction over the offence. (Per Riddell, J.) The King v. Miller, 15 Can. Cr. Cas. 87.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 345.]

SUMMARY CONVICTION; APPLICATION TO ADJOURN; REASONABLE DELAY; RENEWAL OF BAIL; MISTRIAL ON REFUSAL.

(1) An application for an adjournment of the trial of a summary conviction matter should be granted to procure the attendance of witnesses for the defence resident within a short distance of the place of trial, where the accused was arrested on a warrant in the first instance on the same day as the hearing and could be required to renew his bail during the adjournment asked. (2) A summary conviction will be quashed if, by the refusal of a reasonable adjournment, the accused has been deprived of an opportunity to make his full answer and defence to the charge. The King v. Lorenzo, 16 Can. Cr. Cas. 19.

[Distinguished in R. v. Luigi, 16 Can. Cr. Cas. 25.]

SUMMARY CONVICTION; APPLICATION TO ADJOURN THE HEARING AFTER CLOSE OF PROSECUTOR'S CASE; AVAILABLE EVIDENCE FOR DEFENCE NOT TENDERED.

(1) The granting of an adjournment in a summary conviction matter is in the discretion of the magistrate, but such discretion is not to be exercised in such a way as will deprive the accused of a fair trial. (2) Where an application for an adjournment was made at the close of the case for the prosecution on a trial for selling liquor without a license after evidence that the accused was personally present when the sale was made on his premises, but without tendering the evidence then available for the defence, the refusal of the adjournment asked to procure the attendance of another witness present at the time of the alleged sale does not deprive the accused of a fair trial and is not a ground for quashing the conviction. The King v. Luigi, 16 Can. Cr. Cas. 25.

SUMMARY CONVICTION; REFUSAL OF ADJOURNMENT; DISCRETION OF MAGISTRATE.

The granting of an adjournment because of the summons not conforming with the information is wholly in the discretion of the magistrate, and its refusal does not go to the jurisdiction. Ex parte LeBel, 16 Can. Cr. Cas. 363.

SUMMARY CONVICTION; ADJOURNMENT OF HEARING IN DEFENDANT'S ABSENCE.

Where the defendant summoned on a summary conviction charge fails to appear, an adjournment of the hearing must nevertheless be to a time and place appointed and publicly stated at the time the adjournment takes place. The King v. Smith, 16 Can. Cr. Cas. 425.

[Disapproved in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

PRELIMINARY ENQUIRY ADJOURNED MORE THAN EIGHT DAYS; CONSENT OF ACCUSED; EFFECT ON RECOGNIZANCE.

(1) Where a preliminary enquiry is adjourned with the consent of the accused for a period of more than eight days contrary to Code, sec. 679, the recognizance of the accused and of his bail then taken for his appearance at the adjourned hearing is not thereby invalidated. (2) The consent of the accused to the longer adjournment was a waiver of the irregularity and the bail having been expressly given for longer than eight days the surety could not complain. Re Burns' Bail, 17 Can. Cr. Cas. 292.

SUMMARY CONVICTION; ADJOURNMENT OF HEARING FOR MORE THAN EIGHT DAYS.

(1) Where a summary proceeding before a Recorder's Court was after partial trial adjourned to a legal holiday on which the Court did not sit and in consequence the Recorder on an intervening day and in the absence of the accused ordered the adjournment changed to an earlier day and on that day again adjourned the trial in the absence of the accused to a date more than eight days from the date of the partial trial, such subsequent adjournments are irregular and in contravention of Criminal Code, sec. 722, unless notice is given to the accused of the date of the renewed hearing and the Recorder's Court may be prohibited from proceeding further with the case. (2) Where prohibition is granted because of an adjournment of the trial of a summary matter having been made for more than eight days contrary to sec. 722 of the Criminal Code, and it appears that an adjournment of the hearing was moved by defendant's counsel, costs of the prohibition motion will be refused the defendant petitioning for the prohibition. Donohue v. Recorder's Court of Quebec, 18 Can. Cr. Cas. 182.

SUMMARY PROCEEDINGS; ADJOURNMENT BY CONSENT UNTIL CLOSE OF OTHER COURT SITTINGS; REFUSING ADJOURNMENT TO BRING A WITNESS.

(1) Where summary proceedings before a magistrate were adjourned by consent to be taken up on the adjournment of the County Court then in session, at which counsel for both the prosecution and the defence were then engaged in other cases, and the case is afterwards proceeded with without objection, a conviction will not be quashed upon certiorari on the ground that such adjournment lasted for more than eight days contrary to Code, sec. 722. (2) The refusal of the magistrate to adjourn the case to enable the defendant to secure the attendance of a witness he desires to call is a matter of discretion which does not go to jurisdiction of the magistrate. Ex parte Giberson (No. 3), 18 Can. Cr. Cas. 355.

PRELIMINARY HEARING BY MAGISTRATE; STATUTORY LIMITATION.

(1) The delay of eight clear days which must not be exceeded between two remands upon a preliminary enquiry does not apply to the case of an accused who is held on bail. (2) The Criminal Code (sec. 679) in stating that the accused cannot be detained in prison more than eight clear days between two adjournments ipso facto permits an adjournment until the ninth day, as the statute expressly provides that the day following the remand is to be counted as the first day. Dick v. The King, 19 Can. Cr. Cas. 44.

SUMMARY CONVICTION; DELAY IN APPLYING.

The magistrate has a discretion to grant an adjournment of the hearing in order that the defendant may obtain counsel, but where the accused failed to ask for counsel

or for an adjournment until after the evidence for the prosecutor was closed, the magistrate's refusal to adjourn will not invalidate the conviction. The King v. Pfister, 19 Can. Cr. Cas. 92.

PREJUDICE OF JURY BY PRESS COMMENTS.

The postponement of a criminal trial should be ordered on motion of the accused, where the court is satisfied upon the affidavits filed on the motion that the minds of the jurymen in attendance have been affected to the prejudice of the accused by the publication of press notices stating that the accused had confessed the crime. [R. v. Davis, [1906] 1 K.B. 32, approved.] R. v. Willis and Pople, 21 Can. Cr. Cas. 64, 9 D.L.R. 646.

JURISDICTION "TO ENTER CONTINUANCES;" NUNC PRO TUNC.

Where an Appellate Court is permanent and continuing, it has inherent power to adjourn from one sittings to another and in a proper case "to enter continuances" from court to court, *nunc pro tunc*, by virtue of which a pending appeal may, where a hearing day has been allowed to pass, be revived and brought to a hearing. [R. v. Justices of Oxfordshire, 1 M. & S. 446; R. v. Justices of Westmoreland, 37 L.J.M.C. 115, applied.] R. v. Gregg, 22 Can. Cr. Cas. 51, 13 D.L.R. 770.

PROHIBITION; CROSS-EXAMINATION.

The court hearing a prohibition motion has a discretion to refuse an adjournment for the purpose of cross-examination upon an affidavit, where the adjournment would be against justice. Re Buchanan, 22 Can. Cr. Cas. 199, 15 D.L.R. 232.

AFFIDAVITS; RESERVED CASE.

An application by the accused to postpone a criminal trial because of the absence of his witnesses is to be made after plea pleaded, and although in an ordinary case an affidavit in common form is sufficient, yet where from the nature of the case, or from the affidavit on the opposite side, the court has reason to suspect that the application is not made bona fide for the purpose of obtaining material evidence but merely for delay, the court will require to be satisfied specially by affidavit, (*a*) that the persons are material witnesses; (*b*) that there has been no neglect in omitting to apply to them and endeavouring to procure their attendance, and (*c*) that there is reasonable expectation of counsel being able to procure their attendance at the future date if a postponement be granted. [R. v. D'Eon, 1 W. Bl. 510, 3 Burr. 1513, 96 Eng. R. 295, applied.] R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, affirmed in 23 Can. Cr. Cas. 194, 18 D.L.R. 217.

SUMMARY TRIAL; ADJOURNMENT SINE DIE.

Where the magistrate who had heard the evidence on a summary trial had adjourned to fixed date for judgment but, being unable to then attend, another magistrate took his place and further adjourned the case sine die, the conviction recorded by the first magistrate at a later date when the accused was again brought before him is invalid, as any adjournment must be to a day certain. [See R. v. Morse, 22 N.S.R. 298; R. v. Quinn, 2 Can. Cr. Cas. 153; Plante v. Cliche, 17 Can. Cr. Cas. 43, 38 Que. S.C. 542; Cairns v. Choquet, 3 Que. P.R. 25; R. v. Smith, 16 Can. Cr. Cas. 432; Donahue v. Recorder's Court, 18 Can. Cr. Cas. 182; Ex parte Giberson, (No. 3), 18 Can. Cr. Cas. 355; Dick v. The King, 19 Can. Cr. Cas. 44.] R. v. Wilson, 23 Can. Cr. Cas. 256, 19 D.L.R. 797.

DISCRETION OF MAGISTRATE.

Unless it appears that the refusal of a magistrate to grant an adjournment of the hearing results in the accused being prevented from making his "full answer and defence" (Cr. Code, sec. 715), the magistrate's bona fide exercise of discretion cannot be reviewed. [R. v. Irwing, 14 Can. Cr. Cas. 489, referred to.] R. v. Tally, 23 Can. Cr. Cas. 449, 21 D.L.R. 651.

SUMMARY CONVICTION; RESERVING JUDGMENT; DATE.

In the absence of prejudice to the accused, a summary conviction by a justice is valid, although there had been an adjournment without any date fixed for rendering judgment, if the magistrate beforehand has given notice to the solicitor for the accused. [R. v. Quinn, 2 Can. Cr. Cas. 153, distinguished.] Bedard v. The King, 26 Can. Cr. Cas. 99, 30 D.L.R. 326.

REFUSAL TO ADJOURN; DENIAL OF FULL ANSWER AND DEFENCE.

The refusal of an adjournment to the accused even after the taking of evidence for the prosecution will be a ground for quashing a summary conviction if it was a manifest denial of justice and prevented the accused from making his full answer and defence to the charge. [R. v. Farrell, 12 Can. Cr. Cas. 524; R. v. Eli, 10 Ont. R. 727; R. v. Griffiths (1886), 54 L.T.N.S. 280, referred to.] R. v. Dominion Drug Stores, Ltd., 31 Can. Cr. Cas. 86, affirming 30 Can. Cr. Cas. 318, 44 D.L.R. 382.

ADJUDICATION.

See Conviction.

ADMIRALTY.

See Shipping; Seamen; Piracy; Desertion.

ADMISSIBILITY.

See Depositions; Evidence.

ADMISSIONS.

See Evidence.

ADULTERATION ACT.

Amendments of 1898. 2 Can. Cr. Cas. 598, 601.

ADULTERY.

COHABITATION BETWEEN MARRIED PERSONS; ANTICIPATION OF NO CONJUGAL RELATIONS.

The mere fact of cohabitation between two persons, each of whom is married to another person, will not sustain a conviction under R.S.C. ch. 161, as amended by 53 Vict. (D.) ch. 37, sec. 11. R. v. Labrie, 7 Mont. L.R. (Q.B.) 211.

POLYGAMY; MORMONISM.

Section 278 of the Code is the only section which it could be argued covers adultery, was intended to apply only to Mormonism and plural marriages of that kind. R. v. Liston, 34 C.L.J. 546 (n) (unreported).

CRIMINAL ADULTERY; COHABITATION UNDER IRREGULAR CONJUGAL UNION; FALSE CLAIM OF DIVORCE.

A man who, after going through the form of marriage with a woman known to him to be the wife of another, cohabits with her in open continuous adultery in Canada claiming to be her second husband and falsely pretending that she had obtained a divorce, is properly convicted of unlawfully cohabiting in conjugal union by an illegal form of contract and by mutual consent contrary to Code, sec. 278 (b). The King v. Harris, 11 Can. Cr. Cas. 254.

AS CRIME; NEW BRUNSWICK LAW.

Adultery is an indictable offence in the Province of New Brunswick under the pre-confederation statute of that province, R.S. N.B. 1854, ch. 145, sec. 3, which has not yet (1915) been repealed by the Dominion Parliament. The repeal in 1886 by the Dominion Parliament of parts of certain pre-confederation statutes of New Brunswick, which regulated procedure in prosecutions for adultery under R.S.N.B., 1854, ch. 145, leaves that offence punishable in New Brunswick under the procedure applicable to indictable offences generally under the Criminal Code of Canada. [R. v. Buchanan (1846), 8 Q.B. 883, referred to.] R. v. Strong, 24 Can. Cr. Cas. 430, 26 D.L.R. 122.

[Referred to in Ex p. Belyea, 30 Can. Cr. Cas. 284.]

AS CRIME IN NEW BRUNSWICK; SUMMARY JURISDICTION.

Adultery not being an offence either by statute or common law in Ontario, the extended jurisdiction under Code, sec. 777 of a police magistrate in New Brunswick does not include that offence although it is indictable in that province under R.S.N.B. 1854, ch. 145. The jurisdiction under sec. 777 of police magistrates is limited to offences which in Ontario are within the jurisdiction of the Court of General Sessions. [R. v. Strong, 24 Can. Cr. Cas. 430, 26 D.L.R. 122, referred to.] Ex parte Belyea, 30 Can. Cr. Cas. 284, 39 D.L.R. 24.

OFFENCE IN NEW BRUNSWICK; EVIDENCE OF ACCOMPLICE; INSTRUCTION TO JURY.

On a charge of adultery in New Brunswick, where it is an indictable offence under a pre-confederation law, it is the duty of the Judge where there is no corroboration of the evidence of the person with whom the adultery was committed to point out that fact to the jury and to warn them of the danger of finding a verdict of guilty on the testimony of an accomplice. The failure to so warn the jury is a ground for a new trial. [As to offence of adultery, indictable in New Brunswick, see R. v. Strong, 24 Can. Cr. Cas. 430, 26 D.L.R. 122, 43 N.B.R. 190.] R. v. Akerley, 30 Can. Cr. Cas. 343.

AFFIDAVIT.

WHAT CONSTITUTES; DECLARATION WITH JURAT ADDED.

A document in the form of a statutory declaration under the Canada Evidence Act except that the justice had certified that it was "sworn" before him, is not a valid affidavit; the word "oath" or some equivalent in the body of the document is essential to make it an affidavit. [Phillips v. Prentice, 2 Hare 542; Re Newton, 2 DeG. F. & J. 3; Allen v. Taylor, L.R. 10 Eq. 52, 39, L.J. Ch. 627, referred to.] R. v. Marshall, 24 Can. Cr. Cas. 180.

AGE.

Proving age of juvenile. 3 Can. Cr. Cas. 594.

AGENT.

Note on fraudulent conversion by clerks, servants or agents; Distinction between "servant" and "agent." 5 Can. Cr. Cas. 80.

AGENT OF UNLICENSED INSURANCE COMPANY.

The person who manages and carries on the business of an unregistered and unlicensed insurance company in a Province other than that by which it was incorporated is liable to summary conviction therefor

under the provisions of the Insurance Act of Canada, R.S.C. 1886, ch. 124, sec. 22. R. v. Holland, 4 Can. Cr. Cas. 72.

INFORMATION BY A SOCIETY'S AGENT.

Where an information is laid in the name of an individual describing himself as the agent of a society named, the society does not thereby become a party to the proceedings and it has no locus standi to appeal from the justice's order dismissing the charge. The notice of appeal must in such case be taken in the name of the agent personally, otherwise it may be quashed. Canadian Society v. Lauzon, 4 Can. Cr. Cas. 354.

AGENCY; ILLEGAL SALE OF LIQUOR; SALE BY "CLERK, SERVANT OR AGENT;" EJUSDEM GENERIS.

An illegal sale of liquor to an Indian by a hotel cook or other employee unauthorized by the proprietor to sell liquors is not, in the absence of any knowledge or connivance on the part of the proprietor, a sale "by his clerk, servant or agent" so as to render the proprietor liable to the penalty imposed by the Indian Act, R.S.C. 1886, ch. 43, sec. 94, as amended by 51 Vict. ch. 22, sec. 4. The King v. Michael Gee, 5 Can. Cr. Cas. 148.

CUSTOMS FRAUDS; CUSTOMS OFFICER AN AGENT; FRAUD BY AGENT OR BAILEE.

United States v. Browne, 11 Can. Cr. Cas. 167.

AGGRAVATED ASSAULT.

See Assault.

AIDING AND ABETTING.

See Accessory.

ALBERTA.

Criminal procedure in new Province. 9 Can. Cr. Cas. 565.

ALIBI.

Alibi; Reasonable doubt; Onus of proof. 8 Can. Cr. Cas. 476.

QUESTION OF IDENTITY; ONUS OF PROOF; PREPONDERANCE OF TESTIMONY.

It is misdirection entitling the accused to a new trial for the trial Judge to charge the jury that the onus is upon the accused to prove an alibi set up in defence by a preponderance of testimony. The King v. Myshrall, 8 Can. Cr. Cas. 474.

ALIEN LABOUR.

Note on meaning of "aliens." 6 Can. Cr. Cas. 362.

Amending Act of 1901. 4 Can. Cr. Cas. 596.

KNOWINGLY ASSISTING IMPORTATION UNDER CONTRACT; "ALIENS OR FOREIGNERS," MEANING OF.

(1) Where it appears upon a prosecution under the Alien Labour Statutes (1897 Can. ch. 11 and 1901 Can. ch. 13) that the workman was born in the United States, but that his father was born in Canada and no evidence is given that either the workman or his father became United States citizens by naturalization, it is to be inferred that the workman is a British subject and not an alien or foreigner. (2) The offence for which a summary conviction may be made under the said statutes is the "knowingly" assisting, encouraging or soliciting the immigration or importation of any alien or foreigner into Canada to perform labour or service under contract made before the workman becomes a resident of Canada; and a conviction which does not recite that the alleged offence was done knowingly is bad as not disclosing an offence known to the law. (3) The omission of the word "knowingly" from both the information and the conviction is a matter of substance and not a mere matter of form, and the defect is not curable upon certiorari as an "irregularity, informality or insufficiency" under Code, sec. 889. The King v. Hayes, 6 Can. Cr. Cas. 357.

[Distinguished in R. v. Barre, 15 Man. L.R. 421, 11 Can. Cr. Cas. 13; referred to in R. v. M'Guire, 13 Can. Cr. Cas. 325; R. v. Graf, 15 Can. Cr. Cas. 200; R. v. Hogarth, 18 Can. Cr. Cas. 276; Dufresne v. R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

ENCOURAGING IMPORTATION OF FOREIGNERS UNDER CONTRACT OF EMPLOYMENT; ADVERTISING FOR WORKMEN; "PROMISE OF EMPLOYMENT."

(1) The usual manufacturers' advertisement of "Mechanics Wanted" is only an invitation to apply for employment and not a "promise of employment," the advertisement of which is prohibited by the Alien Labour Statutes. (2) The insertion of such an advertisement by a Canadian firm in a foreign newspaper is not illegal, although foreigners are led thereby to come to Canada to make application to the advertisers for employment and are employed by them. Downie v. Vancouver Engineering Works, 8 Can. Cr. Cas. 66.

CONSENT OF JUDGE OR ATTORNEY-GENERAL TO SUMMARY PROSECUTION; SPECIFYING PARTICULARS OF OFFICE; CONSENT IN GENERAL TERMS INVALID.

(1) The purpose of requiring the con-

sent of a Judge to a summary prosecution under the Alien Labour Act is to prevent frivolous complaints and the consent should therefore refer not only to the name of the accused but to the person in respect of whom the alleged offence was committed and the time and place of the offence. (2) A consent signed by a Judge in general terms specifying merely the person accused but not otherwise identifying the offences charged under the Act, is insufficient to confer jurisdiction upon a magistrate and a summary conviction founded upon such general consent must be quashed. (3) A police magistrate hearing a summary prosecution under the Alien Labour Act is not persona designata, and a case may be stated by him for the opinion of a superior Court under Cr. Code, sec. 900. The King v. Breckenridge, 10 Can. Cr. Cas. 180.

[Followed in R. v. Johnson & Carey, 20 Can. Cr. Cas. 319.]

IMPORTATION OF FOREIGN LABOUR; SKILLED LABOUR FOR THE PURPOSE OF NEW INDUSTRY.

(1) A person who, as the agent of a Company, procures the immigration into Canada of an alien labourer, in violation of the Alien Labour Act, is guilty of the offence created, and liable for the fine imposed therein, as if he were a principal acting for himself. (2) It is a violation of the Alien Labour Act to import, or assist in importing, and alien labourer who resides in a foreign country that enacts and retains in force laws of a similar character, even though such labourer should be a citizen of and have his domicile in another foreign country that does not enact and retain in force such laws. (3) On the establishment of steel car manufacturing as a new industry in Canada, rivetters may be imported from a foreign country for its operation, under sec. 9 of the Alien Labour Act, if, in consequence of an unusual demand, they cannot be otherwise obtained, although rivetters are employed in other industries in Canada. The King v. Disney, 14 Can. Cr. Cas. 152.

OFFENCE BY CANADIAN EMPLOYER OF SOLICITING ALIEN IMMIGRANT UNDER PROMISE OF EMPLOYMENT.

Where neither the employment of the alien in Canada nor the solicitation to immigrate to Canada took place in the judicial district in which the prosecution of the employer was instituted for an infraction of the Alien Labour Act, the County Judge of that district has no jurisdiction, although the alien immigrant entered Canada in that district in pursuance of defendant's solicitation in the foreign country. The King v. Chestnut, 17 Can. Cr. Cas. 305.

STATUTORY REQUISITE OF LEAVE; JUDGE'S CONSENT TO INSTITUTION OF PROCEEDINGS; SPECIFYING PARTICULARS OF OFFENCE.

Where the Alien Labour Act, R.S.C. 1906, ch. 97, sec. 5, requires a Judge's consent as a preliminary to criminal proceedings to recover a penalty under that Act, such consent should contain the statement of the offence committed, the name of the person against whom and the time and place where such offence has been committed; and a consent in general terms to proceedings being taken against the defendants under the Alien Labour Act for hiring persons named contrary to the terms of said Act, is insufficient unless the time and place of the offence is also mentioned. [Rex v. Breckenridge, 10 Can. Cr. Cas. 180, 10 O.L.R. 459, followed.] The King v. Johnson & Carey, Limited, 20 Can. Cr. Cas. 319.

ALIEN LABOUR ACT; OFFENCE OF SOLICITING TO ENTER CANADA UNDER CONTRACT.

It is an offence under the Alien Labour Act, R.S.C. 1906, ch. 97, for a subsidiary company incorporated under Ontario law, but operating under the control of a foreign company with headquarters in the U.S.A., to solicit the bringing into Canada of an American citizen to take charge of its fruit commission business as manager. R. v. Gamble-Robinson Fruit Co. Ltd., 22 Can. Cr. Cas. 152, 15 D.L.R. 144.

ALIENS.

See also Immigration; Alien Labour.

IMMIGRATION ACT; DEPORTATION; PROHIBITION; CONSTITUTIONALITY; HABEAS CORPUS.

The provisions of the Immigration Act (Can.) depriving an alien ordered to be deported of any right to apply to the courts to review, quash, reverse, restrain, or otherwise interfere with an order of deportation made "under the authority and in accordance with the provisions of the Act" may prevent a writ of prohibition to the Immigration officers, but it does not remove the right of the person detained to obtain a writ of habeas corpus to test the constitutionality of the statute; on due service of such writ the immigration officers would be bound, under penalty for contempt, to make return thereto with reasons assigned for the detention. [Re Gaynor and Greene (No. 8), 9 Can. Cr. Cas. 496, referred to.] Re Harry K. Thaw (No. 3), 22 Can. Cr. Cas. 8, 13 D.L.R. 715. See also 22 Can. Cr. Cas. 1, 3; 13 D.L.R. 710, 712.

NATURALIZATION; STATUS; CHINAMAN.

Notwithstanding his naturalization in Canada a man born in China and of Chinese parents is a "Chinaman" within the meaning of the statute 2 Geo. V. (Sask.), ch.

17, prohibiting employment of white women in restaurants and other places of business kept by "a Chinaman." Quong Wing v. The King, 23 Can. Cr. Cas. 113, 18 D.L.R. 121, affirming 21 Can. Cr. Cas. 326, 12 D.L.R. 656.

ALIEN ENEMIES; ARREST BY MILITARY AUTHORITIES.

In performing the duty of arresting and detaining (inter alia) persons of a nationality at war with Great Britain who attempt to leave Canada and in regard to whom there is reasonable ground to believe that their attempted departure is with a view to assist the enemy (Proclamation of August 15, 1914) a wide discretion is left to the military commanding officers, which will not ordinarily be reviewed or interfered with by the Courts under habeas corpus process. Re Chamryk, 23 Can. Cr. Cas. 275, 19 D.L.R. 236.

WAR MEASURES ACT; MILITARY CUSTODY; HABEAS CORPUS.

A prisoner held in military custody as an alien enemy must have the consent of the Minister of Justice before he can claim to be released in habeas corpus proceedings in support of which he adduces proof that he is a British subject by naturalization; he cannot be released upon bail or otherwise discharged or tried without the consent of the Minister of Justice under the War Measures Act, 1914, 5 Geo. V., Can. ch. 2. Re Beranek, 24 Can. Cr. Cas. 252, 25 D.L.R. 564.

[Followed in Re Gusetu, 24 Can. Cr. Cas. 427.]

ASSISTING ENEMY ALIEN TO LEAVE CANADA.

A jury trying a charge under Cr. Code, sec. 75A for assisting an enemy alien to leave Canada may properly infer that the person assisted is an alien enemy on his testimony that his earlier recollections are of residence in the enemy country and proof that he had registered in Canada as an alien enemy. [Guerin v. Bank of France, 5 Times L.R. 160, referred to.] Where an enemy alien starts for the boundary line with the intention of leaving Canada he is to be considered as in the act of leaving Canada on every part of the journey, and any person knowing such intention on his part and doing any act in furtherance of that intention therey assists such enemy alien within the meaning of Cr. Code, sec. 75A, whether the latter got across the boundary line or not. R. v. Oma, 25 Can. Cr. Cas. 73; 25 D.L.R. 670.

[Compare R. v. Nerlich, 24 Can. Cr. Cas. 256, 25 D.L.R. 138.]

ALTERNATIVE PUNISHMENT.

Alternative punishment; Imprisonment in default of fine; Cr. Code, sec. 872; Note, 10 Can. Cr. Cas. 361.

ALTERNATIVE REMEDY.

Effect on certiorari, 1 Can. Cr. Cas. 153, 154.

AMENDMENT.

See Summary Conviction; Certiorari; Indictment; Information; Summary conviction; Summary trial.

Of conviction on certiorari. 5 Can. Cr. Cas. 86.

Of convictions under the Ontario Summary Convictions Act. 5 Can. Cr. Cas. 570.

Seduction; Speedy trial; Amendment as to date of offense. 10 Can. Cr. Cas. 236.

Information charging two matters of complaint; Irregularity. 10 Can. Cr. Cas. 35.

Summary conviction; power to amend on appeal. 22 Can. Cr. Cas. 246.

Amendment of summary convictions. 29 Can. Cr. Cas. 99.

AMENDMENT OF CONVICTION AFTER NOTICE OF APPEAL.

The appellant was convicted before the police magistrate of a city for keeping a house of ill-fame, "contrary to a certain by-law of the corporation." She appealed to the sessions, in May following, where it was held that under 32-33 Vict. (D.) ch. 32, the decision of the magistrates was final. The appellant on the 2nd of June applied to this Court for a mandamus to the sessions to hear the appeal, and the police magistrate on the same day filed with the clerk of the peace another conviction, stating the offense to be "contrary to the statute in such case made and provided." 32 Vict. ch. 32, under which there is no appeal:—Held, that the appeal should have been heard; and that after notice of appeal given and the time of hearing the appeal had arrived, no amendment could be made to the conviction. The mandamus was therefore ordered. Regina v. Smith (1874), 35 U.C.Q.B. 518.

AMENDING ORDER DISMISSING INFORMATION.

A justice's order dismissing an information under "The Summary Convictions Act," ordering the informant to pay as costs a sum which included items for "rent of hall," "counsel fee," "compensation for wages," and "railway fare":—Held, that none of these items could legally be charged as costs, and that, therefore, the order was bad, so far as it awarded any costs. Held, also, that the Court could not amend the order by deducting the illegal items; though it could amend by striking out in toto all that part of the order relating to costs.

[Regina v. Dunning, considered.] Queen v. Laird (1889), 1 Terr. L. R. 179.

AMENDMENT OF INDICTMENT; EFFECT ON MERITS OF DEFENSE.

"The merits of the case," with reference to amendments, under 32-33 Vict. ch. 29, sec. 71 d, means the justice of the case as regards the guilt or innocence of the prisoner; and "his defence on such merits," means a substantial, and not a formal or technical defence. Regina v. Cronin (1875), 36 U.C.Q.B. 342.

AMENDMENT ON APPEAL FROM SUMMARY CONVICTION.

Held, that when an appeal is taken and perfected from a decision of justices of the peace in a summary cause, the judgment below is thereby ipso facto vacated, and the case stands for a new trial. On a second trial no amendment adding or substituting a new cause of action or ground of defence will be allowed. Rand v. Rockwell (1871), 2 N.S.R. 199.

VARIANCE BETWEEN INDICTMENT AND CHARGE.

On a charge of stealing 2,200 bushels of beans for which he was committed for trial the evidence before the magistrate disclosed that the prisoner had obtained certain cheques on the false pretense that "there were 2,680 bushels of beans" in his warehouse. At the Assizes he was indicted for obtaining the cheques on the false pretense "that there was then a large quantity of beans, to wit, 2,680 bushels" in his warehouse. During the progress of the trial the indictment was amended by striking out the words "a large quantity of beans, to wit," and the prisoner was convicted thereon:—Held, no such variation as prevented the indictment being preferred for a charge founded upon the facts or evidence disclosed within the meaning of sec. 641 of the Criminal Code, 1892:—Held, also, that the prisoner not having been misled or prejudiced by the amendment, it was properly made. Regina v. Patterson, 26 O.R. 656.

WARRANT OF COMMITMENT; AMENDMENT OF.

The justices may return an amendment of fresh warrant of commitment with the writ of certiorari and if it be sufficient the Court will not enquire into the validity of a previous warrant, upon which the prisoner was held, which was bad for not following the conviction or disclosing any offence. Re Plunket, 1 Can. Cr. Cas. 365.

[Followed in Re Barre, 10 Can. Cr. Cas. 3.]

POWER TO AMEND SUMMARY CONVICTION RETURNED.

Where the original conviction directed payment of a fine and the levy of same by distress and in default of sufficient distress adjudged imprisonment, the Court exercising the power of amendment conferred by Code, secs. 883 and 889 may substitute in lieu of the distress, etc., an award of imprisonment forthwith in case of nonpayment of the fine. R. v. Murdock, 4 Can. Cr. Cas. 82.

SPEEDY TRIAL; SUBSTITUTING NEW CHARGE; AMENDMENT AS TO DATE OF OFFENCE; ANOTHER OCCURENCE TO WHICH A DIFFERENT DEFENCE MIGHT APPLY.

(1) A County Judge holding a speedy trial upon a charge of seduction may substitute a new charge to conform to the evidence of the prosecution by stating it as of a prior date upon which a different occurrence is sought to be proved, but such substitution is subject to the right of the accused to re-elect the mode of trial. (2) As regards the offence of seduction the change of the date of the alleged offence by an amendment of the indictment or charge is in substance the laying of a new charge to which a different defence might be applicable. (3) Code, sec. 723 applies to authorize an amendment as to time or place in a speedy trial charge without re-election, only where the act or transaction which forms the foundation of the charge is the same, and a mistake was made in the evidence or charge as to the true date of the occurrence. The King v. Lacelle, 10 Can. Cr. Cas. 229.

[Referred to in R. v. Sylvester, 19 Can. Cr. Cas. 310, 1 D.L.R. 192; R. v. Dann, 11 Can. Cr. Cas. 246; Dufresne v. R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

AMENDED CONVICTION AND COMMITMENT: SUBSTITUTION ON MOTION FOR HABEAS CORPUS.

Leave may be given on the hearing of a habeas corpus application to substitute an amended conviction and an amended commitment for the invalid conviction and commitment attacked whether the defect in the first be one of form only or one of substance. The King v. Barre, 11 Can. Cr. Cas. 1.

AMENDMENT OF INFORMATION; CHANGING DATE OF ALLEGED OFFENCE.

(1) Where the day of the week and the day of the month mentioned as the return day in a summons issued by a magistrate do not conform, the summons is not invalid as for an impossible day but the day of the month governs. (2) Although the defendant has failed to appear after summons in a summary conviction matter, the information may be amended to correct the date of the offence but not to charge a different offence. (3) A charge of illegally selling liquor on a date specified is properly amended to charge the illegal sale as of a date four days earlier, and such change of date does not necessarily make it a charge of a different offence. Ex parte Doherty, 1 Can. Cr. Cas. 84, distinguished. Ex parte Tompkins, 12 Can. Cr. Cas. 552.

LIQUOR LAWS; INFORMATION; AMENDMENT PERMITTED AFTER TIME LIMIT FOR FRESH INFORMATION.

(1) An information under the Liquor License Act (Ont.) charging the sale of liquor to a minor may be amended by adding that the minor was "apparently or to the knowedge of the defendant under the age of twenty-one," although the time for laying a new information for such offense had expired before the amendment was asked. (2) Such an amendment involving only the addition of words necessary to describe the offense intended to be charged but incompletely charged in the information is not the substitution of another and different offense as to which the prescription may apply. The King v. Ayer, 14 Can. Cr. Cas. 210.

[Specially referred to in R. v. O'Connor, 20 Can. Cr. Cas. 76, 3 D.L.R. 23, 3 O.W.N. 840, 21 O.W.R. 691.]

PLEA OF GUILTY ENTERED UNDER MISAPPREHENSION; ALLOWING AMENDMENT OF PLEA.

Where before sentence on a plea of guilty it appears that the accused disputed that he had so pleaded and claimed a justification or excuse for the act charged against him, the magistrate should have allowed the plea to be changed to one of not guilty and proceeded to a trial on the evidence. The King v. Lamothe, 15 Can. Cr. Cas. 61.

EXTRADITION; AMENDMENT OF RETURN TO HABEAS CORPUS.

A return filed to a writ of habeas corpus may be amended by leave of the Court or leave may be given to substitute a new return. Re Royston, 15 Can. Cr. Cas. 96.

SPEEDY TRIAL; FORMAL CHARGE; AMENDMENT BY ADDING SECOND COUNT FOR DISTINCT OFFENCE.

(1) On a charge of theft preferred under the speedy trials clauses of the Code following a committal for that offence, the Judge may permit an amendment by adding a count for false pretenses in respect of which a preliminary enquiry had been begun, but abandoned, and if the accused elects a speedy trial on the amended charge, a conviction on the added count will not be quashed because of failure of the prosecution to establish the first count on which alone the commitment for trial was made. (2) An amendment to include an additional charge for a wholly distinct offence from that disclosed in the depositions before the magistrate is permissible under Code sec. 834 (as amended, 1909) upon a written charge in a County Court Judge's Criminal Court, but the accused cannot be tried in that Court upon the added charge unless he consents to trial without a jury in respect thereof. (3) A second count for the additional offence will not be quashed because of a finding that the evidence does not support the first count, the jurisdiction to add a new offense under Code, sec. 834 (Amendment of 1909) not being dependent upon proof of the offense originally charged. The King v. Stickler, 16 Can. Cr. Cas. 45.

CERTIORARI; RETURN OF AMENDED CONVICTION.

A magistrate may return in answer to a certiorari an amended conviction correcting the omission from the first conviction of the place of the offense if the latter appears in the depositions. Ex parte Giberson (No. 1), 16 Can. Cr. Cas. 66.

[Referred to in R. v. Giberson (No. 2), 16 Can. Cr. Cas. 71.]

SUMMARY CONVICTION FOR SECOND OFFENCE; AMENDMENT OF CONVICTION ON HABEAS CORPUS.

Under sec. 105 of the Liquor License Act the Court on habeas corpus may amend a summary conviction for an infraction thereof by striking out an unauthorized adjudication for further detention in respect of charges of conveying the prisoner to gaol. The King v. Graves (No. 1), 16 Can. Cr. Cas. 150.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 321.]

SUMMARY CONVICTION; AMENDMENT OF CONVICTION; RIGHT OF MAGISTRATE.

(1) A stipendiary magistrate cannot amend a warrant or conviction after it is filed with the clerk of the peace or other proper officer, under the provisions of sec. 793 of the Criminal Code, to be kept among the records of the general or quarter sessions of the peace or of any Court discharging the functions thereof. (2) Where there is no Court of general or quarter sessions of the peace, or officer thereof, in a province, with whom a warrant and conviction may be filed by a stipendiary magistrate, under sec. 793 of the Criminal Code, if filed with a city clerk, they are still under the control of the magistrate who issued them, and he may amend them at any time before the conviction is quashed. (3) The filing by a stipendiary magistrate of a warrant and conviction with a city clerk instead of the clerk of the peace, to be kept among the records of the general or quarter sessions of the peace, as required by sec. 793 of the Criminal Code, where there is no such Court in the province or officer thereof with whom they may be filed, does not terminate the right of the magistrate to amend the conviction or substitute a new and correct one therefor at any time before the defective one has been quashed. (4) A reasonable time may intervene between the date of a conviction and the filing by a stipendiary magistrate of a warrant and conviction with the clerk of the peace, as required by sec. 793 of the Criminal Code, and

where but a few days elapse, it will be presumed, unless the contrary is shewn, that during such time the warrant and conviction remain in the custody of the magistrate, and so long as they are in his possession he may make amendments thereto. (5) A magistrate, who still has control of a warrant and conviction, may amend them after notice has been given of an application for a writ of certiorari and for the release of a person convicted under habeas corpus. [Ex p. Austin, 44 L.T. 102, and Reg. v. Learmont, 23 N.S.R. 24, distinguished. Re Macdonald, 26 N.S.R. 406; Regina v. Bennett, 3 Ont. R. 45; Ex p. Smith, 3 H. & N. 727; R. v. Richards, 5 Q.B. 296; The King v. Leconte, 11 Can. Cr. Cas. 41, and Regina v. Manse, 2 Man. R. 58, specially referred to.] The King v. Sarah Smith, 19 Can. Cr. Cas. 253.

RETURNING AMENDED CONVICTION; CERTIORARI.

A magistrate making a conviction on a summary trial for an indictable offence may in answer to a certiorari motion attacking the same for irregularity, return an amended conviction conforming with the adjudication and setting out in a more formal manner the conviction which he had already drawn. [See R. v. McAnn, 3 Can. Cr. Cas. 110; R. v. Whiffin, 4 Can. Cr. Cas. 141; R. v. Barre, 11 Can. Cr. Cas. 1; Ex parte Gibberson (No. 1), 16 Can. Cr. Cas. 66; Ex parte Gibberson (No. 2), 16 Can. Cr. Cas. 71; R. v. Smith, 19 Can. Cr. Cas. 253, 45 N.S.R. 517.] R. v. Nelson, 22 Can. Cr. Cas. 301, 17 D.L.R. 305.

CERTIORARI; AMENDMENT OF SUMMARY CONVICTION; STATING OFFENCE; PRACTISING DENTISTRY.

An objection that a conviction for unlawfully practising dentistry in contravention of the Dental Profession Act, R.S.S. ch. 108, does not specify the particular acts which constituted the alleged practising, may be remedied on certiorari by the Court directing an amendment of the conviction so as to insert a statement of the several acts shewn in the evidence to have been committed by the defendant, if the Court finds that the magistrate had jurisdiction and that an offence was committed of the nature specified in the conviction. [Cr. Code sec. 1124; R. v. Coulson, 1 Can. Cr. Cas. 114, applied; R. v. Harris, 13 Can. Cr. Cas. 393, referred to.] R. v. Schilling, 23 Can. Cr. Cas. 380, 21 D.L.R. 60.

POWERS OF AMENDMENT; OFFICIAL TITLE OF MAGISTRATE; RETURN.

On certiorari the court has power to amend a summary conviction by adding to the magistrate's official designation as a county police magistrate words to indicate that he was ex officio a city magistrate as regards an offence committed in the city, if by statute the original appointment for the county has been extended to include the city without further appointment and without any further oath of office being required. The court will not hear evidence on a certiorari application to contradict the return of the magistrate as to the course of procedure at the trial; affidavits to be receivable to disprove jurisdiction must be directed to the commencement of the inquiry and not to the facts disclosed in the progress of same. (Per Barry, J.) [Ex parte Steeves, 15 Can. Crim. Cas. 160, 39 N.B.R. 2; R. v. Bolton (1841), 1 Q.B. 66, followed.] Ex parte Richard; R. v. Steeves, 24 Can. Cr. Cas. 183.

CERTIORARI; AMENDMENT OF CONVICTION; DEPOSITIONS; CHANCE OF PLEA; GUILTY.

If the information for an indecent act under Cr. Code sec. 205 omits to charge that the act was "wilfully" committed and defendant pleads guilty before any evidence is taken, the defect will then not be curable on a motion to quash the summary conviction, but if a plea of not guilty is changed to one of guilty after evidence has been given for the prosecution which satisfies the Court hearing the certiorari that the indecent act was wilful, the defect is amendable under the curative provisions of Cr. Code sec. 1124. [R. v. Clifford, 26 Can. Cr. Cas. 5, 26 D.L.R. 754 distinguished.] R. v. Gerald, 26 Can. Cr. Cas. 7.

POWER TO AMEND SUMMARY CONVICTION; "INFLAMMABLE;" "EXPLOSIVE."

A summary conviction for "storing inflammable goods," following an information in like terms, cannot be supported under a statutory regulation or by-law making it an offence to store "explosive material" at a particular place; the defect is fundamental and the Court cannot on certiorari amend the conviction to conform with the by-law. R. v. Little, 27 Can. Cr. Cas. 422.

CERTIORARI; RETURNING AMENDED CONVICTION; EFFECT OF FILING DEFECTIVE COPY.

A statute requiring the magistrate to file a "copy" of each conviction under a particular statute in a public office within a limited time will not debar the magistrate from amending the original conviction while still in his possession in a manner conformable to the actual adjudication and filing a copy of such amended conviction so as to cure an omission in the first copy filed of the time when the offence was committed as proved by the evidence, and such amended conviction may be returned to an order for certiorari granted after the filing of a copy of the first pursuant to the statutory requirement. [R. v. Learmont, 23 N.S.R. 24, distinguished; R. v. McCann, 3 Can. Cr. Cas. 110, referred to.] R. v. Shatford, 28 Can. Cr. Cas. 284, 38 D.L.R. 366.

CERTIORARI; FILING AN AMENDED CONVICTION; DEFECT NOT CURABLE; DEPOSITIONS.

Leave to file an amended conviction on the return of a certiorari motion to quash will be refused where it was essential to the offence under a provincial law that it should have taken place in an electoral district constituting a restricted locality and the description of the place of offence in the first conviction did not shew that it was within the restricted locality, unless the amendment intended to cure the defect is supported by the evidence and proceedings before the magistrate. [See Annotation on Amendment of Summary Convictions, at end of this case.] R. v. Vissette, 29 Can. Cr. Cas. 97, 41 D.L.R. 52.

CERTIORARI; AMENDING DEFECTIVE CONVICTION; ONTARIO TEMPERANCE ACT.

A summary conviction under the Ontario Temperance Act, which is defective because it does not sufficiently describe an offence, will be amended on certiorari under the curative provisions of sec. 101 of that Act (compare sec. 1124 of the Criminal Code) if the court, hearing the certiorari on a review of the depositions de novo, finds proof of an offence under the Act. R. V. Leduc, 30 Can. Cr. Cas. 246.

ANIMALS.

KILLING DOG; CRIMINAL LIABILITY; DEFENCES.

On a charge under Code sec. 537 for wilfully killing a dog, reference may be had to the rules of the common law under Code sec. 16 for ascertaining whether the dog was killed under circumstances amounting to a legal justification or excuse, and by Code sec. 541 a conviction is not to be made unless the killing of the dog was done not only without legal justification or excuse but without colour of right. A defence to a criminal charge of wilfully killing a dog which was trespassing on the property of the accused is made out if it be shewn that the dog was killed under necessity for the purpose of protecting the defendant's hens in the stable where the dog had gone; and where it is shewn that the defendant's property was in peril from the dog at the moment when the shot was fired because of the probability that the dog would attack the hens, it was not obligatory on the defendant to await the actual attack before shooting the trespassing animal. O'Leary v. Therrien, 25 Can. Cr. Cas. 110, 27 D.L.R. 701.

WILFULLY KILLING HORSE; INDICTABLE OFFENCE; COMPENSATION; AGREEMENT NOT TO PROSECUTE.

If the offence is of a public nature no agreement can be valid that is founded on the consideration of stifling a prosecution for it; consequently a promissory note, unless held by a transferee in due course and for value, is not enforceable if given in consideration of stifling a criminal prosecution for the indictable offense of wilfully killing a horse, the property of another (Cr. Code sec. 510). Johnson v. Musselman, 28 Can. Cr. Cas. 165, 37 D.L.R. 162.

CRUELTY TO ANIMALS; FURIOUS DRIVING; JURISDICTION OF TWO JUSTICES; CR. CODE SEC. 542.

R. v. Nelson, 28 Can. Cr. Cas. 276.

ANIMALS' DISEASES.

Animals' Contagious Diseases Act (Can.), 1903. 7 Can. Cr. Cas. 573.

Bringing diseased animals to market, a common law nuisance. 7 Can. Cr. Cas. 575.

Venue on prosecutions under statute. 7 Can. Cr. Cas. 587.

SELLING ANIMALS HAVING CONTAGIOUS DISEASE; KNOWLEDGE OF SELLER NOT ESSENTIAL TO OFFENCE.

Knowledge on the part of the seller that the animals sold by him were affected with a contagious disease is not essential to the offence declared by sec. 7 of the Animals' Diseases Act, 1903 (Can.). The King v. Perras, 9 Can. Cr. Cas. 364.

ANIMUS.

See INTENT.

APPEAL.

I. Right of Appeal; What Cases Reviewable; Finality.
II. Jurisdiction of Particular Courts.
III. Transfer of Cause; Parties; Time Limitations; Notice; Security.
IV. Record and Case in Appellate Court.
V. Objections and Exceptions; Raising Question in Lower Court.
VI. Preliminary Motions; Dismissal; Abatement; Abandonment.
VII. Hearing and Determination.
VIII. Judgment; Costs, New Trial; Correction.
IX. Rehearing (on Appeal).
X. Leave to Appeal.

ANNOTATIONS.

No appeal from summary trial with consent, by police magistrate for theft. 1 Can. Cr. Cas. 112, 113.

Right of, effect on certiorari. 1 Can. Cr. Cas. 154.

Note on finality of judgment on appeal from a summary conviction. 5 Can. Cr. Cas. 391.

Conviction under provincial law in Ontario not removable by certiorari if appeal

gives adequate remedy. 5 Can. Cr. Cas. 570.

From summary conviction, Code amendment of 1905. 9 Can. Cr. Cas. 569.

In criminal proceedings in N.W.T. 9 Can. Cr. Cas. 574.

Costs of, under Act as to frauds against cheese factories. 2 Can. Cr. Cas. 114.

Leave to appeal after refusal of a "reserved case;" Form of order; Practice; Cr. Code, sec. 744. 2 Can. Cr. Cas. 539.

Note on appeals from summary convictions; Notice of appeal; Recognizance; Code sec. 880. 5 Can. Cr. Cas. 44.

Note on appeal from summary conviction; Form of notice of appeal; Service on justices for respondent; Cr. Code sec. 880; Code form NNN. 5 Can. Cr. Cas. 161.

Note on regularity of notices of appeal from summary convictions. 5 Can. Cr. Cas. 442.

Notice of appeal; Defects affecting jurisdiction. 6 Can. Cr. Cas. 57.

Perfection of appeals. 6 Can. Cr. Cas. 146.

Who is a "party aggrieved." 7 Can. Cr. Cas. 218.

Appeal from summary conviction; Form of notice; Cr. Code sec. 880; Amendment of 1905. 10 Can. Cr. Cas. 405.

From summary conviction; Notice of appeal; Particulars. 10 Can. Cr. Cas. 170.

Motion for leave; Code Amendment, 1900. 3 Can. Cr. Cas. 586.

Practice of "stated case" respecting Ontario provincial offences. 5 Can. Cr. Cas. 567.

Summary trial; Right of appeal or of stated case. 4 Can. Cr. Cas. 532.

Alternative right of appeal. 1 Can. Cr. Cas. 126, 153.

Refusal of reserved case; Time of application; Leave to appeal. 8 Can. Cr. Cas. 413.

Appeal from summary conviction; Parties to; Notice of appeal. 21 Can. Cr. Cas. 214.

Service of notice of appeal; Recognizance. 23 Can. Cr. Cas. 254.

Who may appeal as "party aggrieved" under Summary Conviction Act. 25 Can. Cr. Cas. 268.

Prerequisites on appeals from summary convictions; Cr. Code sec. 750. 25 Can. Cr. Cas. 392.

I. Right of Appeal; What Cases Reviewable; Finality.

BY STATED CASE.

See Stated case.

BY CASE RESERVED.

See Reserved case.

CONTEMPT OF COURT; FINALITY OF JUDGMENT; PRACTICE.

By a rule nisi of the Supreme Court of New Brunswick, E. was called upon to shew cause why an attachment should not issue against him, or he be committed for contempt of Court, in publishing certain articles in a newspaper. On the return of the rule it was made asolute, and a writ of attachment was issued commanding the sheriff to have the body of E. before the Court on a day named. By the practice in such cases in the said Court it appeared that the attachment was issued merely in order to bring the party into Court, where he might be ordered to answer interrogatories and by his answers purge if he could his contempt. If unable to do this the Court would pronounce sentence. E. appealed from the judgment making the rule absolute. On motion to quash said appeal:—Held, that the judgment appealed from was not a final judgment from which an appeal would lie under sec. 24 (a) of the Supreme and Exchequer Courts Act R.S.C. ch. 135. Ellis v. Baird, 16 Can. S.C.R. 147.

APPEAL FROM SUMMARY CONVICTION.

An appeal does not lie to the Court of Queen's Bench, Crown side, under art. 870 Criminal Code, from a summary conviction of neglect to repair a road, against a municipal corporation of a city or town, under art. 4616 R.S.Q., inasmuch as the Parliament of Canada has no legislative authority over such an offence (art. 840, Crim. Code). Scottstown v. Beauchesne, 5 Que. Q.B. 554.

CONVICTION FOR MANSLAUGHTER; UNANIMOUS AFFIRMANCE.

In Michaelmas term, 1877, certain questions of law reserved, which arose on the trial of the appellants, were argued before the Court of Queen's Bench for Ontario, composed of Harrison, C.J., and Wilson, J., and on the 4th February, 1878, the said Court, composed of the same Judges, delivered judgment affirming the conviction of the appellants for manslaughter. The Court of Queen's Bench for Ontario when full is composed of a Chief Justice and two puisne Judges. The appellants thereupon appealed to the Supreme Court under 38 Vict. ch. 11, sec. 49:—Held, that the conviction of the Court of Queen's Bench, although affirmed but by two Judges, was unanimous, and, therefore, not appealable Regina v. Amer (1878), 2 Can. S.C.R. 592.

REMEDY BY REVIEW; ELECTION OF REMEDIES; CERTIORARI.

Where a mode of reviewing the judgment of an inferior Court is pointed out by statute, the Court will not grant a certiorari except under exceptional circumstances. Where a party has elected his mode of appeal by applying for a review, and an adverse decision has been had, the Court will not grant a certiorari; the party must abide by the decision of the tribunal he has elected. Ex parte Wilson, 1 P. & B. 274.

HABEAS CORPUS ORDERS OF JUDGE AT CHAMBERS; RIGHT TO APPEAL.

Sec. 6 of ch. 94 R.S., giving an appeal from the decisions and judgments of a Judge at Chambers, does not apply to an order in the nature of a writ of habeas corpus granted by a Judge under sec. 3 of ch. 99 R.S. of "securing the liberty of the subject." R. v. McKenzie, 2 R. & G. 481.

IN HABEAS CORPUS CASES.

1. A person imprisoned may make fresh application for a habeas corpus to every Judge or Court in turn, who are each bound to consider the question independently. Statutes to be construed favourably to personal liberty. 2. An appeal lies in cases of habeas corpus. Re Bowack (1892), 2 B.C.R. 222.

MOTION TO DISCHARGE ON HABEAS CORPUS; APPEAL FROM JUDGE AT CHAMBERS.

An appeal does not lie to the Court of Appeal from a decision of a Judge sitting for the Court out of term, on a motion to discharge a prisoner on habeas corpus, under either 29 and 30 Vict. ch. 45, or R.S.O. ch. 38, sec. 18. Re Boucher (1879), 4 Ont. App. R. 191.

RIGHT OF APPEAL FROM APPOINTMENT OF COMMISSIONERS.

No appeal lies to the Divisional Court from an order appointing commissioners to take evidence under sec. 23, sub-sec. 2, Criminal Law Amendment Act, 1890, 53 Vict. (Can.) ch. 37. Regina v. Johnson (1892), 2 B.C.R. 87.

RIGHT TO; STATUTORY COMPLIANCE; CONVICTION FOR ASSAULT.

The appellant having been convicted of an assault under Consol. Stat. C. ch. 91, sec. 37, appealed to the Quarter Sessions. On the first day of the Court, after he had proved his notice of appeal, at the respondent's request the case was postponed until the following day; and the respondent then objected to the jurisdiction, as it was not shewn that the appellant had either remained in custody or entered into a recognizance, as required by sec. 117 of Consol. Stat. C., ch. 99. The Court held that this objection had been waived by the application to postpone, and they quashed the conviction. On motion for a prohibition to the Quarter Sessions from further proceeding in the matter:—Held, that this was an appeal under sec. 117 above mentioned, not under Consol. Stat. U. C. ch. 114, sec. 1; that it was clearly incumbent on the appellant to shew his right to appeal by proving compliance with that section; and that the necessity for such proof was not waived by the respondent's application for delay. The prohibition was therefore granted. Re Meyers and Wonnacott, 23 U.C.Q.B. 611.

SUMMARY CONVICTION; BREACH OF BY-LAW; IMPROPER REJECTION OF EVIDENCE; IMPROPER AMENDMENT.

On the appeal the appellant tendered evidence and witnesses not heard on the trial before the magistrate, which the chairman rejected, relying on 32-33 Vict. ch. 31, sec. 66, which, however, had been repealed by 42 Vict. ch. 44, sec. 10. The conviction was amended and affirmed, as and for a breach of a municipal by-law:—Held, that the appellant had the right, under either the Dominion Act or R.S.O. ch. 74, sec. 4, which governed the case, to have such witnesses examined, and having been deprived of this right, the order of sessions should be quashed. Regina v. Washington (1881), 46 U.C.Q.B. 221.

WAIVER OF RIGHT; PAYMENT OF FINE AND COSTS; IRREGULARITY OF RULE NISI.

One D. M. having been on the 27th of August, 1862, convicted before justices of the peace "for allowing card-playing at his inn, and other disorderly conduct during this year," was fined $20 and costs. On judgment being pronounced he remarked that he would pay the fine, etc., but he "would see further about it." On the 30th of August, notice of appeal was given to the prosecutor and to one of the convicting magistrates, and on the 11th of September, the appeal came on at the Quarter Sessions, when the Court decided that the right to appeal was waived and lost by reason of plaintiff having paid the fine and costs. The rule nisi herein is drawn up calling upon "the Court of Quarter Sessions," for the said counties to shew cause, whereas the justices of the said counties should have been called upon by the rule:—Held, 1st. That the facts as set out do not amount to a waiver of the said D. M.'s right to appeal, as the money was paid, as might be inferred from the facts stated, under protest. 2nd. That the rule nisi having been enlarged by the justices, at their request from the previous term, objections could not now be taken to its form, and the irregularity was by the enlargement waived. Semble, that in any doubtful ground a party should not be deprived of his right to appeal against a summary conviction. Re the Justices of the United Counties of York and Peel; Ex parte David Mason, 13 U.C.C.P. 159.

BRITISH COLUMBIA; SUMMARY TRIAL WITHOUT CONSENT.

Cr. Code sec. 784 (3), making the jurisdiction of the magistrate absolute in British Columbia, Prince Edward Island, etc., without the consent of the accused, in cases of summary trial for theft under $10, etc., under sec. 783, has not the effect of preventing an appeal when two justices of the peace exercise the powers of a magistrate

under Cr. Code sec. 782 (a.3) and 782 (a.5). R. v. Wirth, 1 Can. Cr. Cas. 231.

CERTIORARI NOT AN APPEAL.

Proceedings by way of certiorari against a summary conviction do not constitute an "appeal" under Cr. Code sec. 897. R. v. Graham, 1 Can. Cr. Cas. 405.

SUMMARY TRIAL WITH CONSENT.

An appeal does not lie from the decision of a police magistrate who tries a charge of theft summarily with the consent of the accused. R. v. Egan, 1 Can. Cr. Cas. 112.

[Referred to in R. v. Laura Carter, 5 Can. Cr. Cas. 406; followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 353.]

Cr. Code sec. 808 prevents the application of any of the provisions as to appeals from summary convictions (secs. 879–884) to convictions under Part LV. (secs. 782–808), by a police magistrate on a summary trial with the consent of the accused. Ibid. 1 Can. Cr. Cas. 112.

FROM SUMMARY CONVICTION; OFFENCE UNDER PROVINCIAL STATUTE.

An appeal under Cr. Code 879, from a summary conviction in the Province of Quebec to the Court of Queen's Bench of that province, can only be taken where the offence charged is one within the legislative authority of the Parliament of Canada, and not where the offence is against a provincial statute. Lecours v. Hurtubise, 2 Can. Cr. Cas. 521.

FROM ORDER QUASHING SUMMARY CONVICTION.

Except where specially authorized by statute, an appeal does not lie in Ontario to the Court of Appeal from an order of the High Court of Justice quashing a summary conviction made under a provincial statute. R. v. Cushing, 3 Can. Cr. Cas. 306.

APPEAL NOT A MATTER OF PROCEDURE.

A right of appeal is not a matter of procedure under art. 503 of the Montreal City charter, which enacts that the provisions of part 58 of the Criminal Code shall apply to prosecutions under the charter "as regards the mode of procedure" therein; and there is consequently no appeal from the Recorder's Court of Montreal to the Court of Queen's Bench, from a conviction for carrying on the business of a pawnbroker without a license. Superior v. City of Montreal, 3 Can. Cr. Cas. 379.

[Referred to in R. v. Hyndman, 17 Can. Cr. Cas. 471; specially referred to in Dufresne v. R., 19 Can. Cr. Cas. 414, 5 D.L.R. 501.]

HARBOURING DESERTING SEAMEN; SEAMEN'S ACT (CAN.).

The appeal from a summary conviction under the Seaman's Act of Canada for harbouring and secreting a deserting seaman is under sec. 879 and not under sec. 742 of the Criminal Code, and in the Province of Quebec the appeal should be taken to the Crown side and not to the appeal side of the Court of Queen's Bench of that province. R. v. O'Dea, 3 Can. Cr. Cas. 402.

[Followed in R. v. O'Dea, 8 Can. Cr. Cas. 155.]

NO APPEAL FROM SUMMARY TRIAL.

No appeal lies from the decision of a Judge of the sessions, police magistrate, district magistrate, or other functionary mentioned in Cr. Code, sec. 782a (1), holding a "summary trial" under Cr. Codes 783. R. v. Racine, 3 Can. Cr. Cas. 446.

[Followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 352; distinguished in R. v. Leschinski, 17 Can. Cr. Cas. 201.]

FROM CONVICTION INVOLVING FORFEITURE OF LICENSE.

Where a licensee is convicted under sec. 123 (3) The Liquor License Ordinance (N.W.T.) of supplying liquor to an interdicted person with a knowledge of such interdiction, the effect of such conviction being that his license shall be forfeited, an appeal from such conviction is a stay of proceedings and suspends all the consequences of the conviction. The giving of a recognizance under Cr. Code sec. 880, on an appeal from a summary conviction, operates as a stay of proceedings for the enforcement of any pecuniary penalty imposed by the conviction appealed from. Simington v. Colbourne, 4 Can. Cr. Cas. 367.

SUMMARY TRIAL; JURISDICTION OF MAGISTRATE WITHOUT CONSENT OF ACCUSED.

There is no right of appeal from a conviction by a police magistrate under the summary trials procedure (part LV.) although the offence is one which the magistrate may try thereunder without the consent of the accused. The Queen v. Nixon, 5 Can. Cr. Cas. 32.

[Referred to in R. v. Laura Carter, 5 Can. Cr. Cas. 406; followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 353.]

SUMMARY TRIAL BY RECORDER'S COURT, MONTREAL; NO RIGHT OF APPEAL.

No appeal lies from the decision of the Recorder's Court of Montreal holding a "summary trial" under Cr. Code, sec. 783. The King v. Portugais, 5 Can. Cr. Cas. 100.

[Followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 352.]

FISHERIES ACT, R.S.C. 1886, ch. 95.

An appeal lies under Code, sec. 879 from a conviction made under the Fisheries Act, R.S.C. ch. 95, sec. 18, notwithstanding the special appeal provided by that Act. The special appeal, which under the Fisheries Act may be made to the Minister of Marine and Fisheries, may be taken after the disposal of an appeal to a County Court. The

King v. Townsend; The King v. Murtagh, 5 Can. Cr. Cas. 143.

[Referred to in R. v. Townsend, 35 N.S.R. 43.]

SUMMARY CONVICTION; APPEAL; SUBSEQUENT HABEAS CORPUS PROCEEDINGS.

The decision of the Court of General Sessions or County Court in appeal from a summary conviction is final and conclusive, and a superior Court has no jurisdiction to interfere by habeas corpus. The King v. Beamish, 5 Can. Cr. Cas. 388.

SUMMARY CONVICTION; IMMEDIATE PAYMENT OF FINE; NO RIGHT OF APPEAL; DEPOSIT IN LIEU OF RECOGNIZANCE; REQUISITES OF.

(1) A defendant fined in summary conviction proceeding who thereupon pays the fine to the clerk of the Court instead of giving a recognizance or applying to the justice under Code, sec. 880 (c) to fix the deposit on appeal, loses his right of appeal under secs. 879 and 880, notwithstanding that the magistrate afterwards fixed the amount of deposit for the costs only and such deposit was made and transmitted to the Appellate Court with the conviction. (2) The deposit authorized by Code, sec. 880 (c) in lieu of a recognizance on appeal from a summary conviction must include the fine, and the whole sum covering both the fine and the probable costs of appeal must be transmitted to the Appellate Court. (3) Semble, the duty is upon the appellant to obtain the justice's return of such deposit to the Appellate Court under Code, sec. 888, and unless such return is made the appeal must be quashed. The King v. Neuberger, 6 Can. Cr. Cas. 142.

[Considered in R. v. Tucker, 10 Can. Cr. Cas. 221.]

STATED CASE; APPLICATION TO MAGISTRATE AFTER UNSUCCESSFUL APPEAL FROM SUMMARY CONVICTION; RES JUDICATA.

(1) Where an appeal has been taken to a County Court under Crim. Code, sec. 879 from a summary conviction and the County Court has affirmed the conviction, it is not open to the accused to afterwards have the convicting magistrate refer a "stated case" to a superior Court. (2) The decisions of the County Court being res adjudicata between the parties is a bar to the application for a "stated case." The King v. Townshend (No. 2), 6 Can. Cr. Cas. 519.

FROM SUMMARY CONVICTION; CERTIORARI PROCEEDINGS A WAIVER.

The taking of a writ of certiorari is a waiver on the part of the petitioner of his right of appeal. Denault v. Robida, 8 Can. Cr. Cas. 501.

TRADE COMBINES; CONSPIRACY; TRIAL WITHOUT A JURY; APPEAL ONLY FOR CONVICTION; TRADE COMBINATIONS ACT.

The right of appeal under secs. 4 and 5, the Trade Combinations Act, where the defendant elects trial without a jury, is limited to an appeal from the conviction, and the Crown has no appeal from an acquittal on other counts of the indictment. The King v. Elliott, 9 Can. Cr. Cas. 505.

SUMMARY TRIAL; LIMITED RIGHT OF APPEAL; DECISION OF TWO JUSTICES.

Where two justices of the peace in the Territories exercise their jurisdiction of summary trial for the offences of theft, etc., under $10, there is no appeal, as such justices have a general jurisdiction under Part L.V. of the Code under sec. 782 (a iii.) and the trial is not by virtue of sub-paragraph (v.) of that section. The King v. McLennan (No. 2), 10 Can. Cr. Cas. 14.

[Adhered to in R. v. Pisoni, 6 Terr. L.R. 238.]

EXTRADITION; APPLICATION FOR PROHIBITION; APPEAL FROM REFUSAL OF WRIT: PROCEEDING "ARISING OUT OF A CRIMINAL CHARGE."

No appeal lies to the Supreme Court of Canada from the refusal by a Provincial Court of a writ of prohibition respecting extradition proceedings for a criminal offence, although the prohibition is sought upon the ground that the Extradition Commissioner was not appointed by competent authority. An application for a writ of prohibition to restrain an Extradition Commissioner from holding an inquiry upon a demand of extradition for larceny is a "proceeding arising out of a criminal charge" within the meaning of sec. 24 (g) of the Supreme Court Act. [Re Gaynor and Greene (No. 7), 9 Can. Cr. Cas. 492, overruled.] Re Gaynor and Greene (No. 10), 10 Can. Cr. Cas. 21.

LIQUOR LICENSE; INSPECTOR'S APPEAL ON DISMISSAL OF COMPLAINT; LIMITED RIGHT; DIRECTION OF ATTORNEY-GENERAL; NO APPEAL FROM DISMISSAL ORDER OF POLICE MAGISTRATE.

(1) The limited right of appeal by a license inspector under the Ontario Liquor License Act upon the dismissal of his complaint does not include dismissal orders made by a police magistrate of a town, acting in his capacity of police magistrate and not as an ex officio justice. (2) Sec. 118 (6) of the Liquor License Act, R.S.O. 1897, ch. 245, which permits an appeal to the County Court Judge by direction of the Attorney-General in all cases in which an order has been made "by a justice or justices" dismissing an information, does not include a police magistrate within the term "justice or justices." The King v. Smith, 10 Can. Cr. Cas. 362.

APPEALS IN HABEAS CORPUS.

There is no appeal to the Full Court of King's Bench in Manitoba from the decision of a single Judge of that Court refus-

ing a motion for a habeas corpus to discharge a prisoner from custody, but successive applications for the writ may be made to each Judge. The King v. Barre, 11 Can. Cr. Cas. 1.

OFFENCE UNDER BOTH DOMINION AND PROVINCIAL STATUTES; APPEAL FROM SUMMARY CONVICTION.

1. Code, sec. 706 combined with sec. 16 of the Lord's Day Act (Canada), which enacts that, if an offence thereunder is also an offence under a provincial law, the prosecution may be under either statute, has the effect of conferring the right of appeal under Part XV. of the Criminal Code to a defendant convicted under the Sunday Observance Act (Quebec) of an offence thereunder which might have been charged as an offence under the Dominion Act. 2. Sec. 4 of the Quebec Sunday Observance Act, which enacts that fines for its violation may be recovered before certain magistrates or two justices of the peace "under the provision of Part XV. of the Criminal Code," has not the effect of embodying the appeal provisions of Part XV. in the provincial statute. The King v. Ouimet, 14 Can. Cr. Cas. 136.

CERTIORARI; RIGHT OF APPEAL FROM SINGLE JUDGE.

No appeal lies in British Columbia to the Full Court from the decision of a single Judge quashing a summary conviction under the Criminal Code on the return of a certiorari. The King v. Carroll, 14 Can. Cr. Cas. 338.

[Distinguished in Re Tiderington, 19 Can. Cr. Cas. 365, 5 D.L.R. 138.]

HABEAS CORPUS; APPEAL TO DIVISIONAL COURT FROM REFUSAL TO DISCHARGE.

Sec. 121 of the Liquor License Act (Ont.) which provides an appeal to the Court of Appeal only upon obtaining a certificate of the Attorney-General, from the judgment of a High Court Judge refusing to discharge a prisoner held in custody under a conviction for breach of the License Act, does not bar an appeal by the prisoner to a Divisional Court without any certificate from the Attorney-General. The King v. Teasdale, 16 Can. Cr. Cas. 53.

[Not followed in R. v. Graves (No. 2), 16 Can. Cr. Cas. 318, 21 O.L.R. 329; referred to in R. v. Pfister, 19 Can. Cr. Cas. 93.]

SUMMARY TRIAL; SPECIAL APPEAL IN CERTAIN CASES.

The special appeal from a summary trial conferred by Code, sec. 797 in the case of obtaining money under $10 by false pretences and of certain other offences, does not apply to a conviction for attempting to obtain money under false pretences, although such conviction was made under Code, sec. 949 on a charge of the completed offence. The King v. Lyons (No. 2), 16 Can. Cr. Cas. 352.

SUMMARY CONVICTION; RIGHT OF APPEAL.

Where an appeal was so taken by the prosecutor from the magistrate's dismissal of a complaint under sec. 3562 (a) of the Revised Statutes of Quebec for unlawful practice as an attorney, and an application to quash had been refused by a Judge of the Court of King's Bench, Crown side, an application to the Court of King's Bench, appeal side, for leave to appeal from such refusal was dismissed. Montreal Bar Association v. Dominion Mercantile Protective Association, 16 Can. Cr. Cas. 371.

CONTEMPT OF COURT; QUEBEC CODE OF CIVIL PROCEDURE, ART. 43.

1. The merits of an adjudication of a Court of record on a charge of contempt by scandalizing such Court will not be enquired into on an appeal, but an appeal lies to the Court of Appeal by way of reserved case or leave pursuant to the Criminal Code to decide (1) whether or not there was jurisdiction in the Court below, (2) whether what was adjudged a contempt is such in law and (3) whether the punishment was authorized by law. (Per Cross, J.) 2. The appeal from the Superior Court to the Court of King's Bench of Quebec in such case is by virtue of art. 43 of the Quebec Code of Civil Procedure and not under the Criminal Code of Canada. (Per Archambeault, J.) Fournier v. Attorney-General, 17 Can. Cr. Cas. 108.

RIGHT OF APPEAL FROM SUMMARY CONVICTION.

As the statute provides that prosecutions for infractions of the Quebec Motor Vehicles Act shall be "governed" by Part XV. of the Criminal Code, an appeal may be taken from a summary conviction in the manner set out in articles 749 et seq. of the Criminal Code. (Per Trenholme, J., on a preliminary motion.) The King v. Labbe, 17 Can. Cr. Cas. 417.

DISCRETION AS TO SEPARATE TRIAL; REVIEW.

The discretion of the trial Judge under Code, sec. 857, in trying the different counts of an indictment separately or jointly is not subject to review by the Court of Appeal per Maclaren, J.A. The King v. Hughes, 17 Can. Cr. Cas. 450.

SUMMARY CONVICTION UNDER PROVINCIAL STATUTE; INCORPORATION OF RIGHT OF APPEAL.

An appeal lies to the Court of King's Bench of Quebec from a conviction under the Motor Vehicles Act (Que.) by virtue of such incorporation of Part XV. of the Cr. Code as governing prosecutions under the Provincial statute. The King v. Hyndman, 17 Can. Cr. Cas. 469.

TAKING AWAY RIGHT OF APPEAL.

A Provincial Legislature has power to include in a Provincial statute prohibiting the sale of intoxicating liquors and providing for its enforcement by fine and imprisonment, a clause depriving the accused of any right of appeal. The King v. McMurrer, McMurrer v. Jenkins, 18 Can. Cr. Cas. 385.

LOCAL OPTION BY-LAW; APPEAL FROM HABEAS CORPUS ORDER; UNANIMOUS JUDGMENT.

(1) Notwithstanding the Habeas Corpus Act, R.S.O. 1897, ch. 83, there is no appeal to the Ontario Court of Appeal from the unanimous judgment of the Court below refusing to discharge the prisoner on habeas corpus where he is held under a conviction under the Ontario Liquor License Act, unless the Attorney-General certifies under sec. 121 of the latter statute (R.S.O. 1897, ch. 245) that the point in dispute is of sufficient importance to justify an appeal. (2) A conviction for selling liquor or keeping liquor for sale in contravention of a local option municipal by-law prohibiting the issue of liquor licenses is a conviction under the Liquor License Act for selling or keeping for sale "without a license," and is subject to the same limitations as to review on certiorari and habeas corpus as a conviction against a non-licensee in a district in which licenses are issued. Re Leach and Fogarty, 18 Can. Cr. Cas. 487.

RIGHT OF CROWN TO APPEAL; QUESTION IN CASE RESERVED.

(1) The question whether an indictment was properly quashed on a motion made before pleading thereto and before trial, may be reserved at the instance of the Crown for the opinion of the Court of Appeal under sec. 1014 of the Criminal Code, which will be liberally construed so as to prevent a miscarriage of justice. Brisbois v. The Queen (1888), 15 Can. S.C.R. 421, and Morin v. The Queen (1890), 18 Can. S.C.R. 467, distinguished. (2) The reserving of purely academic questions for the opinion of the Court of Appeal, while within the powers of the Court below, the Court of Appeal may refuse to hear them. The King v. Lynn (No. 2), 19 Can. Cr. Cas. 129.

[Referred to in R. v. Stauffer, 19 Can. Cr. Cas. 205, 4 Sask. L.R. 284.]

RIGHT TO QUESTION SELECTION OF JURY ON AN APPEAL.

The omission of the sheriff, in striking from the grand jury panel, on his own motion, the names of two jurors known to him to be exempt from jury duty, and the substituting of duly qualified jurors therefor, to have before him the affidavit of exemption required by sec. 43 of ch. 162 of R.S.N.S., cannot, under the provisions of sec. 1011 of the Criminal Code (1906), be questioned on appeal from a judgment in a criminal case. Per Graham, E.J. The King v. Brown and Diggs, 49 Can. Cr. Cas. 237.

RIGHT OF; DISCHARGE ON HABEAS CORPUS UNDER EXTRADITION COMMITMENT.

In the absence of Federal legislation permitting it, an appeal does not lie from an order discharging on habeas corpus a person from custody under a commitment for extradition. [Cox v. Hakes, 15 App. Cas. 506, and Rex v. Carroll, 14 Can. Crim. Cas. 338, 14 B.C.R. 116, followed; Barnardo v. Ford, [1892] A.C. 326, and Re Hall, 8 A.R. (Ont.) 135, distinguished.] Re Tiderington, 19 Can. Cr. Cas. 365, 5 D.L.R. 138.

SUMMARY CONVICTION; RIGHT TO APPEAL; QUESTIONING LEGALITY OF ARREST WITHOUT A WARRANT AFTER CONVICTION.

(1) The fact that a formal summary conviction was not signed until some time after the sentence was pronounced does not deprive the accused of his right of appeal which lies as soon as the sentence is pronounced. (2) When a person has been arrested, has pleaded not guilty, and has been tried and convicted in a summary conviction matter, it is too late for him then to raise the objection that he was illegally arrested without a warrant. The King v. Langlois; City of Montreal mis-en-cause, 20 Can. Cr. Cas. 183.

RIGHT TO APPEAL IN CRIMINAL CASES; ACCEPTANCE OF CASH BAIL WITHOUT AUTHORITY; EFFECT ON THE APPEAL.

Even though a County Court does not possess jurisdiction to permit the giving of cash bail on an appeal from a conviction by a police magistrate under Cr. Code (1906), sec. 797, upon a summary trial, an appeal is not lost where the attorney for the prosecution assents to the acceptance by the Court of such bail, receives payment of the money, and permits the prisoner to go at large. Robinson v. District of Saanich and Aikman, 20 Can. Cr. Cas. 241, 7 D.L.R. 499.

RIGHT OF APPEAL; CRIMINAL CASES; ESTREAT ORDERS.

Whether or not the process in execution thereof is civil and not criminal process the order of estreat made by a County Court Judge presiding in a criminal Court on the forfeiture of bail given for the appearance of the accused before a magistrate in proceedings under the Fugitive Offenders Act, R.S.C. 1906, ch. 154, is in itself a proceeding in a criminal matter, and no appeal lies therefrom to the Court of Appeal (B.C.). [Re Talbot's Bail, 23 O.R. 65; R. v. Creelman, 25 N.S.R. 404, and R. v. Starkey, 7 Man. L.R. 489, distinguished.] The King v. Harvie, 20 Can. Cr. Cas. 369, 9 D.L.R. 432.

RESTRICTION BY STATUTE WHILE PROSECUTION PENDING.

A liquor law amendment passed during the currency of a prosecution under the principal Act and providing that no appeal shall lie, is a statute relating to procedure and will apply to the pending prosecution. R. v. Glassey, 22 Can. Cr. Cas. 73.

SUMMARY CONVICTION; LORD'S DAY ACT.

An appeal from a summary conviction under the N.S. Lord's Day Act, a preconfederation measure, lies only under the provisions of the Criminal Code and not under the N.S. Summary Convictions Act, R.S. N.S. 1900, ch. 161. R. v. Bellefontaine, 22 Can. Cr. Cas. 140.

SUMMARY TRIAL; SECRET COMMISSIONS ACT.

Where a prosecution before a police magistrate for an offence under the Secret Commissions Act, 8–9 Edw. VII. (Can.) ch. 33, is brought as for an indictable offence and is tried on the defendant's election under the Summary Trials clauses of the Cr. Code, 1906 (Part 16), and the charge, while triable in either method, is not brought under the Summary Convictions clauses of the Code (Part 15), there is no right of appeal by the prosecutor from the dismissal of the charge. Re Buchanan, 22 Can. Cr. Cas. 199, 15 D.L.R. 232.

KEEPING DISORDERLY HOUSE; LIMITED RIGHT OF APPEAL.

R. v. Dubuc, 22 Can. Cr. Cas. 426, 16 D.L.R. 318.

[Followed in R. v. Merker, 27 Can. Cr. Cas. 113.]

STATUS OF PRIVATE PROSECUTOR.

The right of the "prosecutor" to appeal on a question of law by case reserved under Cr. Code 1014(3) or by leave under Cr. Code 1015 on an acquittal of the accused, is limited to the Crown when the proceedings on the indictment are conducted by the Crown counsel; and where the Crown counsel was refused a reserved case at the trial, whereupon the informant, who had been bound over to prefer the indictment and had done so, also applied and was refused, the latter has no locus standi to make a subsequent application under Code, sec. 1015 for leave to appeal where the Crown makes no application. [R. v. Gilmore, 7 Can. Cr. Cas. 219, 6 O.L.R. 286, and R. v. Patteson, 36 U.C.Q.B. 129, referred to.] R. v. Fraser, 23 Can. Cr. Cas. 140, 19 D.L.R. 470.

FROM REFUSAL OF CERTIORARI.

No appeal lies in British Columbia from the refusal of a certiorari in respect of a summary conviction under the Criminal Code. R. v. Kwong Yick Tai, 24 Can. Cr. Cas. 28, 22 D. L. R. 323.

QUESTION OF LAW OR FACT; INDICTABLE OFFENSE.

Whether or not there was evidence upon which the trial tribunal might make a conviction is a question of law, but where there is an acquittal on the facts in respect of a charge of an indictable offence, whether by a jury or by a Judge trying the case without a jury, the question of the sufficiency of the evidence to prove the charge is a question of fact and not of law, and cannot be raised by the prosecution as a "question of law" on an appeal under Cr. Code, secs. 1014 and 1015. R. v. White, 24 Can. Cr. Cas. 74.

RIGHT OF APPEAL IN SUMMARY CONVICTION; PARTIES; NOTICE OF APPEAL.

The effect of the words "the prosecutor or complainant as well as the defendant" which are used in Cr. Code, sec. 749, in reference to the appeal given to "any person who thinks himself aggrieved" is to limit the right of appeal from the dismissal of an information in a summary conviction proceeding to the prosecutor or complainant. It is ground for quashing an appeal under Cr. Code, sec. 749, from the dismissal of a summary conviction proceeding that the appellant has not shown upon the appeal that he is the complainant and so within the limitation of Code, sec. 749 as a party aggrieved by the order of dismissal; the Court to which the appeal is taken under a notice of appeal which does not state the appellant to be the complainant in the proceedings below is not bound to look at the information transmitted under Cr. Code, sec. 757, to ascertain whether the appellant was such complainant if the information was not put in evidence on the appeal. A notice of appeal taken in a summary conviction matter under Cr. Code, sec. 749, by a person entitled to appeal thereunder need not state on its face that the appellant is a "person aggrieved" nor recite such facts as would show legal grounds for his being aggrieved. [Rex. v. McKay, 21 Can. Cr. Cas. 212, 10 D.L.R. 820, followed.] Gates v. Renner, 24 Can. Cr. Cas. 122.

SUMMARY CONVICTION; PROVINCIAL LEGISLATIBILITY OVER OFFENCE.

The right of appeal in a summary conviction matter conferred by sec. 749 *et seq.* of the Cr. Code is limited by the effect of Cr. Code, sec. 706, to matters over which the Parliament of Canada has legislative authority; this refers to the Dominion Parliament and, in the absence of provincial legislation adopting the Code provisions as to appeal or making other provision therefor, an appeal will not lie from the dismissal of a charge under a statute of the former Province of Canada in force in the present Province of Quebec which relates wholly to matters over which the Quebec Legislature now has exclusive jurisdiction. [Reg. v. Joseph, 6 Can. Cr. Cas. 144, 11 Que. Q. B. 211; R. v. Superior, Superior v.

Montreal, 3 Can. Cr. Cas. 379, 9 Que. Q.B. 138; R. v. Racine, 3 Can. Cr. Cas. 446, 9 Que. Q.B. 134; Lecours v. Hurtubise, 2 Can. Cr. Cas. 521, 8 Que. Q.B. 439, referred to.] Burroughs v. Paradio, 24 Can. Cr. Cas. 343.

STATED CASE; SUMMARY CONVICTION.

Where an appeal by stated case from a summary conviction and forfeiture of a recognizance to keep the peace, has been taken on a point of law under Cr. Code, sec. 761, there is no further appeal from the decision affirming such conviction and forfeiture; Cr. Code, secs. 1013 et seq., do not give jurisdiction to the Court of Criminal Appeal to grant leave to appeal and to receive a case stated by the Superior Court of Criminal Jurisdiction hearing the appeal from the magistrate's decision. Waller v. The King, 24 Can. Cr. Cas. 393.

RIGHT OF APPEAL; REHEARING; DISORDERLY HOUSE; TRIAL BY TWO JUSTICES.

The intention of Cr. Code 797, as amended 1913, ch. 13, is to limit the right of appeal by way of rehearing in respect of summary trial convictions for keeping a disorderly house so that there should be no such appeal where a police magistrate or other functionary having the powers of two justices had made the conviction; and the right of appeal given by sec. 797 is limited to cases where two persons who are justices of the peace are sitting together as a summary trial Court under Part XVI. for the trial of an offence within sub-secs. (a) or (f) of Cr. Code, sec. 773, i.e., theft or receiving where under $10 or keeping a disorderly house. R. v. Brown, 26 Can. Cr. Cas. 97, 30 D.L.R. 645.

[Referred to in R. v. Berenstein, 29 Can. Cr. Cas. 435.]

FROM SUMMARY TRIAL.

The words "two justices of the peace sitting together" as used in sec. 797 of the Criminal Code (Amendment of 1913) do not include a police magistrate exercising the power of two justices on a summary trial of an indictable offence; consequently, no appeal lies from a conviction made by a police magistrate where the accused was charged under Code, sec. 228, with being the keeper of a disorderly house. R. v. Robertson, 26 Can. Cr. Cas. 239.

SECOND APPEAL ON NEW GROUNDS.

After the dismissal of a case reserved on the application of the accused, a second application, although upon new grounds, is to be discouraged; and quære, whether the Court of Appeal has jurisdiction to hear a second appeal from the same conviction. R. v. Bela Singh, 27 Can. Cr. Cas. 40.

FROM SUMMARY TRIAL; DISORDERLY HOUSE.

An appeal under Code, sec. 797, as amended in 1913, does not lie from a summary trial for keeping a disorderly house except in the special case of two Justices of the Peace sitting together; the amended sec. 797 does not permit an appeal from a Police Magistrate or other functionary having the powers of two Justices. [R. v. Dubuc, 22 Can. Cr. Cas. 426, 16 D.L.R. 318, followed.] R. v. Marker and Daniels, 27 Can. Cr. Cas. 113.

FROM DISCHARGE ON HABEAS CORPUS.

There is no appeal in Manitoba from an order discharging a prisoner on habeas corpus; nor can the provincial Court of Appeal after the prisoner's release review by way of rule nisi the validity of the discharge order made in the King's Bench in respect of a committal for contempt made by a commissioner in extrajudicial proceedings not brought up by certiorari. [Cox v. Hakes, 15 A.C. 506, and Re Sproule, 12 Can. S.C.R. 140, referred to.] Re Beck, 27 Can. Cr. Cas. 331, 32 D.L.R. 15.

FROM SUMMARY CONVICTION; JURISDICTION; NOTICE OF APPEAL.

Sec. 749 of the Criminal Code confers jurisdiction on District Courts in Alberta to hear appeals from summary convictions made under the Code. [Re Vancini, 8 Can. Cr. Cas. 228, 34 Can. S.C.R. 61, applied.] Service of notice of appeal from a conviction under sec. 750 (b) of the Criminal Code, need not be made upon the respondent and convicting Justices within the ten days within which the notice must be filed in the Appeal Court; the limit applies only to the filing of the notice. [R. v. McDermott, 23 Can. Cr. Cas. 252, 19 D.L.R. 321, followed; and see Annotation to that case and Annotation to R. v. Hewa, 25 Can. Cr. Cas. 386, 28 D.L.R. 147.] Gallagher v. Vennesland, 27 Can. Cr. Cas. 360, 32 D.L.R. 435.

FROM PROTECTION ORDER.

An appeal lies under the Judicature Act, R.S.O. 1914, ch. 56, sec. 26, from so much of an order quashing a summary conviction as grants protection to the magistrates under the Public Authorities Protection Act, R.S.O. 1914, ch. 89, from a civil action in respect of the conviction so quashed. Re Lascelle and Wholehan, 27 Can. Cr. Cas. 369, 34 D.L.R. 360.

WAR REVENUE ACT; "PROSECUTOR."

An information under the Special War Revenue Act, 1915, Can., may be laid in the name of the Minister of Inland Revenue by an authorized revenue officer, and an appeal from the dismissal of the complaint may thereupon be taken in the name of the Minister as the "prosecutor" under Cr. Code sec. 749. Minister of Inland Revenue v. Thornton, 28 Can. Cr. Cas. 3.

TO PRIVY COUNCIL; CR. CODE, SEC. 1025.

Sec. 1025 of the Criminal Code, which purports to limit the right of appeal to the Judicial Committee of the Privy Council in criminal matters, does not apply to a prosecution by indictment for a noncriminal of-

fence such as the class of noncriminal nuisances referred to in Cr. Code, sec. 223. Toronto Ry. Co. v. The King, 29 Can. Cr. Cas. 29, 38 D.L.R. 537, reversing 25 Can. Cr. Cas. 183, 25 D.L.R. 586, 18 Can. Cr. Cas. 417, 23 D.L.R. 186.

RIGHT OF APPEAL TO SUPREME COURT OF CANADA; WRIT OF PROHIBITION.

An appeal does not lie to the Supreme Court of Canada from the judgment of the King's Bench, Quebec, given in respect of a writ of prohibition against proceeding with a criminal charge where no future rights were bound and the case was not within any of the classes specified in s. 46 of the Supreme Court Act, Can. [Desormeaux v. Ste. Thérèse, 43 Can. S.C.R. 82 and Olivier v. Jolin, 36 D.L.R. 729, 55 Can. S.C.R. 41, referred to.] Bouchard v. Sorgius, 29 Can. Cr. Cas. 245, 38 D.L.R. 59, quashing appeal from 26 Que. K. B. 242.

DISORDERLY HOUSE; LIMITED RIGHT OF APPEAL; TWO JUSTICES.

There is no appeal under Code, s. 797, as amended by Can. Stat. 1913, c. 13, from a conviction on summary trial for keeping a disorderly house when made by a city police magistrate trying the case without the consent of the accused under Code, secs. 773 (f) and 774. [R. v. Brown (1916), 26 Can. Cr. Cas. 97, 30 D.L.R. 645, 9 A.L.R. 494, referred to; and see R. v. Merker and Daniels, 27 Can. Cr. Cas. 113, 37 O.L.R. 582.] R. v. Berenstein, 29 Can. Cr. Cas. 435.

II. Jurisdiction of particular courts.

JURISDICTION OF THE SUPREME COURT OF CANADA.

The decision of a provincial Court in a case of constructive contempt is not a matter of discretion in which an appeal is prohibited by sec. 27 of the Supreme and Exchequer Courts Act. Taschereau, J., dubitante. The Supreme Court has jurisdiction to entertain such an appeal from the judgment of the Court of Appeal of the Province, not only under sec. 24, sub-sec. (a) of Supreme and Exchequer Courts Act as a final judgment in an action or suit, but also under sub-sec. (1) of sec. 26 of the same Act, as a final judgment "in a matter or other judicial proceeding" within the meaning of said sec. 26. The adjudication that the appellant, a solicitor and officer of the Court, and moved against in that quality, has been guilty of a contempt, is by itself an appealable judgment, although no sentence for the contempt has been pronounced by the Court. When the party in contempt has been ordered to pay the costs of the application to commit, the Court in effect inflicts a fine for the contempt. The alleged contempt consisted in publishing in a newspaper comments on a judgment rendered by a Master in Chambers in a cause in which the writer was solicitor for the defendant. The motion to commit was made by the relator in such cause. Notice of appeal from said judgment had been given, but before the motion was made the notice was counterclaimed and the appeal abandoned. Reg. ex rel. Felitz v. Howland, Re O'Brien, 16 Can. S.C.R. 197.

JURISDICTION OF CANADA SUPREME COURT; CONTEMPT OF COURT.

Contempt of Court is a criminal proceeding and unless it comes within sec. 68 of the Supreme Court Act an appeal does not lie to this Court from a judgment in proceedings therefor. In proceedings for contempt of Court by attachment until sentence is pronounced there is no "final judgment" from which an appeal could be brought. [O'Shea v. O'Shea, 15 P.D. 59, followed; Re O'Brien, 16 Can. S.C.R. 197, referred to.] Ellis v. The Queen (1893), 22 Can. S.C.R. 7.

APPEAL FROM CERTIORARI; CONVICTION UNDER MERCHANTS' SHIPPING ACT.

An appeal lies to the Supreme Court of Canada from the judgment of a provincial Court making absolute a rule nisi for a certiorari to bring up proceedings before a police magistrate under the Merchants' Shipping Act with a view to having the judgment thereon quashed. Reg. v. Troop, 29 Can. S.C.R. 662.

WHERE TO BE HEARD; ADJOURNMENT.

Under C.S.U.C. ch. 114, an appeal from a conviction must be heard at the Court of Quarter Sessions appealed to. There is no power of adjournment. Re McCumber and Doyle (1867), 26 U.C.Q.B. 516.

SUPREME COURT OF CANADA; JURISDICTION.

The right of appeal in criminal cases to the Supreme Court of Canada from the decision of a Court of Criminal Appeal, is restricted to cases where the conviction has been affirmed by the Court of Appeal, and then only in case one or more of the Judges of the latter Court has dissented from the decision of the majority of the Court. If by the decision of the Court of Appeal the conviction is set aside and a new trial ordered, there is no appeal therefrom to the Supreme Court of Canada. The dissent from the "opinion" of the majority (Cr. Code 742) by any of the Judges of the Court of Appeal, which is necessary in order to confer the right of a further appeal to the Supreme Court of Canada has reference to the "decision" or "judgment" of such majority in affirmance of a conviction (Cr. Code 750); and where a majority of the Court of Appeal in directing a new trial also expressed their concurrence (two of them dissenting) with that part of the decision appealed from by which it was held that certain evidence was properly admitted, the latter decision is not reviewable by the

Supreme Court of Canada. Viau v. The Queen, 2 Can. Cr. Cas. 540.

[Followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141.]

FROM SUMMARY CONVICTION IN ONTARIO.

An appeal from a summary conviction under the Criminal Code is, in Ontario, to be taken to the Court of General Sessions of the Peace sitting without a jury; and Code, sec. 881, constituting such Court the absolute Judge as well of the facts as of the law in respect of the conviction or decision appealed against, is intra vires of the Dominion Parliament. A statutory provision that the Appellate Court shall try the appeal without a jury is one relating to the procedure and not to the constitution of the Court. R. v. Malloy, 4 Can. Cr. Cas. 116.

[Referred to in Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 253.]

SUMMARY CONVICTION; JURISDICTION OF HIGH COURT IN ONTARIO.

A case stated by a magistrate in a summary conviction matter is to be heard by the High Court and not by the Court of Appeal in Ontario, whether the summary conviction is under Part XV. of the Criminal Code for an offence under a Dominion law or under the Ontario Summary Convictions Act for an offence under a Provincial law. The King v. Henry, 16 Can. Cr. Cas. 73.

APPEAL FROM SUMMARY CONVICTION; NO JURISDICTION IN COUNTY JUDGE TO STATE CASE TO COURT OF APPEAL.

A County Judge hearing an appeal from a summary conviction has no power to state a case to the Court of Appeal in respect of points of laws arising on the appeal before him. Per Court of Appeal. The King v. McIntosh, 17 Can. Cr. Cas. 295.

CASH DEPOSIT AS SECURITY; JURISDICTION.

(1) A cash deposit under Cr. Code, sec. 750 to answer the costs of an appeal from a summary conviction is a security payable to the Crown. (2) Where an appeal from a summary conviction awarding a money penalty was taken under Cr. Code, sec. 749 to the Court of King's Bench (Crown side) in the Province of Quebec, and that Court dismissed the appeal without making any order in respect of the cash deposit made by the appellant under Cr. Code, sec. 750, the Superior Court of Quebec on evocation from the Circuit Court has jurisdiction to decide a contestation respecting the ownership of the money deposited. Groulx v. Sicotte, 19 Can. Cr. Cas. 101.

RIGHT OF COURT OF KING'S BENCH, QUEBEC, TO REFER TO COURT OF APPEAL; AMENDMENT OF SENTENCE.

The Quebec Court of King's Bench cannot, in lieu of quashing a sentence upon a writ of habeas corpus and discharging the prisoner, refer the matter to the Court of Appeal for amendment of the sentence, since that would amount to forcing an appeal upon the accused for the benefit of the Crown. Hoolahan v. Malepart, 19 Can. Cr. Cas. 405, 5 D.L.R. 479.

CRIMINAL CASE; OTHER REMEDY; STATED CASE.

The Ontario Court of Appeal on a criminal appeal, has no jurisdiction to intervene in a case of error or misunderstanding, its jurisdiction being limited by sec. 1014 of the Criminal Code in a stated case to questions of law; the application for relief in a case of error or misunderstanding being to the Minister of Justice, under sec. 1022 of the Criminal Code (1906). The King v. Pilgar, 20 Can. Cr. Cas. 507, 8 D.L.R. 830.

SUPREME COURT OF CANADA; JURISDICTION; HABEAS CORPUS.

The Supreme Court Act, R. S. C. 1906, ch. 139, sec. 39 (c), which gives the Supreme Court of Canada jurisdiction of an appeal "from the judgment in any case of proceedings for or upon a writ of habeas corpus . . . not arising out of a criminal charge," does not give the Supreme Court of Canada jurisdiction of an appeal from a judgment of a provincial court affirming a judgment refusing to discharge appellant from imprisonment on a conviction for keeping liquor for sale in violation of a provincial liquor law. (Per Fitzpatrick, C. J., Davies and Anglin, JJ., on the ground that the process was one or a "criminal charge;" per Idington and Brodeur, JJ., on the ground that the proceeding was not "for or upon a writ of habeas corpus," but upon a motion under an alternative practice authorized by a provincial law). Where on an application to discharge the accused from imprisonment under a summary conviction for keeping liquor for sale contrary to the provisions of the Nova Scotia Temperance Act, 1910, the order is issued under the Liberty of the Subject Act, R.S.N.S. (1900), ch. 181, such order is not a proceeding "for or upon a writ of habeas corpus" from which an appeal could lie under sec. 39 (c) of the Supreme Court Act. (Per Idington and Brodeur, JJ.) Re McNutt, 21 Can. Cr. Cas. 157, 10 D.L.R. 834, quashing appeal from 20 Can. Cr. Cas. 174, 7 D.L.R. 651.

[Considered in R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662; referred to in Quong Wing v. The King, 23 Can. Cr. Cas. 113, 18 D.L.R. 121.]

SUMMARY CONVICTION; MAGISTRATE ACTING FOR TWO COUNTIES; JURISDICTION.

An appeal under the Summary Convictions Act, R.S.B.C. 1911, ch. 218, from a magistrate's conviction under a provincial law cannot be taken to the County Court

of a county other than that in which the offence is alleged to have been committed, although the magistrate may have had jurisdiction in both counties. [R. v. Lynn (No. 1), 17 Can. Cr. Cas. 354, 3 S.L.R. 339, referred to.] R. v. Brady, 23 Can. Cr. Cas. 35.

JURISDICTION; SUPREME COURT (CAN.); CRIMINAL CASE; DISSENT IN COURT BELOW.

While the jurisdiction of the Supreme Court of Canada on a criminal appeal may be limited to the points on which there was a dissent in the Court appealed from, a reasonable latitude should be permitted to counsel on the argument of the appeal to go fully into the whole conduct of the trial for the purpose of elucidating the appealable ground and the limitations imposed by Cr. Code, sec. 1019 on the appellate jurisdiction to interfere unless there has been a substantial wrong or miscarriage at the trial or an improper disallowance of a challenge. (Per Idington, J.) [Eberts v. The King, 20 Can. Cr. Cas. 273, 7 D.L.R. 538, 47 Can. S.C.R. 1, referred to.] Minchin v. The King, 23 Can. Cr. Cas. 414, 18 D.L.R. 340, affirming 22 Can. Cr. Cas. 254, 15 D.L.R. 792.

III. Transfer of cause; Parties; Time limitations; Notice; Security.

APPEALS FROM COUNTY COURT TO SUPREME COURT; SUMMARY CONVICTION.

An appeal lies to the Supreme Court from the judgment or decision of a Judge of the County Court in respect to orders, judgments and convictions of justices of the peace taken by way of appeal to the County Court. R. v. Dominion Coal Co., 41 N.S.R. 137.

COMPLIANCE WITH THE STATUTE UNDER WHICH THE APPEAL IS TAKEN.

The person appealing from a summary conviction by a magistrate must comply with all the conditions imposed upon him by the statute under which he appeals. Where in the recognizance the appellant, instead of being bound to appear and try the appeal, etc., as required by the Act, was bound to appear at the sessions to answer to any charge that might be made against him, the appeal was dismissed. An application to take the appellant's recognizance in Court was refused, on the ground that, although the recognizance need not be entered into within four 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.

ENTRY OF; TIME OF GIVING RECOGNIZANCE.

The recognizance required by sec. 71 (c) of the B.C. Summary Convictions Act, on an appeal to a County Court from a summary conviction, must be entered into before the appeal is entered for trial; and the giving of the recognizance thereafter, but before the sitting of the Court, is insufficient. R. v. King, 4 Can. Cr. Cas. 128.

NOTICE OF APPEAL; AFFIDAVITS; SURETIES; SUFFICIENCY.

A notice of appeal from a summary conviction is invalid if not addressed to any person. It is not necessary that the recognizance on an appeal from a summary conviction should be accompanied by affidavits of justification by the sureties, the sufficiency of the sureties being a matter entirely for the justice before whom the recognizance is given. Cragg v. Lamarsh, 4 Can. Cr. Cas. 246.

[Not followed in Cragg v. Lamarsh, 5 Can. Cr. Cas. 160; referred to R. v. Jordon, 5 Can. Cr. Cas. 491; R. v. Ah Yin (No. 1), 6 Can. Cr. Cas. 64.]

FROM SUMMARY CONVICTION; CONDITIONS PRECEDENT.

On an appeal under Criminal Code, sec. 880, by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellants, and the appeal will be quashed if the recognizance is given with only one surety. An appeal not being a common law right, the conditions precedent prescribed by statute must be strictly complied with. The giving of security is an essential part of the appeal, and unless it is done in the manner required by statute, the giving of a notice of appeal will be unavailing, and the conviction may be prosecuted as if no notice had been given. R. v. Joseph, 4 Can. Cr. Cas. 126.

[Distinguished in R. v. Koogo, 19 Can. Cr. Cas. 57.]

NOTICE OF, IN NAME OF SOCIETY; SERVICE ON JUSTICES.

Where an information is laid in the name of an individual describing himself as an agent of a society named, the society does not thereby become a party to the proceedings and it has no locus standi to appeal from the justices' order dismissing the charge. The notice of appeal must in such case be taken in the name of the agent personally, otherwise it may be quashed. Where a notice of appeal under the summary convictions clauses is served on the justice who tried the case, instead of on the respondent, it must shew on its face that it is so served on the justice for the respondent. Canadian Society v. Lauzon, 4 Can. Cr. Cas. 354.

NOTICE OF APPEAL; SERVICE ON MAGISTRATE.

A notice of appeal from a summary conviction neither addressed to nor served upon the prosecutor, but addressed to and served upon one only of two convicting justices of the peace, is insufficient, though it appears

that when the notice was so served the justice upon whom it was served was verbally informed that it was for the prosecutor. Hostetter v. Thomas, 5 Can. Cr. Cas. 10.

[Distinguished in R. v. Jordan, 5 Can. Cr. Cas. 441.]

SECURITY; MONEY DEPOSIT IN LIEU OF RECOGNIZANCE.

On an appeal from a summary conviction the appellant making a money deposit in lieu of recognizance must see to it that such deposit is returned by the justice into the Court to which the appeal is taken, and in default the appeal cannot be heard. The fact that the appellant had made such a deposit is a matter of record and is not properly provable by affidavit. The Queen v. Gray, 5 Can. Cr. Cas. 24.

APPEAL FROM SUMMARY CONVICTION; TIME FOR RECOGNIZANCE OR DEPOSIT.

Where on an appeal from a summary conviction the appellant does not make the deposit in lieu of recognizance until after the sittings of the Appellate Court at which he should have brought the appeal on for hearing, and for which notice was given, the appeal cannot be heard. There is no jurisdiction to award costs against the appellant in respect of the proceedings in appeal at any other sittings than the one for which notice was given (Code, sec. 884). McShadden v. Lachance, 5 Can. Cr. Cas. 43.

NOTICE OF APPEAL; ADDRESS; SERVICE ON CONVICTING JUSTICE.

A notice of appeal from a summary conviction served upon the convicting justices is not invalid because it is not addressed to them by name. Cragg v. Lamarsh (1898), 4 Can. Cr. Cas. 246, not followed. The King v. Jack, 5 Can. Cr. Cas. 160.

SUMMARY CONVICTION; NOTICE OF APPEAL; FORM AND SERVICE OF.

A notice of appeal under the British Columbia Summary Convictions Act is sufficient if addressed to the convicting magistrate only and served on him only. The recognizance or deposit required to be given or made on appealing from a summary conviction under that statute (similar to Cr. Code, sec. 880 (c)) is not invalid because the appellant was not first taken into custody. The notice of appeal need not recite that the appellant is a "person aggrieved" by the decision appealed from (see Code, sec. 879.) The King v. Jordan, 5 Can. Cr. Cas. 438.

[Discussed in R. v. Bryson, 10 Can. Cr. Cas. 403.]

SUMMARY CONVICTION; JOINT APPEAL BY SEVERAL DEFENDANTS; RECOGNIZANCE; TWO SURETIES ESSENTIAL.

(1) On a joint appeal, under sec. 879 of the Criminal Code, by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellants, and the appeal will be quashed if the recognizance be given with only one surety. (2) An appeal not being a common-law right, the conditions precedent imposed by the statute must be strictly complied with. (3) The giving of security is an essential part of the appeal, and unless it be done in the manner required by statute, the giving of a notice of appeal will be unavailing and the conviction may be prosecuted as if no notice had been given. The Queen v. Joseph, 6 Can. Cr. Cas. 144.

[Referred to in R. v. Edelston, 17 Can. Cr. Cas. 155.]

SUMMARY CONVICTION; REQUISITES OF NOTICE OF APPEAL; DESCRIBING THE OFFENCE.

A notice of appeal from a summary conviction must state the name of the appellant, the intent to appeal, the nature of the conviction appealed against, and the sittings of the Court at which the appeal will be brought on. A notice of appeal purporting to be from a conviction for "looking on" while another person was playing in a common gaming house is not a good notice of appeal from a conviction for "playing" in a common gaming house. The King v. Ah Yin (No. 1), 6 Can. Cr. Cas. 63.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 36.]

FROM SUMMARY CONVICTION; NOTICE.

A notice of appeal under Code, sec. 880 is sufficient if addressed to and served upon the magistrate or justices without being also addressed to the prosecutor. The King v. Davitt, 7 Can. Cr. Cas. 514.

[Referred to in R. v. Edelston, 17 Can. Cr. Cas. 156.]

APPEAL FROM SUMMARY CONVICTION; FORM OF RECOGNIZANCE; CONDITION TO "PERSONALLY" APPEAR.

(1) The recognizance upon an appeal from a summary conviction must be conditioned that the defendant should "personally appear," and the omission of the word "personally" makes the recognizance defective. (2) The giving of proper security upon the appeal is a statutory condition precedent to the carrying on of a successful appeal, but notwithstanding a defect in the security the Court has jurisdiction to award costs against the appellant on giving effect to the objection and dismissing the appeal upon that ground. (3) Notwithstanding a general order or rule of Court requiring the grounds to be stated in an order nisi, the Court may on the return of

the order grant leave to add another ground. Ex parte Sprague, 8 Can. Cr. Cas. 109.

[Distinguished in R. v. Koogo, 19 Can. Cr. Cas. 57; considered in Pahkala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 247, 8 D.L.R. 34.]

FROM SUMMARY CONVICTION; NOTICE OF APPEAL; FAILURE TO STATE TIME OF HEARING; INVALIDITY.

A notice of appeal from a summary conviction is invalid if it shews merely to what Judge and at what place the appeal is to be made, and does not state that the appeal will be made at the next sittings (Code sec. 880 (a)), nor otherwise define the time of hearing. The King v. Brimacombe, 10 Can. Cr. Cas. 168.

FROM SUMMARY CONVICTION; NOTICE OF APPEAL; WANT OF SIGNATURE; NOTICE WHOLLY TYPEWRITTEN; STATUTORY FORM; FORM "TO LIKE EFFECT."

(1) A notice of appeal from a summary conviction is not invalid because of the want of signature. (2) Although signature is indicated by Code form NNN, an unsigned notice of appeal otherwise valid in form is a "form to the like effect" and is validated by Code, sec. 982. (3) A notice of appeal wholly typewritten is a "notice in writing" under Code, sec. 880 (b). The King v. Bryson, 10 Can. Cr. Cas. 398.

[Referred to in R. v. Ouimet, 14 Can. Cr. Cas. 141.]

SERVICE OF GROUNDS OF APPEAL; "AT LEAST FIVE DAYS' NOTICE;" CONDITIONS PRECEDENT; OBJECTION NOT RAISED; DEFECT APPARENT ON FACE OF PROCEEDINGS.

(1) On an appeal from a summary conviction, if it appears on the face of the proceedings that the statutory conditions precedent have not been complied with, the Court must dismiss the appeal, although the point is not raised by the respondent. (2) A want of jurisdiction which appears on the face of the proceedings cannot be effectively waived. (3) Five clear days' notice of the grounds of appeal from a summary conviction is essential under Code, sec. 880; (b), neither the date of service nor the date of hearing being counted. (4) The Court to which an appeal might properly be taken from a summary conviction has jurisdiction to award costs to the respondent on quashing an appeal for want of jurisdiction through a defect in the notice of appeal. The King v. The Doliver Mountain, Mining and Milling Co., 10 Can. Cr. Cas. 405.

[Referred to in R. v. Edelston, 17 Can. Cr. Cas. 156; Pakhala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 249, 8 D.L.R. 34.]

FORM OF RECOGNIZANCE; WHEN IMMEDIATE PAYMENT OF FINE NOT A WAIVER OF APPEAL.

(1) Where the condition in a recognizance on appeal from a summary conviction was for appearance and to abide the judgment, but omitted the words to "try such appeal" (Code, sec. 880 (c)), the Appellate Court will have jurisdiction to hear the appeal if the appellant in fact appears to prosecute. (2) Where the fine and costs imposed by a summary conviction were payable forthwith and in default of distress the immediate payment of same to the magistrate accompanied by a request for information as to the time allowed for appeal, is not a waiver of the right of appeal. (3) Where the conviction of the magistrate is reversed by the general sessions on appeal, the unauthorized inclusion in the order of the latter Court of a direction that the magistrate refund to the appellant the fine and costs collected from him, will not vitiate that part of the order which quashes the conviction with costs. (4) An appeal lies to the general sessions in Ontario from a summary conviction of a school trustee under the Public Schools Act for neglect of his official duties. The King v. Tucker, 10 Can. Cr. Cas. 217.

[Followed in R. v. Koogo, 19 Can. Cr. Cas. 57.]

APPEAL FROM SUMMARY CONVICTION AWARDING IMPRISONMENT; REDUCTION OF SENTENCE ON APPEAL.

A person appealing from his conviction and sentence of imprisonment under a liquor law must be personally present on a revision of the sentence by the Appellate Court, although the appeal results in a lesser sentence. The King v. Johnston (No. 2), 11 Can. Cr. Cas. 10.

[Disapproved in Johnston v. Robertson, 13 Can. Cr. Cas. 452].

APPEAL FROM SUMMARY CONVICTION; CONDITIONS OF APPEAL; SERVING "REASONS OF APPEAL;" FIVE CLEAR DAYS ESSENTIAL.

(1) Upon an appeal from a summary conviction the reasons of appeal must be served five clear days before the hearing. (2) If the reasons of appeal are served too late under Code, sec. 880 (amendment of 1905), the appeal is not lodged in due form and should be dismissed on a preliminary objection. The King v. Thornton, 11 Can. Cr. Cas. 71.

APPEAL FROM ORDER OF MAGISTRATE; SITTINGS OF THE COURT; PLEA OF AUTREFOIS CONVICT.

(1) The words "sittings of the Court" in paragraph (a) of Code, sec. 880, refers to the opening of the term of the Court as fixed by law and not to a sitting on a date to which an adjournment had been ordered

during such regular session; and an appeal is not late when not taken to the adjourned sittings first following the delay of fourteen days. (2) An appeal lies to the Court of King's Bench in Quebec from an order of a justice of the peace, dismissing an information or complaint on a plea of autrefois convict. The King v. Bombardier, 11 Can. Cr. Cas. 216.

EXTENSION OF TIME FOR NOTICE OF APPEAL; JURISDICTION.

The power given by sec. 1024 of the Revised Criminal Code (1906), ch. 146, to a Judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a Crown case reserved may be exercised after the expiration of the time for the service of such notice. Gilbert v. The King (No. 1), 12 Can. Cr. Cas. 124.

[Referred to in R. v. Eberts (No. 1), 20 Can. Cr. Cas. 265, 7 D.L.R. 550.]

SUMMARY CONVICTION; NOTICE OF APPEAL; NO SUBSTITUTIONAL SERVICE PERMITTED.

A notice of appeal from a summary conviction (Revised Cr. Code, sec. 750) cannot be served substitutionally on the respondent by mailing it to his last known address or leaving it at his last known place of abode. Olson v. Cameron, 12 Can. Cr. Cas. 193.

SUMMARY CONVICTION; NOTICE TO BOTH JUSTICES WHERE TWO JUSTICES REQUIRED TO FORM THE COURT; QUASHING APPEAL WHERE ONLY ONE JUSTICE SERVED.

(1) Where the jurisdiction to make a summary conviction under the particular statute, is given only to two justices of the peace sitting together, a notice of appeal from the conviction must be served on both justices, and the appeal will be quashed if only one justice was served. (2) The words "justice who tried the case" in sec. 750 of the Criminal Code are to be construed in cases where two justices must sit, as referring to both justices. (3) The proper service of notice of appeal under Code, sec. 750 is a condition precedent to the hearing of an appeal from a summary conviction. (4) Costs are to be allowed to the respondent under Code, sec. 755 only upon proof of notice of the appeal having been given to the persons entitled, and therefore will not be granted where the appeal is quashed for failure to serve all parties. The King v. Edelston, 17 Can. Cr. Cas. 155.

[Disapproved in Pahkala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 247, 8 D.L.R. 34.]

CONVICTION UNSUPPORTED BY EVIDENCE; ERROR IN RECOGNIZANCE.

(1) On an appeal from a summary conviction a preliminary motion may be made to quash the conviction appealed from upon grounds appearing on the face of the proceedings, ex. gr. the lack of any evidence as to an essential part of the offence. (2) On an appeal from a summary conviction imposing a fine and, in default of payment, imprisonment, the Appellate Court is not deprived of jurisdiction to hear the appeal by a clerical error in the recognizance whereby the amount of appellant's personal obligation was omitted although filled in as to the sureties. The King v. Koogo, 19 Can. Cr. Cas. 56.

EXTENSION OF TIME FOR SERVICE OF NOTICE OF APPEAL.

The Court to which an appeal may be taken from a summary conviction upon compliance with the statutory requirements as to notice and security (Cr. Code, sec. 750, as re-enacted, 1909) has no jurisdiction to extend the time for service of notice of appeal. The King v. White, 19 Can. Cr. Cas. 156.

EXTENSION OF TIME; APPEAL FROM CONVICTION UNDER INSPECTION AND SALE ACT.

Where, under sec. 335 of the Inspection and Sale Act, R.S.C. ch. 85, the Court or Judge hearing an appeal from a conviction under that Act has once extended the time for hearing and decision beyond the 30 days thereby limited, the time for such hearing and decision is then wholly at large and in the discretion of the Court or Judge. Rex v. Hamlink, 19 Can. Cr. Cas. 493, 5 D.L.R. 733.

APPEAL FROM SUMMARY CONVICTION; TIME BETWEEN CONVICTION AND APPEAL SITTINGS; COMPUTATION.

(1) An appeal under secs. 749 and 750 of the Code from a summary conviction in Nova Scotia is to be made to the appropriate sittings following the conviction in point of time, of the Judge presiding over the County Court district where the cause of complaint arose whether such sittings be in the same or another county comprised in such district. Per Townshend, C.J., Meagher and Russell, JJ. (2) The appeal is to be to the County Court of the county in which the cause of complaint arose, and notice of appeal is properly given for a session to be held within the county without regard to an intervening session by the Judge of the same district held in another county. Per Longley, J. (3) In computing the time which must intervene between the conviction and the sittings of the Court hearing an appeal under Code, sec. 750, the term "more than 14 days before the sittings" means that 15 days at least must intervene between the date of conviction and the date fixed for the sittings. Per Townshend, C.J., and Meagher, J. (4) The term "more than 14 days before the sittings" means that 14 days only need intervene between the date of conviction and the

date fixed for the sittings. Per Russell, J. The King v. Johnston, 13 Can. Cr. Cas. 179.

APPEAL FROM POLICE MAGISTRATE; ORDER APPEALED FROM NOT LODGED UNTIL AFTER THE FIRST DAY OF SITTINGS.

1. Sec. 757 of the Criminal Code is directory only, and the transmission of the conviction to the Court in accordance with the provisions of that section before the time when the appeal may first be heard is not a condition precedent to the appeal. 2. It is sufficient if the conviction or order be lodged in Court before the appeal is actually heard. Harwood v. Williamson, 14 Can. Cr. Cas. 76.

APPEAL BY PROSECUTOR FROM ORDER TO DISCHARGE; SPECIAL APPEAL ON ATTORNEY-GENERAL'S FIAT.

The provisions of the Liquor License Act (Ont.) permitting an appeal in certain cases by the prosecutor from an order discharging a prisoner convicted under that Act, must prevail over the provisions as to appeals under the Ontario Habeas Corpus Act where the commitment is for an offence under the Liquor License Act. [The King v. Nurse (1904), 8 Can. Cr. Cas. 173, distinguished.] The King v. Reid, 14 Can. Cr. Cas. 329.

[Referred to in R. v. Wellman, 14 Can. Cr. Cas. 336.]

NOTICE OF APPEAL IN CRIMINAL CASE; GRANTING NEW TRIAL.

1. The Court of Appeal hearing an appeal by the Crown by way of reserved case from a ruling in favour of the accused on a criminal trial, will hesitate to hear the appeal of which notice has been served on his counsel, but not on the accused personally, although counsel for the accused is present to argue the appeal and admits that he had shewn the accused the notice of appeal; but an adjournment for personal service will not be necessary if the accused attends in person at the argument of the appeal. 2. Where on a trial for shooting with intent to murder the jury returned a verdict of acquittal after an erroneous ruling by the trial Judge that the jury could not be directed, on such indictment, to bring in a verdict for the lesser offence of shooting with intent to maim or to do grievous bodily harm, if they found such lesser offence proved, a new trial will not necessarily be granted by the Appellate Court on reversing such erroneous ruling on an appeal by the prosecution, but the Court will exercise its discretion in refusing a new trial if it considers that the evidence does not warrant it. The King v. Kerr, 20 Can. Cr. Cas. 70, 3 D.L.R. 720.

TIME FOR TAKING APPEAL; TELEGRAM AS NOTICE; EXTENSION OF TIME FOR APPEALING.

(1) The meaning of rule O. LVII., r. 3 (Nova Scotia), which stipulates that "the notice of appeal, shall be served within ten days from the day that the appellant or his solicitor first had notice that the order upon the decision appealed from had been made," is not ten days from the service of the order nor ten days from the filing of the order, but ten days from "notice" of it, and for this purpose notice by telegram is effective. (2) Where the prisoner had since been discharged upon habeas corpus by a Judge of the Supreme Court having undoubted jurisdiction and any question as to whether a Master of the Court had power to discharge would be merely academic, there is no merit that would call for indulgence by extending the time for appealing from a prohibition order in respect of the Master's previous decision upon a similar application made on the prisoner's behalf. Rex v. Pelton, 20 Can. Cr. Cas. 239, 8 D.L.R. 77.

SERVICE OF NOTICE OF APPEAL; SUMMARY CONVICTIONS.

Upon an appeal from a summary conviction of the notice of appeal may be served either upon the justice or upon the respondent under Cr. Code 750 (amendment of 1909), but where the respondent is not served, more must be shewn than service upon a person to whom the witness, called in proof of service, had been directed on enquiry for a man bearing the same surname and initials as the justice; the appellant should prove that the person served was the justice who tried the case. Pahkala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 247, 8 D.L.R. 34.

NOTICE OF APPEAL FROM SUMMARY CONVICTION; RECOGNIZANCE.

It is sufficient that a notice of appeal under Crim. Code, sec. 750 (*b*) (amendment of 1909) shall be filed in the office of the clerk of the court appealed to and a copy served on the justice who tried the case, without also serving a copy on the respondent. [But see Crim. Code Amendment Act, 1913, as to cases subsequent to that Act.] Upon an appeal from a summary conviction for common assault, it is not essential that the notice of appeal shall state explicitly in the language of Crim. Code, sec. 749, that the defendant is a "person aggrieved." Where the defendant desires to appeal from a summary conviction which awards imprisonment and enters into a recognizance in lieu of remaining in custody pending the appeal, the appeal of which due notice has been given will not be quashed on the ground that no return of the recognizance was made by the magistrate into the court to which the appeal was taken, such return being beyond the control of the appellant and within the duty of the magistrate whose neglect should not prejudice the rights of the appellant. [Wills v. McSher-

ry, [1913] 1 K.B. 20, applied.] R. v. McKay, 21 Can. Cr. Cas. 211, 10 D.L.R. 820.

[Followed in Gates v. Renner, 24 Can. Cr. Cas. 122.]

NOTICE; TIME; SUNDAY.

If the last day of the ten days in which notice of appeal from a conviction may be given, as required by sec. 750 (*b*) of the Criminal Code, falls on Sunday, sec. 31 (*h*) of the Interpretation Act, R.S.C. 1906, ch. 1, applies to make the notice regular if given on the following day. In the absence of an officer of the N.W. Mounted Police, on whom an Indian Agent consents to service of notice of an appeal from a conviction by him, the notice may properly be served on the person in charge in such officer's place. R. v. Trottier, 22 Cr. Cas. 102, 14 D.L.R. 355.

SUMMARY CONVICTION; SECURITY; DEDUCTION BY CLERK FOR FEE.

Where the defendant appealing from a summary conviction deposited with the justice the full amount fixed by the latter as security for the appeal and the latter transmitted it to the clerk of the Appellate Court, who deducted therefrom his fee of 50 cents for receiving, and issued a receipt to the justice for the balance only, the appeal is not thereby rendered incompetent; the making of the deposit with the justice and his handing the money to the clerk of the Appellate Court completed the requirements of law as to the regularity of the appeal, and the appellant was not concerned with the retention of the fee by the officer of the Appellate Court. R. v. Walsh and Crane, 22 Can. Cr. Cas. 144.

SUMMARY CONVICTION; NOTICE OF APPEAL.

The notice of appeal under Cr. Code, sec. 750 (amendment of 1909) which is to be filed with the court appealed to within ten days after a summary conviction, is too late late where mailed to the clerk of the court in time for him to receive it on the tenth day at his post office, if by reason of his own office being officially closed on that day, he did not in fact receive it until the day following. R. v. Green, 22 Can. Cr. Cas. 155.

FROM SUMMARY CONVICTION; PROOF OF SERVICE; SECOND OFFENCE.

It is sufficient that a notice of appeal from a summary conviction to which the procedure of the Criminal Code is applicable should be proved by affidavit and not by calling a witness on the return of the appeal to prove the service. [R. v. Gray, 5 Can. Cr. Cas. 24, and Pahkala v. Hannuksela, 20 Can. Cr. Cas. 247, 8 D.L.R. 34, considered.] On an appeal from a summary conviction under the Liquor License Act, R.S.S. 1909, ch. 130, all the facts necessary to shew that the offence has been committed must be proved before the district Judge hearing the appeal; and where the appeal is from a conviction as for a second offence with increased penalties the alleged former conviction must be proved and it is not sufficient that the magistrate in the conviction appealed from had included a statement that the accused had been previously convicted giving the alleged particulars thereof, where neither the prior conviction nor formal proof thereof was produced on the appeal. [Re Ryer and Plows, 46 U.C.Q.B. 206, referred to.] R. v. Curran, 22 Can. Cr. Cas. 388, 19 D.L.R. 120.

SUMMARY CONVICTION; TEN DAYS LIMITATION; DATE OF CONVICTION.

Where there is any question as to the correct date of a summary conviction it is open for the appellant to shew that date by extrinsic evidence and support his appeal taken within 10 days therefrom as in time, although the conviction itself bears a prior date which would make it appear that the notice of appeal was late. (Dictum per Elwood, J.) R. v. Prokopate, 23 Can. Cr. Cas. 189, 18 D.L.R. 696.

FROM SUMMARY CONVICTION; SERVICE OF NOTICE OF APPEAL; RECOGNIZANCE.

The period of ten days limited by Code, sec. 750 (as amended 1909 and 1913) for filing a notice of appeal from a summary conviction does not apply to the service of notice on the respondent and the justices; it is sufficient that the service was made in sufficient time to perfect the appeal. Where a summary conviction directs payment of a fine and, in default of distress, imprisonment, the defendant's recognizance on an appeal therefrom under Cr. Code, sec. 750 need not cover the fine and costs, the imprisonment fixed in default of payment being sufficient security for that; the basis on which the amount of the recognizance should be fixed in such case is what the probable costs of the appeal would be. [Criticized in Annotation to this case.] R. v. McDermott, 23 Can. Cr. Cas. 252, 19 D.L.R. 321.

FROM SUMMARY CONVICTION; "NEXT SITTINGS."

Where, as in Saskatchewan, the regular sittings of the district court to which an appeal may be taken from a summary conviction, are fixed by provincial order-in-council and others known as special sittings are fixed by the judge by virtue of a provincial statute, a notice of appeal is valid if served for the special sittings being the first sittings following the expiration of fourteen days from the conviction; and semble, it would be competent for an appellant to give notice of appeal either to the next special sittings or the next regular sittings, either being the "next sittings" within a liberal interpretation of Cr. Code, sec. 749. The sittings of a district court which shall be held "nearest" to the place where the cause of the information or complaint arose and to

which in Saskatchewan an appeal from a summary conviction is to be taken, means, prima facie the nearest, measured in a straight line on a horizontal plane, but if it be shewn that another place for which a session of the court is fixed is more convenient of access, having regard to the recognized means of travel, the appellant will be deemed to have complied with Cr. Code, sec. 749, if he brings his appeal either there or at the place which is nearest, when measured in a straight line. [R. v. Surrey, 6 Q.B.D. 100; R. v. Norfolk, 99 L.T. 936, applied.] R. v. Georget, 23 Can. Cr. Cas. 341, 19 D.L.R. 404, reversed in 25 Can. Cr. Cas. 76.

SUMMARY CONVICTION; DISTRICT COURTS; SITTINGS; NOTICE.

The court has not to take judicial notice of the distance from one place to another, and the appellant has therefore to prove on an appeal in Saskatchewan under Cr. Code, sec. 749, sub-sec. (f), from a summary conviction, that the district sittings for which he gives notice are the nearest to the place where the cause of the information or complaint arose. Collison v. Kokatt, 24 Can. Cr. Cas. 151, 8 D.L.R. 167.

SUMMARY CONVICTION; NEAREST PLACE OF SITTINGS; DISTRICT COURTS.

An appeal from a summary conviction in Saskatchewan is by Criminal Code, sec. 749, to be taken to the sittings of the District Court held nearest to the place where the cause of the information or complaint arose, and the distance is to be measured in a straight line without regard to the circumstance that the sittings held at a place which was not the nearest in a straight line would be more convenient of access having regard to the recognized means of travel; the jurisdiction of the District Court is limited by Code, sec. 749 to the sittings which are in fact the nearest. R. v. Georget (No. 2); Fanchauk v. Georget, 24 Can. Cr. Cas. 76, reversing 23 Can. Cr. Cas. 341, 19 D.L.R. 404.

SUMMARY CONVICTION; RECOGNIZANCE; CASH BAIL; SECURITY.

Where the summary conviction appealed from by the defendant under Cr. Code, sec. 750, as amended 1909 and 1913, adjudges payment of a fine and imprisonment in default, it is insufficient to give jurisdiction to hear the appeal that the defendant, when placed under arrest to answer the charge, had deposited with the chief of police, who was the complainant in the proceedings, a sum as cash bail, the equivalent of which was afterwards imposed as the fine, and had, before the hearing of the appeal but not within 10 days after the conviction, deposited with the magistrate, the sum fixed by the latter as security for costs of the appeal; the appellant should have filed a recognizance to perfect his appeal. [R. v. McKay, 21 Can. Cr. Cas. 211, dissented from; Re McNeill and Saskatchewan Hotel Co., 17 W. L. R. 7, followed.] R. v. Mack Sing, 25 Can. Cr. Cas. 158.

NOTICE OF APPEAL FROM SUMMARY CONVICTION; "PARTY AGGRIEVED."

A notice of appeal given under Cr. Code, sec. 750, by the person convicted and which shows on its face that he appeals as such from the summary conviction made against him, need not specifically state that he is the "person aggrieved" (Cr. Code, sec. 749). [See Annotation to this case.] R. v. Hatt, 25 Can. Cr. Cas. 263, 27 D.L.R. 640.

SERVICE OF NOTICE; DISMISSAL OF INFORMATION; AFFIDAVIT.

The filing of the appellant's affidavit with the magistrate under the Illegitimate Children's Act, R.S.M. 1913, ch. 92, on appealing from his dismissal of an information thereunder, is intended to take the place of the service on the magistrate of any other formal notice of appeal, such affidavit in itself declaring both the intention to appeal and that the appeal was not being prosecuted for delay; consequently where the appellant has personally served the respondent with a notice of appeal, has given the prescribed bond and has within ten days from the decision complained of filed the statutory affidavit, a preliminary objection for failure to serve the like notice of appeal upon the magistrate will be overruled. [Davis x. Feinstein, 24 Can. Cr. Cas. 160, 24 D.L.R. 798, 25 Man. L.R. 517, referred to.] Re Sigurdson (No. 1), 25 Can. Cr. Cas. 291, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 313, 28 D.L.R. 376.

SUMMARY CONVICTION; RECOGNIZANCE; JURISDICTION.

In order to perfect his appeal from a summary conviction, which ordered imprisonment in default of paying a fine, the appellant, who has given a recognizance under Cr. Code, sec. 750, before a justice, is under a duty to see that the jutice promptly transmits the recognizance to the Court which is to hear the appeal, and if he has taken no steps to see that the recognizance is transmitted in time by the magistrate, the observance of which duty might be enforced by a mandamus against the latter, there is no jurisdiction to hear an appeal on a recognizance filed on the day of the opening of the Court when the appeal was to come on for hearing. [R. v. McKay, 21 Can. Cr. Cas. 211, 10 D.L.R. 820, not followed; Wills v. McSherry, [1913] 1 K.B. 20, distinguished.] R. v. Hewa, 25 Can. Cr. Cas. 386, 28 D.L.R. 147.

NOTICE OF APPEAL FROM DISMISSAL ORDER.

The notice of appeal by the informant, under Cr. Code, sec. 750, from the dismissal of the complaint laid by him on behalf

of an association of which he was officer, for infringement of a law the enforcement of which would specially benefit such association, need not specifically state that such informant is a "person aggrieved" by the dismissal order. (Cr. Code, sec. 749.) R. v. Austin, 25 Can. Cr. Cas. 446.

FROM SUMMARY CONVICTION; NOTICE OF APPEAL; CASH DEPOSIT.

Where the grounds of appeal are set forth in the notice of appeal given under Cr. Code, sec. 750, they may be referred to for identification of the summary conviction or order from which the appeal is taken and which by Cr. Code, sec. 750 (*b*) must be set forth "with reasonable certainty" in the notice of appeal. A notice of appeal from a summary conviction or order need not specify whether the appeal is against the finding of fact or against the award by way of sentence or penalty or against both. On an appeal from a summary conviction the notice of appeal need not be "addressed" to any one and a notice regularly served on both the justice and the respondent (Cr. Code, sec. 750) but addressed to the justice only, is not thereby invalidated. [Cragg v. Lamarsh, 4 Can. Cr. Cas. 246, 3 Terr. L.R. 91, and Hostetter v. Thomas, 5 Can. Cr. Cas. 10, 4 Terr. 224, distinguished.] A notice of appeal under Cr. Code, sec. 750 may be subscribed in the name of the "solicitor for the appellant" with the addition of words so describing his representative capacity; no formal signature is necessary if the notice otherwise shews by whom it is given. [R. v. Bryson, 10 Can. Cr. Cas. 398, approved.] Where the appeal given by Cr. Code, sec. 749 is to a specific Court at a particular sittings thereof, a notice of appeal intituled in the proper Court and stating that the appeal is made to a named Judge thereof and made returnable at the proper sittings, may be accepted by another Judge holding such sittings; the naming of the Judge in the notice is irregular but the respondent cannot object if he has not been misled by the irregularity. If the justice accepts as cash the unmarked cheque of the appellant for the deposit required on appeal under Cr. Code, sec. 750 (c) and the cheque was endorsed by the justice and transmitted to the clerk of the District Court appealed to and was cashed by the bank on presentation by the clerk, an objection first raised by the respondent on the return of the appeal to the regularity of such deposit will not be allowed. [See Annotation on "Pre-requisites on appeals from summary conviction," 25 Can. Cr. Cas. 392.] Bezaucon v. G. T. P. Development Co., 27 Can. Cr. Cas. 388, 31 D.L.R. 682.

APPLICATION TO JUSTICE FOR STATED CASE.

Under the Alberta Crown Rules (Alberta Rules of Court 816-823) as to cases stated by justices on questions of law in summary conviction matters, the written application to the justice for a stated case must state whether the appeal is to be heard by the Appellate Division or by a Judge in Chambers, in pursuance of the option which the rules give to the appellant. Failure to do so within the time limited is fatal to that mode of appeal, notwithstanding the Alberta Rule 823 curing slight deviations, as the justice is required by Rule 822 to forward the recognizance in the one case to the Registrar and in the other to the Clerk of the Court at the place where the appeal is to be heard. [Foss v. Best, [1906] 2 K.B. 105, applied.] R. v. Dean, 28 Can. Cr. Cas. 212, 37 D.L.R. 511.

CERTIORARI; NOTICE OF APPEAL FROM ORDER TO QUASH CONVICTION; STATING GROUNDS; ALTA. RULE 847.

A notice of appeal from an order quashing a summary conviction on certiorari must specify the grounds of appeal. (Alta. Criminal Rule 847.) Failure in that respect would justify the Appellate Court in disregarding an objection that an adequate remedy was afforded the accused by an appeal and that in such event certiorari was taken away by statute. (Per Stuart J.) R. v. Dominion Drug Stores, Ltd., 31 Can. Cr. Cas. 86, affirming 30 Can. Cr. Cas. 318, 44 D.L.R. 382.

IV. Record and Case in Appellate Court.

APPEALS IN CRIMINAL CASES; RULES OF JUDICIAL COMMITTEE; SHORTHAND EVIDENCE.

The rule of the Judicial Committee is not to grant leave to appeal in criminal cases except where some clear departure from the requirements of justice is alleged to have taken place:—Held, that 34 & 35 Vict. ch. 28, which authorizes the Parliament of Canada to provide for "the administration, peace, order, and good government of any territory not for the time being included in any province" vests in that Parliament the utmost discretion of enactment for the attainment of those objects. Accordingly Canadian Act 43 Vict. ch. 25, is intra vires of the legislature. Sec. 76, sub-sec. 7, which prescribes that full notes of evidence be taken is literally complied with when those notes are taken in shorthand. Riel v. R., 10 A.C. 675.

APPEAL FROM CONVICTION; DEFECTIVE NOTICE; JURISDICTION TO HEAR APPEAL.

Appellant having been convicted by a justice of the peace on two charges of assault gave notice that he would appeal to "the next sitting of the Supreme Court to be holden at Saltcoats on Monday, the third day of October, A.D. 1898," and filed his notice of appeal and recognizance in the office of the deputy clerk at Yorkton. The next regular sitting of the Court at Saltcoats had been fixed by order-in-council for

the 6th (and not 3rd) of October. Under ordinance No. 10 of 1895 a deputy clerk at Yorkton had been appointed. Saltcoats is situated within the district set apart for the deputy clerk so appointed. On hearing of the appeal the respondent's counsel objected that the notice of appeal was defective in that it specified a wrong date for the sitting of the Court and that it and the recognizance should have been filed in the office of the clerk of the Court for the judicial district of Eastern Assiniboia at Moosomin. Both points being referred to the Court en banc, it was held that the notice of appeal was sufficient, and that the office of the deputy clerk at Yorkton was the proper office in which to file the notice and recognizance. [See Ullrick v. Andrais, 2 N.W.T. Rep. 328.] Ullrick v. Daum (1900), C.A.D. 141, 2 N.W.T.R. 328.

NOTICE OF; AMENDMENT OF CONVICTION AFTER NOTICE.

The appellant was convicted before the police magistrate of a city for keeping a house of ill-fame, "contrary to a certain by-law of the corporation." She appealed to the sessions, in May following, where it was held that under 32-33 Vict. ch. 32 D., the decision of the magistrates was final. The appellant on the 2nd of June applied to this Court for a mandamus to the sessions to hear the appeal, and the police magistrate on the same day filed with the clerk of the peace another conviction, stating the offence to be "contrary to the statute in such case made and provided," 32 Vict. ch. 32, under which there is no appeal:—Held, that the appeal should have been heard, and that after notice of appeal given and the time of hearing the appeal had arrived, no amendment could be made to the conviction. The mandamus was therefore ordered. Regina v. Smith (1874), 35 U.C.Q.B. 518.

MODE OF, BY STATED CASE; OFFENCE UNDER ONTARIO STATUTE.

The procedure by way of "stated case" under sec. 900 of the Criminal Code is a form of appeal, and as the application of the Criminal Code to offences under Ontario statutes is declared by the Ontario Summary Convictions Act (R.S.O. 1897, ch. 90, sec. 2) not to affect "procedure on appeals," there is no jurisdiction to proceed by "stated case" to review a decision of a magistrate in respect of such an offence, except where the constitutionality of Provincial Acts are involved. (R.S.O. 1897, ch. 91.) The appeal, whether of the prosecutor or of the accused, is, as regards such offences, to the Court of General Sessions under the provision of the Ontario Summary Convictions Act. R. v. Simpson Company, 2 Can. Cr. Cas. 272.

[Referred to in R. v. Ferguson, 11 Can. Cr. Cas. 278.]

KEEPING DISORDERLY HOUSE.

A person convicted, under the summary trial clauses, of having kept a disorderly house constituting a nuisance, has no right of appeal other than by way of case reserved or case stated under Cr. Code, sec. 743 and 744. R. v. Bougie, 3 Can. Cr. Cas. 487.

[Referred to in R. v. Poirier, 31 Que. S. C. 68; R. v. Janneau, 12 Can. Cr. Cas. 361; relied on in R. v. Weir, 8 Q.P.R. 406; referred to in R. v. Laura Carter, 5 Can. Cr Cas. 406.]

SUMMARY TRIAL; THEFT UNDER $10.

A magistrate trying a charge of theft of goods of the value of less than $10 under the summary trials procedure (Code, secs. 783 and 786) with the consent of the accused, is not a "Court or Judge having jurisdiction in criminal cases" within Code, sec. 742 allowing an appeal by way of case reserved. Semble, the proper mode of review of any question of law involved on such a trial is by way of "stated case" under Code, sec. 900. R. v. Hawes, 4 Can. Cr. Cas. 529.

SUMMARY CONVICTION UNDER PROVINCIAL LAW; AFFIDAVIT OF MERITS; JURISDICTION.

The conditions, practice and procedure, in respect of appeals from summary convictions made under the laws enacted by the Legislative Assembly are those which that assembly has prescribed, and an appeal cannot be heard unless all the statutory requirements imposed as conditions of the right of appeal have been complied with. Where the Legislative Assembly has provided that the provisions of Part LVIII. of the Criminal Code shall apply to such appeals and has also enacted that no appeal shall lie unless an affidavit of merits be filed, the latter must be taken to be a condition precedent of the appeal in addition to those contained in Code, sec. 880, notwithstanding the provision of Code, sec. 881 that, when the requirements of Part LVIII. have been complied with the Court shall try the appeal. The King v. McLeod, 6 Can. Cr. Cas. 23.

SUMMARY CONVICTION; AMENDMENT OF CONVICTION ON APPEAL; COSTS OF CONVEYING TO GAOL.

Where the costs and charges of conveying to gaol are imposed in case of non-payment of the fine under the "Ontario Summary Convictions Act," the amount thereof must be stated in the conviction; but a conviction improper in that respect may be amended under 2 Edw. VII. (ONT.) ch. 12, sec. 15, upon an appeal, by striking

out the award of such costs. Collins v. Horning, 6 Can. Cr. Cas. 514.

[Affirmed in R. v. Horning, 8 Can. Cr. Cas. 268.]

MISCONDUCT OF MAGISTRATE; LAPSE OF APPEAL BECAUSE RETURN WITHHELD; SUBSEQUENT CERTIORARI.

(1) Where an appeal was taken from a summary conviction but lapsed because of the failure of the magistrate to return the conviction, a superior Court may afterwards issue a certiorari and quash the conviction notwithstanding the abortive appeal and Code sec. 887, upon the ground that the magistrate had deprived the accused of a reasonable opportunity of making their defence and had acted collusively with the prosecutor. (2) In exceptional cases the Court will grant a certiorari although another mode of reviewing the conviction is provided by statute, and this jurisdiction will be exercised where a gross perversion of justice has occurred through the misconduct of the magistrate. Ex parte Cowan, 9 Can. Cr. Cas. 454.

[Distinguished in Harwood v. Williams, 14 Can. Cr. Cas. 78.]

RETURN OF CONVICTION TO APPELLATE COURT; DUTY OF JUSTICE TO RETURN DEPOSITIONS AND INFORMATION THEREWITH.

(1) Where a justice making return of a summary conviction to the Court to which an appeal is given, forwards therewith papers purporting to be depositions upon which the conviction is founded, such Court, if one having certiorari jurisdiction, may, upon a motion to quash the conviction take cognizance of such depositions without a writ of certiorari being issued and return made thereto. (2) Apart from Code, sec. 888 it is the duty of the justice to return the information and depositions with the conviction. The King v. Rondeau, 9 Can. Cr. Cas. 523.

ABORTIVE APPEAL FROM SUMMARY CONVICTION; DEFAULT OF MAGISTRATE IN MAKING RETURNS; CERTIORARI AFTER APPEAL QUASHED.

A certiorari may be granted to remove a summary conviction for want of jurisdiction over the offence, although an appeal from the conviction had been taken if such appeal was quashed for irregularity due to the default of the magistrate in returning the deposit. The King v. Alford, 10 Can. Cr. Cas. 61.

ORDER DISMISSING COMPLAINT; FILING BEFORE HEARING OF APPEAL.

(1) An appeal from an order dismissing a summary complaint will not be quashed because the order appealed from was not transmitted and filed in the Appeal Court before the commencement of the sittings at which the appeal is to be heard; and the Court may hear the appeal if the order appealed from is in Court when the appeal is called. (2) The provision contained in Cr. Code, sec. 757 for transmitting proceedings before justices to the Court having jurisdiction in appeal therefrom, is directory only. The King v. Williamson, 13 Can. Cr. Cas. 195.

SUMMARY TRIAL; PROVING LOCALITY OF OFFENCE; TERRITORIAL JURISDICTION.

On a summary trial with consent and conviction thereon ojections as to the sufficiency of the evidence to shew any offence or to prove that the offence was committed within the magistrate's jurisdiction must be taken by reserved case or appeal and cannot be raised by habeas corpus. The King v. McEwen, 13 Can. Cr. Cas. 346.

[Referred to in R. v. Pepper, 15 Can. Cr. Cas. 315; distinguished in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 546; R. v. Johnson, 20 Can. Cr. Cas. 9, 5 D.L.R. 523.]

APPEAL BY STATED CASE; SASKATCHEWAN RULES OF COURT.

1. The failure of the justice to deliver to the appellant a stated case within the time limited by rules of Court is not a ground for quashing the appeal, if the appellant made application for same in due time. 2. Where a rule of Court (Saskatchewan rules, No. 44) requires that the stated case shall be delivered by the justice to the appellant in a sealed envelope for transmission to the Appellate Court and the stated case was so enclosed when received from the appellant, it will be presumed that the justice had complied with the rule, and the onus of shewing the contrary is upon the respondent. 3. The recognizance of the appellant alone may be accepted as security from an applicant for a stated case under Code, sec. 762. 4. An appeal by way of stated case may properly be taken when the summary conviction is bad on its face. 5. A justice hearing a complaint for obstructing passengers by using insulting language (Code, sec. 238 (e)) has no power to adjudge that the defendant make an apology to the complainant. The King v. Turnbull, 15 Can. Cr. Cas. 1.

STATUTORY REQUIREMENTS; AFFIDAVIT OF MERITS; GAME ACT.

An appeal under the B.C. Game Act, 1914, ch. 33 is not competent unless the statutory conditions of sec. 56 as to making an affidavit of merits as well as the conditions imposed by the Summary Convictions Act, B.C., have been strictly complied with; and the defendant's affidavit of merits, stating that he did not commit the offence charged, must also negative the charge in the terms used in the conviction to comply with sec. 56 of the Game Act. R. v. Marshall, 24 Can. Cr. Cas. 180.

RECORD; INSTRUCTIONS TO JURY; COMMENT ON FAILURE OF ACCUSED TO TESTIFY; EVIDENCE ACT.

Upon an appeal to the Court of Appeal or an application for a new trial following a conviction, it is not permissible for the accused to read affidavits for the purpose of showing that the Judge who presided at the trial had, in his charge to the jury, made comments upon the failure of the accused to testify and so contravened the provision of sec. 4 of the Canada Evidence Act, R.S.C. 1906, ch. 145, where the trial Judge has transmitted to the Court of Appeal a report containing his charge to the jury; the Court of Appeal is in such case bound to accept such report as complete and has no power to order the taking of evidence or to receive evidence for the purpose of showing the inaccuracy or incompleteness of such report. The statutory power conferred by sec. 1017 of the Criminal Code whereby the Court of Appeal may, on any appeal or application for a new trial, refer to such other evidence of what took place at the trial as it thinks fit in addition to what is included in the Judges' notes applies only to the notes taken by the Judge presiding at the trial, and not to the address made by the Judge to the jury, the stenographic report of which he had certified. [Compare R. v. Angelo, 22 Can. Cr. Cas. 304, 16 D.L.R. 126, 19 B.C.R. 261, as to Judge's certificate of evidence not shewn on stenographer's notes.] Di Lena v. The King, 24 Can. Cr. Cas. 301.

BY CROWN ON QUESTION OF LAW; JUDGE'S NOTES SHEWING DISMISSAL FOR LACK OF EVIDENCE; SPEEDY TRIAL.

The notes of the decision of a judge holding a speedy trial without a jury may be filed at a later date than that of the delivery of the oral judgment and must be given credence on a motion to the Appellate Court for leave to appeal as to the grounds on which the decision rested; the court will not take into consideration in contradiction of such notes the affidavits of counsel for the appellant, even of the Crown counsel where the Crown asks leave to appeal, nor can the Crown be given leave to appeal as on a question of law when the case was dismissed for insufficiency of the evidence adduced to prove an essential ingredient of the offence. R. v. Jacobs, 30 Can. Cr. Cas. 80.

AFFIDAVIT OF MERITS; ALBERTA LIQUOR ACT; DUTY OF MAGISTRATE.

It is not within a magistrate's jurisdiction to decide the question of law, whether or not a defendant, having moved by way of certiorari, can yet proceed by way of appeal in an action under the Liquor Act (1916, Alta., ch. 4). It is his duty to administer the oath to the appellant on his affidavit of merits required by sec. 4 (10) of the Act as a preliminary to the proposed appeal when requested to do so. R. v. Dominion Drug Stores, Limited; R. v. C. N. R. Co., 30 Can. Cr. Cas. 318, 44 D.L.R. 382, affirmed in 31 Can. Cr. Cas. 86.

V. Objections and Exceptions; Raising Question in Lower Court.

APPEAL FROM DECISION OF JUSTICES OF THE PEACE; DEFECTIVE SERVICE.

Defendant was prosecuted under ch. 19, Rev. Stats. (3rd series), for a breach of the law relating to the sale of intoxicating liquors. There was no actual service upon him of the writ of summons, and the affidavit of the constable verifying the return was informal in being intituled with the surnames only of plaintiff and defendant. Defendant having been convicted in his absence, appealed and filed the necessary bond under the statute:—Held, that when an appeal is taken and perfected from a decision of justices of the peace, in a summary cause, the judgment below is thereby ipso facto vacated, and the case stands for a new trial. Also, that defendant having appealed, and thus virtually appeared, and having avoided the judgment below by having taken an important step in the cause, it was not competent to him to repudiate the jurisdiction of the Court below, on the ground of want of personal service. Had he wished to avail himself of such an objection, he should not have appealed, but should have sued on a writ of certiorari. On a second trial no amendment adding or substituting a new cause of action or ground of defence will be allowed. Rand v. Rockwell (1871), 2 N.S.R. 199.

APPEAL FROM CONVICTION UNDER THE LIQUOR LICENSE ACT OF MANITOBA.

S. was convicted under the Liquor License Act of Manitoba, 1889, of selling liquor without a license. The information was laid before one justice of the peace, but the prosecution was heard before two justices. The defendant was convicted, and a sum for witness fees was included in the costs awarded against him. The defendant had given notice of appeal, perfected security, and taken out a summons under sec. 126 of the Liquor License Act, by way of appeal from the conviction, but had abandoned the summons before serving it:—Held, 1. That the defendant had appealed within the meaning of sec. 84 of the Summary Convictions Act, and that the right to certiorari was taken away, except as to objections going to the jurisdiction of the Justices. 2. That the bringing of the prosecution was the laying of the information, and that it ought to have been laid before two justices and that the matter of the prosecution was not, therefore, properly before the two justices on the hearing of the case,

and they had no jurisdiction to hear or determine it. Reg. v. Starkey, 7 Man. L.R. 43.

APPEAL TAKEN AWAY BY CANADA TEMPERANCE ACT.

Where a defendant submits to examination before a magistrate, it is too late afterwards to object to its propriety. In cases where a magistrate has jurisdiction, certiorari is absolutely taken away, but an appeal to the session still exists, which, however, is itself also taken away by sec. 111 of the Canada Temperance Act, 1878, where the conviction is before a stipendiary magistrate. Regina v. Ramsey, 11 O.R. 210.

SUMMARY CONVICTION; DECISION IN APPEAL UPON THE MERITS NOTWITHSTANDING DEFECTS IN FORM.

1. An objection taken on appeal from a summary conviction under a liquor license by-law that the conviction does not shew that the by-law was in force at the time of the alleged offence, is at most a defect in a matter of form, and notwithstanding the same the conviction should be affirmed if supported by the evidence under the British Columbia Summary Convictions Act, sec. 76 (similar to Code, sec. 754). 2. An objection that a summary conviction does not include a specific sum as the costs of conveying to gaol in default of sufficient distress is one that may be remedied by amendment upon an appeal therefrom under the British Columbia Summary Convictions Act, sec. 76 (similar to Code, sec. 754) and is, therefore, an objection on a matter of form which should not be allowed if the conviction can be supported upon the merits. The King v. Sing Kee, 14 Can. Cr. Cas. 420.

RAISING QUESTION AS TO SUFFICIENCY OF INFORMATION FOR FIRST TIME ON APPEAL.

An objection to an information based on a municipal by-law prohibiting the use of abusive, insulting and provoking language toward another while on a public street, because of the omission of the word "abusive" therefrom, is too late where made for the first time upon an appeal from the decision of a County Court Judge upon the review of a magistrate's conviction, where the statute authorizing the by-law is sufficient to warrant a by-law in the terms of the conviction without the word "abusive." The King v. Elderman, 19 Can. Cr. Cas. 445.

WAIVER OF OBJECTION TO PRELIMINARY ENQUIRY BY ARRAIGNMENT AND PLEA.

An objection that the preliminary enquiry in a criminal case was not conducted according to law will not avail where the accused, who had been committed for trial, pleaded not guilty and stood trial without questioning the regularity of the preliminary proceedings. The King v. Seguin, 20 Can. Cr. Cas. 69, 3 D.L.R. 257.

OBJECTION TO ADMISSIBILITY OF DISCOVERY DEPOSITIONS.

Where the defendant in a criminal conversation case was examined for discovery before the trial without objecting to testify on the ground of privilege, and where he testified in his own defence at the trial and upon cross-examination repeated substantially everything included in the discovery depositions an objection taken on appeal against the verdict on the ground that the depositions on discovery were put in evidence at the trial by the plaintiff against the defendant's objection founded on the statute 32-33 Vict. (Imp.) ch. 68, sec. 3, will not be allowed. [Fleury v. Campbell, 18 P.R. (Ont.) 110, referred to.] Zdrahal v. Shatney, 20 Can. Cr. Cas. 205, 7 D.L.R. 554.

VI. Preliminary Motions; Dismissal; Abatement; Abandonment.

ABATEMENT; DEATH OF INFORMANT.

An appeal under Criminal Code, sec. 880 from a summary conviction to the General Sessions in a criminal case does not abate by the death of the informant. R. v. Fitzgerald 1 Can. Cr. Cas. 420.

SUMMARY CONVICTION; APPEAL AFTER PLEA OF GUILTY; REOPENING CASE TO REVISE PUNISHMENT.

On an appeal from a summary conviction had upon a plea of guilty the case should not be reopened and witnesses called as to the merits for the purpose of revising the punishment imposed, if the magistrate has not acted oppressively. R. v. Bowman, 2 Can. Cr. Cas. 89.

[Referred to in R. v. Baird, 13 Can. Cr. Cas. 242; distinguished in Upton v. Brown, 10 Can. Cr. Cas. 190.]

STATED CASE DISMISSED FOR NONCOMPLIANCE WITH STATUTORY CONDITIONS; SUBSEQUENT APPEAL; WAIVER.

A person "appeals" when he formally gives notice to the opposite party of his intention to appeal, although he does not in fact comply with the conditions precedent required to bring the appeal on for hearing. (Code, sec. 900). Under a Provincial enactment, similar to sub-sec. 15 of Code, sec. 900, providing that a person appealing by way of stated case to a superior Court shall be taken to have abandoned his right of appeal to a County Court, the appellant by obtaining a case to be stated elects the mode of appeal and cannot revert to an appeal to the County Court on the stated case being dismissed for noncompliance with statutory conditions. Cooksley v. Toomaten Oota, 5 Can. Cr. Cas. 26.

APPEAL FROM SUMMARY CONVICTION; QUASHING CONVICTION DEFECTIVE ON ITS FACE.

A County Court Judge, who has allowed an appeal from a summary conviction under a statutory provision similar to Code, sec. 883, and has quashed the conviction as invalid on its face without hearing further evidence and trying the case de novo, cannot be compelled by mandamus to reopen the appeal for the purpose of hearing such evidence. Strang v. Gellatly, 8 Can. Cr. Cas. 17.

[Distinguished in R. v. Sing Kee, 14 Can. Cr. Cas. 422.]

ENTRY; DISMISSAL OF APPEAL ON DEFAULT; FILING NOTICE OF APPEAL NOT AN ENTRY.

The provisions of sec. 72 of the Summary Convictions Act (B.C.) requiring the entry of an appeal at least three days before the sittings of the Court at which such appeal is to be heard are imperative, and unless complied with the appeal must be dismissed. Gibson v. Adams, 10 Can. Cr. Cas. 32.

VII. Hearing and Determination.

FINDING OF GUILTY; EVIDENCE TO SUPPORT VERDICT.

A finding of "guilty" will not be set aside upon appeal if there be any evidence to support the verdict. The Queen v. Riel (No. 2), 1 Terr. L.R. 23.

REVIEW OF FINDING; QUESTION OF FACT ON CERTIORARI.

The magistrate's finding in a summary conviction upon a question of fact within his jurisdiction will not be reviewed upon certiorari, and the same can be attacked only by way of appeal from the conviction. R. v. Urquhart, 4 Can. Cr. Cas. 256.

TRIAL DE NOVO ON THE APPEAL.

On an appeal from a conviction under the Nova Scotia Liquor License Act, the case is to be tried de novo, and the Judge is at liberty to pronounce a new finding upon the facts, whether or not new evidence has been taken before him. R. v. McNutt, 4 Can. Cr. Cas. 392.

[Referred to in R. v. Farrell, 16 Can. Cr. Cas. 423, 21 O.L.R. 540; followed in R. v. Baird, 13 Can. Cr. Cas. 245.]

SUMMARY CONVICTION; EXPEDITING THE HEARING.

An appeal from a summary conviction under the Liquor License Ordinance (N.W. T.) may, under Ordinance of 1901, ch. 33, sec. 21, before the first day of the sittings be expedited by the Judge appointed to take the sittings for which notice of appeal was given. The Queen v. McLeod (No. 2), 6 Can. Cr. Cas. 94.

FROM SUMMARY CONVICTION; RIGHT OF, AFTER PLEADING GUILTY.

(1) A person who has been convicted under the Summary Convictions Part of the Criminal Code upon his plea of guilty may notwithstanding such plea enter an appeal under Code, sec. 879. (2) The plea of guilty concludes the accused only as to the fact that he did what is charged in the information, and he may still appeal upon the ground that the conviction is bad in law or upon an objection to the information or summons taken before the magistrate and overruled by him. The King v. Brook, 7 Can. Cr. Cas. 216.

[Followed in R. v. Baird, 13 Can. Cr. Cas. 242; followed in R. v. Koogo, 19 Can. Cr. Cas. 58; Upton v. Brown, 21 Can. Cr. Cas. 190, 18 D.L.R. 461.]

COURT OF CRIMINAL APPEAL; RESERVED CASE; JURISDICTION; FULL COURT OF SEVEN JUDGES; HEARING BEFORE FOUR JUDGES ONLY.

Four Judges constituting a majority of the Supreme Court of Nova Scotia, have authority to sit as the Supreme Court of that Province en banc to hear a reserved case, the full membership of the Court being seven. George v. The King, 8 Can. Cr. Cas. 401.

APPEAL ON BOTH FACTS AND LAW.

On an appeal both on the facts and the law under Code, sec. 1012 in a trade combine case tried without a jury, the Court of Appeal is to decide whether the judgment below should have been for the accused or whether there was evidence on which the judgment against him could reasonably be supported. The King v. Clarke (No. 2), 14 Can. Cr. Cas. 57.

INTERDICTION; SUMMARY CONVICTION; PROOF OF EXCESSIVE DRINKING BY INTERDICT.

Where a summary conviction was made without evidence that the interdict was an habitual inebriate, the prosecutor will not be allowed on the defendant's appeal from the conviction, to supplement his case by producing such evidence on the appeal and the conviction will be quashed. The King v. Morrison, 15 Can. Cr. Cas. 215.

APPEAL TO DISTRICT COURT; UNAUTHORIZED REFERENCE BY DISTRICT COURT TO A SUPERIOR COURT ON QUESTION OF LAW.

On an appeal from a summary conviction there is no authority for a reference being made by the Appellate Court to a superior Court of criminal jurisdiction of a point of law arising on the appeal even if the question is whether or not the appeal was lodged in due form. The King v. Mischowsky, 15 Can. Cr. Cas. 364.

RESERVED CASE; QUESTION OF LAW; WHETHER ANY EVIDENCE TO SUPPORT CONVICTION.

Where the question reserved is whether there is any evidence upon which the defendant may legally be convicted, and there is some evidence upon which the conviction might be supported, the question whether the finding was reasonable or not, in view of the whole evidence, is not a question of law for the Appellate Court. The King v Johnston, 16 Can. Cr. Cas. 379.

COUNTY JUDGE'S CERTIFICATE OF NONINFLUENCE; DOUBT AS TO ADMISSIBILITY OF SUCH CERTIFICATE BEFORE COURT OF APPEAL.

The Court of Appeal under the Cr. Code has no power to receive evidence to shew what operated on the mind of the County Judge presiding at the "speedy trial," as the County Court Judge is then exercising the functions of a jury as well as those of Judge. Per Martin and Galliher, JJ.A. The King v. Iman Din, 18 Can. Cr. Cas. 82.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 50; R. v. Whistnant, 20 Can. Cr. Cas. 322, 8 D.L.R. 468.]

EFFECT OF APPEAL FROM SUMMARY CONVICTION IN RESPECT TO ORIGINAL WARRANT OF COMMITMENT.

On an appeal taken under sec. 751 of the Criminal Code, 1906, applicable to appeals from summary convictions and to certain appeals from summary trials (Cr. Code, sec. 797) the original warrant of commitment on the conviction appealed from is not vacated by the lodging of the appeal and the granting of bail to the accused and the further enforcement of such warrant may be proceeded with without a fresh warrant after the affirmance of the conviction upon such appeal. The King v. Durlin, 19 Can. Cr. Cas. 392, 4 D.L.R. 660.

RIGHT OF APPEAL; WHERE THERE IS EVIDENCE ON WHICH MAGISTRATE MIGHT HAVE CONVICTED.

Where there was evidence before a magistrate trying a prosecution for an offence forbidden by law on which he might have convicted the accused, this conviction will not be disturbed, as the magistrate is the judge of the weight to be attached to the evidence. [R. v. St. Clair, 3 Can. Cr. Cas. 551, 27 O.A.R. 308, at p. 310, followed.] The King v. Riddell, 19 Can. Cr. Cas. 400, 4 D.L.R. 662.

REVIEW OF VERDICT; MURDER; CULPABLE HOMICIDE REDUCED TO MANSLAUGHTER.

Where the Appellate Court is of opinion that, upon the evidence no jury could properly find that the prisoner shot the deceased while in the heat of passion caused by sudden provocation, no substantial wrong or miscarriage at the trial is shewn to warrant the Appellate Court in setting aside a conviction for murder or directing a new trial under the Cr. Code 1906, sec. 1019, by reason of the trial Judge's instruction to the jury that they were bound, upon the evidence, either to acquit the prisoner altogether or to find him guilty of murder. Eberts v. The King (No. 2), 20 Can. Cr. Cas. 273, 7 D.L.R. 538; affirming 20 Can. Cr. Cas. 262, 7 D.L.R. 530.

VERDICT; QUALIFICATION OF JUROR.

The question of qualification of a juror in a criminal case is a question of fact which cannot be raised after verdict rendered and the Court of Appeal has no jurisdiction to entertain a reserved case thereon. Section 1010 of the Criminal Code 1906, forbidding the reversal of a verdict for certain irregularities not objected to before verdict in criminal cases, is taken from the Imperial statute 7 Geo. IV. ch. 64, and not from 21 James I. ch. 13. [Regina v. Feore, 3 Q.L.R. 219, corrected.] R. v. Battista, 21 Can. Cr. Cas. 1, 9 D.L.R. 138.

BY-LAW OF MUNICIPALITY; ULTRA VIRES.

Sec. 753 of the Criminal Code, 1906, does not prevent one who pleads guilty before a justice of the peace on a summary proceeding for the violation of a municipal by-law, from attacking its validity on appeal, notwithstanding such objection was not raised before the justice of the peace. [R. v. Brook, 7 Can. Cr. Cas. 216, followed: R. v. Bowman, 2 Can. Cr. Cas. 89, distinguished.] Upton v. Brown, 21 Can. Cr. Cas. 190, 18 D.L.R. 461.

[Considered in R. v. Gillis, 23 Can. Cr. Cas. 160, 18 D.L.R. 461.]

SUMMARY CONVICTION; REVIEW OF FACTS; TRIAL DE NOVO.

The findings of a county court judge upon an appeal from a summary conviction, where such appeal is in effect a rehearing of the witnesses, and a trial de novo will not be disturbed on a further appeal, unless it appears that the county court judge was clearly wrong on the merits; and this doctrine applies where the county court judge preferred to follow the line of testimony discredited by the magistrate and consequently has reversed the latter's findings of fact. R. v. Barker, 21 Can. Cr. Cas. 267, 12 D.L.R. 346.

SUMMARY CONVICTION; DEFECT IN CONVICTION.

The duty of the appellate Judge on an appeal from a summary conviction is to hear and determine the charge notwithstanding any defect in the conviction, and he has no power to entertain a motion to quash the conviction as defective; on such defect appearing, reference must still be had to the information to ascertain the charge which is to be heard and determined on the appeal. Where neither the summary conviction nor the information on which it

was based mentioned the time of the offence, an appeal from the conviction will be allowed, there being no power on the hearing of the appeal to remedy the defect by an amendment, although the magistrate might have amended the information under Cr. Code, sec. 669. [See Annotation at end of this case.] R. v. Dunlap, 22 Can. Cr. Cas. 245.

[Referred to in R. v. Murphy, 29 Can. Cr. Cas. 445.]

QUESTIONS OF LAW; REFUSAL TO POSTPONE TRIAL; TIME OF APPEAL.

Where the Court on an application under Cr. Code, section 901 has, in the exercise of judicial discretion, refused to allow a postponement of a criminal trial, there can be no review of the decision by an Appellate Court and the question presented does not constitute a question of law upon which there may be a reserved case under the provisions of section 1014 of the Criminal Code. [R. v. Charlesworth, 1 B. & S. 460; Winsor v. The Queen, L.R. 1 Q.B. 390; Rex v. Lewis, 78 L.J.K.B. 722; Rex v. Blythe, 15 Can. Cr. Cas. 177, 19 O.L.R. 386; Reg. v. Johnson, 2 C. & K. 354; and Reg. v. Slavin, 17 U.C.C.P. 205, referred to; see Annotation on Postponement of Criminal Trials at end of this case.] On a motion to extend the time for appealing under Cr. Code 1024 from the affirmance of a conviction for an indictable offence from a provincial Appellate Court to the Supreme Court of Canada, the latter Court will enter upon the question of the competency of the appeal and if of opinion that the question is not appealable will refuse the extension. Mulvihill v. The King, 23 Can. Cr. Cas. 194, 18 D.L.R. 217, affirming 22 Can. Cr. Cas. 354, 18 D.L.R. 189.

RESERVED CASE; QUESTION NOT ARISING FROM THE CHARGE; CR. CODE, S. 1014.

On an appeal by defendant on a case reserved following a conviction for an indictable offence, the Court of Appeal will decline to answer a question included by the trial judge as to whether the accused should have been charged with another offence under the same statute upon the facts disclosed but as to which no charge was in fact laid. R. v. Fong Soon, 31 Can. Cr. Cas. 78, 45 D.L.R. 78.

VIII. Judgment; Costs, New Trial; Correction.

COURT OF QUARTER SESSIONS; ORDER FOR COSTS ON APPEAL.

Under 32 & 33 Vict. ch. 31, secs. 65, 74 D., the Court of Quarter Sessions at which an appeal is heard must determine on quashing a conviction, whether any and what costs are to be paid, and when. Where, therefore, the only order made was, "Conviction quashed with costs":—Held, that no subsequent session of the Court could interfere by way of an amendment of the order or otherwise, and a rule for mandamus to the chairman and clerk of the sessions to issue the said order, with a provision for payment by the respondents to the appellant of the costs of the appeal forthwith after taxation, was discharged, but under the circumstances without costs. Re Rush and Bobcaygeon Corp. (1879), 44 U.C.Q.B. 199.

DEPOSIT MADE AS SECURITY ON AN APPEAL.

Cr. Code, sec. 880 (e), enacting that the Court "may" order the fine and costs to be paid out of moneys deposited pursuant to sec. 880 (c) on taking an appeal, if the conviction is affirmed, is to be construed as giving the Court no discretion to refuse the application of the party to be benefited by the making of the order. Fenson v. New Westminster, 2 Can. Cr. Cas. 52.

APPEAL BY PROSECUTOR; TRIAL DE NOVO; COSTS.

Code, sec. 883, which authorizes the Court on hearing an appeal from a summary conviction or order of a justice to try the case upon its merits and to make a new conviction or order, applies to an appeal by the prosecutor from the justice's order dismissing the complaint. Where an order is made allowing the prosecutor's appeal and convicting the accused, the costs of the appeal may be included in the costs awarded by the conviction, and the payment thereof may be enforced by a distress warrant and imprisonment in default. R. v. Hawbolt, 4 Can. Cr. Cas. 229.

[Referred to in Victoria v. Belyea, 12 B.C.R. 115.]

JURISDICTION OF GENERAL SESSIONS.

Where an appeal to a Court of General Sessions of the Peace from a summary conviction is not proceeded with, an order giving costs to the respondent can only be made at the same sitting for which notice of appeal was given; but where an appeal is heard, and determined against the appellant, the formal order need not be drawn up at the same sittings, and the respondent's costs may be taxed nunc pro tunc at the next sittings and included in a formal order then issued in pursuance of the direction therefor made at the previous sittings. Where an appeal from a summary conviction has been heard and determined and a minute made by the chairman of the Sessions dismissing the same with costs and directing the clerk to tax the same, but no formal order was ever drawn up, the clerk's certificate of taxation and a subsequent order of the Court of General Sessions directing a distress for the costs taxed are irregular, and will be quashed. Where a prosecution is instituted by a police officer in his own name as informant, in respect of an offence against a municipal by-law, the police officer is per-

sonally a party both to the proceedings before the magistrate and to the appeal from his decision, and the municipal corporation is not properly named as a party to such appeal, nor can costs be awarded in favour of the corporation. Bothwell v. Burnside, 4 Can. Cr. Cas. 450.

MISDIRECTION; FACTS FOR THE JURY INVOLVED IN QUESTION OF LEGAL RIGHT.

Where there is misdirection by the trial Judge equivalent to a withdrawal from the jury of the questions of fact involved in the determination of the question of legal right, the prisoner is entitled to a new trial. R. v. Brennan, 4 Can. Cr. Cas. 41.

[Discussed in R. v. Barrett, 14 Can. Cr. Cas. 474, 1 S.L.R. 382; distinguished in R. v. Fouquet, 10 Can. Cr. Cas. 255, 262, 14 Que. K.B. 94.]

SUMMARY CONVICTION; DISMISSAL AS NOT LODGED IN DUE FORM; JURISDICTION AS TO COSTS.

Where an appeal from a summary conviction is entered and prosecuted but is dismissed on the ground that it was not lodged in due form, there is no jurisdiction to avoid costs against the appellant. Code, sec. 884 only applies where the appellant fails to proceed with his appeal without abandoning it according to law. The King v. Ah Yin (No. 2), 6 Can. Cr. Cas. 66.

REVERSAL ON APPEAL BY CROWN; ORDER FOR NEW TRIAL; DISCRETION OF APPELLATE COURT.

(1) Upon an appeal by the Crown, by leave of the Court of Appeal, from the judgment acquitting the accused and withdrawing the case from the jury on the ground that there was no corroborative evidence under Revised Code, sec. 1002, the Court of Appeal, on revising such ruling, should direct a new trial. (2) Sec. 1018 of the Revised Code (former sec. 746) is permissive and not obligatory as to the granting of a new trial upon reversing a judgment of acquittal, and the Appellate Court has a discretion to grant or refuse a new trial, or to make such other order as justice requires. The King v. Burr, 12 Can. Cr. Cas. 103.

[Referred to in Von Koolberger v. Lapointe, 19 Que. K.B. 244.]

JURISDICTION OF APPELLATE COURT TO AWARD LESS THAN MAXIMUM PUNISHMENT.

(1) On an appeal from a summary conviction, the Court hearing the appeal is the absolute Judge both of law and facts, and where the conviction appealed from awards a penalty in excess of that authorized by law, the Appellate Court may impose a new sentence at its discretion. (2) Where an excessive sentence has been imposed on a summary conviction following a plea of guilty, the Court hearing an appeal therefrom may modify the conviction by imposing a lawful punishment less than the legal maximum. (3) The Appellate Court tries the case de novo upon the merits, and its powers are not limited to the cutting off of the unlawful excess. The King v. Baird, 13 Can. Cr. Cas. 240.

IMPRISONMENT IN DEFAULT OF PAYING FINE; EXCESS OVER LEGAL LIMIT; REDUCTION OF SENTENCE BY COURT HEARING CASE STATED.

Upon a case stated by a justice under the Nova Scotia Summary Convictions Act, the Court hearing the stated case may, under sub-sec. 6 of sec. 73 of that statute (similar to Criminal Code, sec. 765) amend a conviction in respect of excessive imprisonment awarded in default of paying the fine by reducing the term to the legal limit. The King v. Power, 14 Can. Cr. Cas. 264.

MURDER; OMISSION TO DIRECT JURY ON LAW APPLICABLE TO ISSUE RAISED ON EVIDENCE; NEW TRIAL; CONSENT DISPENSING WITH STATED CASE.

(1) The Court of Appeal may order a new trial where the jury has not been directed as to a material question raised upon the evidence which might, with a proper direction, have resulted in a verdict of manslaughter instead of murder. (2) On an application to the Court of Appeal to direct a stated case and for leave to appeal after refusal of the trial Judge to reserve a case, the Court may, with the consent of counsel for the prisoner and of counsel for the Crown, forthwith hear the appeal as if a case had been stated. The King v. Blythe, 15 Can. Cr. Cas. 224.

[Followed in R. v. Daley, 16 Can. Cr. Cas. 177; referred to in R. v. Monvoisin, 18 Can. Cr. Cas. 124.]

LIBERATION ON RECOGNIZANCE PENDING APPEAL; FRESH COMMITMENT ON DISMISSAL OF APPEAL; JURISDICTION OF APPELLATE COURT TO ENFORCE ITS OWN ORDER; ENFORCING PAYMENT OF APPEAL COSTS.

1. If a person sentenced to imprisonment upon summary conviction gives a recognizance and is liberated under sec. 750 (c) pending an appeal from the summary conviction, the interval until his return to custody will not count on the term of imprisonment, as affirmed on the appeal. 2. If a person sentenced to imprisonment upon summary conviction remains in jail pending his appeal therefrom, the time so served counts on the term of imprisonment as affirmed on the appeal. 3. Where the accused sentenced on summary conviction to three months' imprisonment served seven days thereunder and then obtained his release under Code, sec. 750 pending an appeal, but the conviction was afterwards affirmed, a fresh commitment erroneously issued for the whole

term of three motnhs instead of for the remainder of such term, is not bad in toto and may be amended under Code, secs. 1121 and 1124 on habeas corpus. 4. Where an appeal from a summary conviction is dismissed without any variance of the order made by the justice, the enforcement of the conviction so affirmed should proceed under warrant of the convicting justice or of some other justice for the same territorial division, and not under warrant issued from the Appellate Court except for the costs of appeal. 5. If instead of an affirmance, a different judgment has been pronounced on the appeal, the judgment so substituted for that appealed from may be enforced either by the process of the Court appealed to (Code, sec. 751) or by process issued by the convicting justice. 6. When the costs of an unsuccessful appeal are awarded against the defendant, the payment of such costs may be enforced either by process of the Appellate Court or by a justice's warrant upon certificate of default under Code, sec. 759. 7. Code forms 53 and 54 of warrants by justices in default of payment of the costs of appeal from a summary conviction may be varied under Code, sec. 1152 so as to apply to warrants issued for the same purpose by the Appellate Court. 8. A commitment in respect both of the imprisonment imposed in a summary conviction for the offence and of the costs of an unsuccessful appeal therefrom is severable, and if the unexpired term under either has been legally awarded, it will constitute an answer in habeas corpus. Collette v. The King, 16 Can. Cr. Cas. 281.

RESERVED CASE; CONVICTION SET ASIDE WITHOUT REMITTING FOR NEW TRIAL.

Where the Court of Appeal on a case reserved after conviction is of opinion that upon the facts as found in the Court below the prisoner should have been acquitted, it need not order a new trial, but may quash the conviction and discharge the prisoner. The King v. Ayoup, 16 Can. Cr. Cas. 375.

APPEAL FROM SUMMARY CONVICTION; COSTS OF APPEAL TO BE FIXED BY COUNTY JUDGE.

Where upon an appeal from a summary conviction the County Court Judge purports to delegate the taxation of the costs of the appeal to the clerk of the Court, instead of himself fixing the costs of the appeal, a superior Court on an application for prohibition from collecting the costs taxed by the clerk, may enlarge the motion to allow of an application to the County Judge to fix the costs and amend his judgment accordingly. The King v. Hamlink, 17 Can. Cr. Cas. 162.

RESERVED CASE.

When it appears upon a reserved case that there was evidence upon which the jury could reasonably find as they did, the Appellate Court should not grant a new trial merely because a different conclusion may appear to it to have been preferable on a consideration of the whole evidence. The King v. Faulkner, 19 Can. Cr. Cas. 47

NEW TRIAL; WAIVER OF RIGHT TO A JURY.

Where the Court of Appeal has ordered a new trial of a criminal case tried before a County Court Judge's Criminal Court because of the improper admission of evidence, the case is remitted to the same Court for trial upon his original election for speedy trial therein and waiver of his right to a jury. The King v. Deakin (No. 2), 19 Can. Cr. Cas. 274, 2 D.L.R. 282.

NEW TRIAL; MISDIRECTION OF JURY AS TO UNIMPORTANT QUESTION; OBJECTION NOT TAKEN AT TRIAL.

(1) Upon an appeal in a criminal case, the Court of Appeal should not grant a new trial merely because a portion of the Judge's charge was objectionable if of opinion that, irrespective of the charge, the jury could not have done otherwise than convict the accused and consequently that the misdirection could not have occasioned any "substantial wrong" to the accused within the terms of the Criminal Code (Can. 1906), sec. 1019. [See also Tremeear's Criminal Code, 2nd ed., 1908, pages 806-808; and see annotation to this case.] (2) While the lack of objection on the prisoner's behalf at a criminal trial to an erroneous instruction in the Judge's charge is not necessarily fatal to an appeal, it is a matter which the Appellate Court will consider as a circumstance tending to uphold the trial proceedings notwithstanding the irregularity, when determining whether or not any substantial wrong or miscarriage had been thereby occasioned without which the conviction must be affirmed under sec. 1019 of the Cr. Code (Can.) 1906. The King v. Lew, 19 Can. Cr. Cas. 281, 1 D.L.R. 99.

NEWLY DISCOVERED EVIDENCE; PRACTICE.

A Court of criminal appeal has the right to order a new trial when new evidence discovered before the rendering of the verdict is not allowed to be placed before the jury. After verdict rendered, however, only the Minister of Justice could order a new trial. The King v. Manconi, 20 Can. Cr. Cas. 81, 3 D.L.R. 112.

ENFORCEMENT OF AFFIRMED JUDGMENTS; WARRANT OF COMMITMENT ISSUED BY APPELLATE JUDGE.

Sec. 150, sub-sec. (e), of the Liquor License Act, R.S.N.S. 1900, ch. 100, which provides that, upon the affirmance on appeal of a conviction thereunder, if it is adjudged by the conviction that the person convicted "shall be imprisoned," the County Court Judge hearing the appeal

may issue his warrant of commitment, applies only where the commitment imposed imprisonment in the first instance without the alternative of a fine, and the County Court Judge has no authority to issue a warrant of commitment because of the default of the unsuccessful appellant in paying the fine which the conviction imposed although the conviction provided that in default of payment the defendant should be imprisoned unless the fine were sooner paid. [Ex parte Abell, 33 C.L.J. 626, followed.] Rex v. Ackerson, 20 Can. Cr. Cas. 245, 7 D.L.R. 95.

JUDGMENT; PUNISHMENT APPROPRIATE TO COUNTS.

Cr. Code, sec. 1020 would enable the Court of Appeal on a case reserved upon a general verdict to affirm a sentence appropriate to counts properly framed and which were supported by the evidence without regard to other counts framed upon the wrong enactment and therefore not supported by the evidence. R. v. McDonald, 25 Can. Cr. Cas. 106, 28 D.L.R. 377.

TRIAL DE NOVO; ILLEGITIMATE CHILDREN'S ACT.

Sec. 32 of the Illegitimate Children's Act, R. S. M. 1913, ch. 92, has the effect of making secs. 749 to 760 of the Criminal Code applicable to appeals under that Act, except in so far as the proceedings on such appeals are regulated by that Act; and the powers which the Act expressly confers by sec. 30 upon the judge hearing the appeal, are to be considered as supplemented by the powers given by sec. 754 of the Code, which include the power to make the order which the magistrate appealed from should have made and to impose costs and to commit for noncompliance. Re Sigurdson (No. 2), 25 Can. Cr. Cas. 313, 28 D.L.R. 376. See also 25 Can. Cr. Cas. 291, 28 D.L.R. 375.

SUMMARY CONVICTION; JUDGMENT; JURISDICTION.

On an appeal to the County Court from a summary conviction, the Judge of the County Court is functus officio on the entry of his judgment allowing the appeal with costs and the adjournment of the Court sine die; and subsequent orders of the Judge purporting to adjourn the appeal to a fixed date and on the later date purporting to allow counsel fees or other costs not covered by the former order, will be set aside on certiorari as having been made without jurisdiction. Ex parte Cronkhite; R. v. Wilson, 26 Can. Cr. Cas. 224.

JUDGMENT; DISCHARGE OR NEW TRIAL.

Where the Court of Appeal sets aside a verdict for misdirection and finds on a review of the whole evidence that the accused should have been acquitted because of the general weakness of the Crown's case, it will exercise its discretion under Cr. Code, sec. 1018 (*d*) by ordering a discharge instead of a new trial. R. v. Carswell, 26 Can. Cr. Cas. 288, 29 D.L.R. 589.

HOMICIDE; MISDIRECTION; EVIDENCE.

A conviction based upon nondirection or misdirection as to the applicability of evidence is not saved on the ground that there has been no substantial wrong or miscarriage (Cr. Code, sec. 1019) merely because there is ample evidence to support a conviction without the incompetent testimony; the Court of Appeal should not allow the conviction to stand unless it comes to the conclusion that the jury would certainly have convicted even if the error had not intervened. R. v. Duckworth, 26 Can. Cr. Cas. 314, 31 D.L.R. 571.

VERDICT; DIRECTION AS TO SENTENCE.

Where the majority of the Court of Appeal in deciding a reserved case on counts for three separate crimes charged on the same facts, holds that the accused at least was properly found guilty of one of such crimes, and that the penalty should be imposed as for one crime only, a direction may be given under Cr. Code, sec. 1020 that the trial Judge, in passing sentence which had been postponed until after the appeal, shall impose one penalty in respect of the three counts and regulate the extent of same by the maximum which would apply to the lesser offence. The Supreme Court of Canada, on a further appeal under Cr. Code, sec. 1024, will decline to deal with the question of the validity of the conviction on the other counts as raising mere academic questions under such circumstances, if it finds the verdict for such lesser offence unassailable. [R. v. Norman, [1905] 1 K.B. 341, and R. v. Lockett, [1914] 2 K.B. 720, 83 L.J.K.B. 1193, referred to.] R. v. Kelly (No. 3), 27 Can. Cr. Cas. 282, 34 D.L.R. 311, affirming 27 Can. Cr. Cas. 140.

REVERSING ACQUITTAL ON QUESTION OF LAW; CR. CODE, SEC. 1018.

Upon a reserved case by a judge of Sessions trying without a jury a charge for an indictable offence upon which he entered an acquittal based solely on specific points of law found by the Appellate Court not to be well founded, the Appellate Court may itself find the accused guilty and remand him to the lower court for sentence. R. v. Gross & Miller, 31 Can. Cr. Cas. 35.

SUMMARY CONVICTION; IRREGULARITY; APPELLATE COURT SENTENCE.

On an appeal from a summary conviction the Appellate Court is the absolute judge both of law and facts, and where the conviction appealed from is irregular although made on a plea of guilty, the Appellate Court may impose a new sentence. [The King v. Baird (1908), 13 Can. Cr. Cas. 240,

followed.] R. v. Auerbach, 31 Can. Cr. Cas. 46, 45 D.L.R. 338.

IX. Rehearing (on appeal).

TO SUPREME COURT OF CANADA; COURT OF APPEAL UNANIMOUSLY AFFIRMING CONVICTION ON ONE GROUND; DISSENT ON ANOTHER GROUND.

Where the Court of Appeal is unanimous in affirming the conviction as to one of the grounds of appeal, but there is a dissent as to another ground, a further appeal to the Supreme Court of Canada under Code, sec. 742 can be based on the latter only, and the appeal cannot be dealt with in respect to the ground on which the Court of Appeal was unanimous. McIntosh v. The Queen, 5 Can. Cr. Cas. 254.

[Followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141.]

LEAVE TO APPEAL TO SUPREME COURT OF CANADA; SPECIAL LEAVE ONLY UPON SPECIAL GROUNDS OTHER THAN ERROR.

Where an appeal lies from the Court of Appeal for Ontario to the Supreme Court of Canada, only where special leave is obtained from either of said Courts, leave should be refused unless special reasons are shewn apart from the alleged error in the decision sought to be reviewed. Attorney-General v. Scully, 6 Can. Cr. Cas. 381.

APPEAL FROM SUMMARY CONVICTION; REHEARING BEFORE COUNTY JUDGE.

The so-called appeal to a County Judge from a secondary conviction under the Liquor License Act (Ont.) is a rehearing or tiral de novo, and the burden of proof is on the prosecutor at such rehearing as well as at the trial before the magistrate. The King v. Farrell, 16 Can. Cr. Cas. 419.

SUMMARY CONVICTION; REHEARING OF.

On an appeal from a summary conviction the Court will not quash the conviction upon consent unless it appears on the face of the proceedings or upon a rehearing that the conviction was wrong. The King v. McCabe, 18 Can. Cr. Cas. 217.

APPEAL FROM SUMMARY CONVICTION; REHEARING; TRANSFER OF CASE; SECURITY; STAY.

An appeal from a summary conviction can ordinarily only be disposed of by (*a*) quashing, (*b*) formal abandonment, or (*c*) a hearing; and the appeal being a rehearing (Cr. Code 1906, secs. 751–754), the respondent, who is the prosecutor, must prove his case although the appellant does not appear. Where an appeal from a summary conviction under the Criminal Code has been entered on the records of a District Court, the validity of the entry of the appeal is not subject to collateral attack, and until quashed by the District Court or held invalid by a superior Court in a proceeding such as prohibition upon which the question is raised on a direct and substantive application, the stay of proceedings incident to the appeal must be held to be operative so as to invalidate an arrest under the conviction appealed from, made before the disposal of the appeal. R. v. Gregg, 22 Can. Cr. Cas. 51, 13 D.L.R. 770.

REHEARING; SUMMARY TRIAL; JURISDICTION; BAWDYHOUSE.

Where an appeal is permitted under Code, sec. 797, from a conviction on summary trial for keeping a common bawdy house and the accused takes the appeal instead of proceeding by certiorari, the District Court acquires jurisdiction over the person of the appellant and may proceed to a rehearing "upon the merits," notwithstanding defendant's objection taken before the magistrate, that the latter had no jurisdiction because the arrest was illegally made without a warrant. The word "law" in Cr. Code, sec. 752, where it is declared that the court appealed to should try and shall be the absolute judge "as well of the facts as of the law," in respect to the conviction or order appealed from refers to the law applicable to the facts adduced in support of or against the proof of the charge; the appeal being a rehearing, is a submission to the jurisdiction of the District Court to which an appeal is taken under Cr. Code, sec. 797, from a summary trial for the indictable offence of keeping a disorderly house (Cr. Code, secs. 228 and 773 (*f*) and 774) and the District Court may rehear on the merits notwithstanding the want of jurisdiction of the magistrate below, by reason of the illegality of the arrest, nor does Code, sec. 753 as to objections taken below, apply other than to the cases it specifically mentions. [Rand v. Rockwell (1871), 2 N.S.R. 199, referred to.] The rehearing on an appeal under sec. 754 (summary convictions clauses), is to be "upon the merits," and this permits the District Court by which the appeal is heard to reduce the punishment if it sees fit to do so. [By the Cr. Code amendment, 1913, ch. 13, appeals by way of rehearing in disorderly house cases under Code, sec. 773 (*f*), are now limited to trials before two justices of the peace, sitting together.] R. v. Miller, 25 Can. Cr. Cas. 151.

[Followed in R. v. Willson, 29 Can. Cr. Cas. 42.]

SUMMARY CONVICTION; REHEARING OF MERITS.

On an appeal from a summary conviction the complaint is to be reheard on the merits notwithstanding such an irregularity as the omission from the conviction of costs which the magistrate had ordered in the adjudication below. [R. v. Dunlap, 22 Can. Cr. Cas. 245, referred to.] R. v. Murphy, 29 Can. Cr. Cas. 445.

SUMMARY CONVICTION; HABEAS CORPUS MOTION; RES JUDICATA.

The doctrine of res judicata applies to prevent an Appellate Court reopening at the instance of the accused, on an appeal from a habeas corpus order which refused a discharge from custody, the question of the validity of the summary conviction in question which had previously been decided against the accused on her motion to quash the conviction itself against which decision no appeal had been taken. (Per RIDDELL and ROSE, JJ.) R. v. Jackson, 29 Can. Cr. Cas. 352.

X. Leave to Appeal.

LEAVE TO APPEAL TO IMPERIAL PRIVY COUNCIL.

Leave to appeal to the Judicial Committee of the Privy Council upon a question of the constitutionality of a provincial statute will, except under special circumstances, be refused to the party convicted thereunder whose conviction has been affirmed in certiorari proceedings, if an appeal to the Privy Council is pending in a civil action between other parties in which the same question is being litigated. R. v. Little, 2 Can. Cr. Cas. 240.

LEAVE TO APPEAL: PRIVATE PROSECUTOR.

Leave to appeal to the Court of Appeal under Cr. Code, sec. 744, as amended in 1900, should not be granted to a private prosecutor except under exceptional circumstances. Leave to appeal will not be granted to a private prosecutor from the decision of a police magistrate holding a summary trial by consent, merely upon the ground that the magistrate erred in rejecting certain evidence which was properly admissible but corroborative only. R. v. Burns, No. 1, 4 Can. Crim. Cas. 323.

[Discussed in R. v. Phinney, 36 N.S.R. 272.]

TO SUPREME COURT OF CANADA; UNANIMOUS AFFIRMANCE OF CONVICTION BY COURT OF APPEAL; NO POWER TO GRANT LEAVE.

An appeal to the Supreme Court of Canada from the decision of a Court of Appeal on a case reserved at the trial is governed by sec. 750 of the Criminal Code without regard to the Statute of 1897, 60-61 Vict. (Can.) ch. 34, respecting leave to appeal from the Ontario Court of Appeal, and the latter statute does not apply to criminal appeals. Rice v. The King, 5 Can. Cr. Cas. 529.

[Followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141.]

LEAVE TO APPEAL; JUDGE'S COMMENT ON PRISONER'S CHALLENGE OF JURORS; INSTRUCTION TO JURY; IMPEACHMENT OF VERDICT.

(1) An objection to a trial and verdict on the ground that one of the jurors was not indifferent, but had stated before the trial that if he were selected he would send the accused to gaol, raises a question of fact and not a question of law, and a Court of Criminal Appeal has no jurisdiction to grant leave to appeal in respect thereof under Code, sec. 743. (2) An objection to a verdict on the ground that it is against the weight of evidence can only be raised by obtaining leave from the trial Court under Code, sec. 747 to apply to the Court of Appeal for a new trial. (3) Where the trial Judge has refused to reserve a case upon a question of law and the Court of Appeal is then applied to for leave to appeal under Code, sec. 744, leave cannot be granted in respect of another question of law in respect of which a reserved case had not been asked of the trial Judge. (3) Where the trial Judge, after five jurors had been sworn, said to the prisoner's counsel in the hearing of the jurors composing the panel: "If you continue to challenge every man who reads the newspapers, we will have the most ignorant jurors selected for the trial of this cause"—this is not misdirection or undue influence of the jury against the prisoner or his counsel, and leave to appeal should not be granted upon that ground. (5) It is not misdirection for the trial Judge in charging the jury to say: "About forty or fifty witnesses have been examined for the purpose of establishing his (the prisoner's) good character; it is very strange that it should take forty or fifty witness to establish it"—if the statement as to the number of witnesses as to character is in fact correct. The King v. Carlin (No. 2), 6 Can. Cr. Cas. 507, affirming 6 Can. Cr. Cas. 365.

[Referred to in R. v. Hayes (No. 2), 9 Can. Cr. Cas. 119.]

LEAVE TO APPEAL; NOTICE OF MOTION; STATING GROUNDS OF APPLICATION; TIME OF SERVICE.

Upon an application made, pursuant to Code, sec. 744, for leave to appeal after the refusal of a reserved case, ample notice of the application should be given to the Attorney-General, and the notice of motion should set forth the grounds relied upon. The King v. Lai Ping, 8 Can. Cr. Cas. 467.

RESERVED CASE; REFUSAL TO GRANT; TIME OF APPLICATION; LEAVE TO APPEAL ONLY WHERE APPLICATION MADE DURING THE TRIAL.

(1) The trial Judge may if he sees fit grant a reserved case during or after the trial, either upon application therefor or of his own motion, but the Court of Appeal can grant leave to appeal only in the case of an application made during the trial being refused. (2) The words "party applying" in the first paragraph of Code, sec. 744 refer to the application authorized by Code, sec. 743, sub-sec. (3), to be made dur-

ing the trial either orally or in writing by the prosecutor or the accused. The King v. Toto, 8 Can. Cr. Cas. 410.

[Adopted in R. v. Ead, 43 N.S.R. 57; doubted R. v. Ead, 43 N.S.R. 59; distinguished in Ead v. R., 13 Can. Cr. Cas. 348, 358, 40 Can. S.C.R. 272.]

LEAVE TO APPEAL; REFUSING LEAVE UNLESS SUBSTANTIAL WRONG OCCASIONED AT TRIAL.

Leave to appeal will not be granted by an Appellate Court under Code, sec. 744 on the ground of the admission of irrelevant evidence, if in the opinion of the Court the reception of such evidence did not occasion any substantial wrong or miscarriage on the trial. The King v. Callaghan, 8 Can. Cr. Cas. 143.

[Referred to in R. v. Gallagher, 18 Can. Cr. Cas. 350.]

LEAVE TO APPEAL; CONVICTION UNDER PROVINCIAL LAW; APPEAL FROM DIVISIONAL COURT.

The judgment of a Divisional Court affirming a conviction under the Ontario Loan Corporation Act is final, and the Court of Appeal cannot grant to the accused leave to appeal to the latter Court. The King v. Pierce (No. 2), 10 Can. Cr. Cas. 177.

LEAVE TO APPEAL FROM JUDGMENT ON SPEEDY TRIAL.

On granting leave to appeal to the Court of Appeal under sec. 1015 of the Revised Cr. Code, the Court of Appeal may direct that the Court below shall state a case as if the questions had been reserved. The King v. Sam Chak (No. 1), 12 Can. Cr. Cas. 495.

LEAVE TO APPEAL IN CRIMINAL MATTER.

Quære, whether the Judicial Committee may not grant special leave to appeal from a Canadian Court in a criminal matter notwithstanding sec. 1025 of the Revised Cr. Code 1906 (sec. 751 of the Code of 1892), but such leave will not be granted unless the judgment below is attended with sufficient doubt to justify the granting of special leave. The King v. Townsend (No. 4), Townsend v. Cox, 12 Can. Cr. Cas. 509.

[Discussed in Townsend v. Beckwith, 14 Can. Cr. Cas. 357.]

SPEEDY TRIAL; CERTIORARI RETURN NOT FILED.

Where writs of habeas corpus and certiorari in aid had been improperly issued in respect of a conviction by an inferior Court of record and the prisoner remanded thereunder for sentence which had been deferred in the Court below, leave to appeal will not be granted to question the validity of the sentence afterwards passed on the accused on an objection that the record of proceedings which had been transmitted in accordance with the writ of certiorari, but not filed, had not been returned to the inferior Court when sentence was passed. The King v. Harrison, 13 Can. Cr. Cas. 108.

LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL FROM THE JUDGMENT ON THE POINTS OF LAW REFUSED.

Leave to appeal was refused by the Judicial Committee of the Privy Council in respect of a judgment of the Supreme Court of Nova Scotia [Johnston v. MacDougall (No. 1), 17 Can. Cr. Cas. 58] upon points of law involving the statutory jurisdiction of the magistrate, deciding prior to any assessment of damages in an action claiming $2,000 for illegal execution of a search warrant issued under the Canada Temperance Act. Johnston v. MacDougall (No. 2), 17 Can. Cr. Cas. 398.

LEAVE TO APPEAL; GRANTING STATED CASE TO CONSIDER MERITS.

On an application for leave to appeal after the refusal of a reserved case, the Court should direct a case to be stated, if the merits are to be gone into to ascertain whether or not the offence may be considered a "trivial" one under Code, sec. 1081, so as to justify a suspension of sentence by the trial Court. The King v. Pettipas (No. 1), 17 Can. Cr. Cas. 448.

MOTION TO SET ASIDE WARRANT; LEAVE TO APPEAL FROM REFUSAL; APPEAL IN A CRIMINAL CASE.

An order refusing the defendant's application to set aside a bench warrant or warrant of arrest for alleged default in the recognizance of bail is a proceeding in a criminal matter and a Provincial Court has no jurisdiction to give leave to appeal from its decision to the Privy Council. The King v. Keizer (No. 2), 18 Can. Cr. Cas. 39.

LEAVE TO APPEAL FROM CONVICTION.

In granting leave to appeal from a conviction upon an indictment, the Court of Appeal may settle the form of the questions upon which it directs the trial Court to state a case. The King v. Tansley, 19 Can. Cr. Cas. 42.

CRIMINAL LAW; ORDER REFUSING MOTION TO QUASH SUMMARY CONVICTION.

Where a motion to quash a summary conviction has been dismissed and the conviction ordered to be amended under Code, sec. 1124 as to a defect in form, leave to appeal from the dismissal should be refused, if the evidence warranted all the amendments necessary to make a good conviction. The King v. Demetrio (No. 2), 20 Can. Cr. Cas. 318, 1 D.L.R. 515.

LEAVE TO APPEAL; CRIMINAL CASE.

Where it is quite evident to the Appellate Court after a consideration of the entire case that the conviction must be af-

firmed on the uncontradicted evidence and the law, leave to appeal, under Cr. Code 1906, sec, 1015, from a conviction on indictment or speedy trial will be refused. The King v. Day, 20 Can. Cr. Cas. 325.

GRANTING LEAVE TO APPEAL; MISDIRECTION IN CRIMINAL CASE.

(1) Leave to appeal will be granted the accused in a homicide trial involving the responsibility for the accidental discharge of a gun in the hands of the deceased if the Appellate Court considers that the jury has not been properly instructed on the question of the casual connection between the acts of the accused and the discharge of the gun. (2) Leave to appeal will be granted the accused where the general effect of the instruction to the jury in a murder charge is, in the opinion of the Appellate Court, to deal with the question of malice as if it were sufficiently proved by shewing ill-feeling on the part of the accused towards the deceased, where the circumstances were such as to make such definition prejudicial to the accused by reason of the meagreness of any evidence of unlawful intent in respect of the crime charged as distinguished from mere ill-will. [The conviction was subsequently affirmed on an equal division of the Court differently constituted; Rex v. Graves (No. 3), 9 D.L.R. 175, 20 Can. Cr. Cas. 438; but on further appeal to the Supreme Court of Canada a new trial was ordered.] (3) Leave to appeal should be granted the accused on a conviction for murder if the Appellate Court thinks that the instruction given to the jury as to the possible mitigation of the offence by provocation was, in effect, limited so as to exclude acts done by the accused in carrying out a grudge. (4) The Appellate Court on an application for leave to appeal in a criminal case should grant the leave if the questions raised are fairly arguable. (Dictum per Ritchie, J.) The King v. Graves (No. 2), 20 Can. Cr. Cas. 384, 9 D.L.R. 30.

DELAY IN MOVING FOR LEAVE TO APPEAL.

A delay of two years after the conviction in applying for leave to appeal therefrom under sec. 1019 of the Criminal Code, 1906, would not be a ground for refusing to entertain an appeal based upon the wrongful admission of the prisoner's wife as a witness against him, even if the Crown had not by consenting to an order granting leave to appeal waived such objection. R. v. Allen, 22 Can. Cr. Cas. 124, 14 D.L.R. 825.

LEAVE TO APPEAL; STATED CASE; JUDGE'S CERTIFICATE; STENOGRAPHER'S NOTES.

On giving leave to appeal under Cr. Code (1906), sec. 1015, following the refusal of the trial judge to reserve a case, the court of criminal appeal should not, even by consent, hear and deal with the matter as though a case had been stated on the question on which the leave is given; sec. 1016 of the Criminal Code is mandatory in directing that a case "shall be stated." [R. v. Armstrong, 12 Can. Cr. Cas. 544, 15 O.L.R. 47, dissented from.] In a conflict between what the trial judge certifies in a case stated under Cr. Code 1906, sec. 1016, to have been specifically sworn to by a witness in answer to his own question, and what is shewn on the stenographer's notes of evidence sent up with the stated case under Cr. Code, sec. 1017, a court of criminal appeal is bound to accept the statement of the trial judge, particularly where he certifies that the stenographer's notes are defective by reason of the omission of such question and answer. (Per Martin, J. A.) The power of a court of criminal appeal on hearing a case stated by the trial judge under Cr. Code (1906), sec. 1015, to refer to such other evidence of what took place at the trial as it thinks fit is limited by Cr. Code, sec. 1017 to cases in which "only the judge's notes are sent and it considered such notes defective;" there is no such power where, in addition to the judge's notes, the notes of the official stenographer accompany the stated case. R. v. Angelo, 22 Can. Cr. Cas. 304, 16 D.L.R. 126.

Leave to appeal; conviction for theft; particulars; sufficiency. R. v. Lemelin, 23 Can. Cr. Cas. 171, 8 D.L.R. 1025.

MOTION FOR LEAVE TO APPEAL; DELAY.

Where the accused files a motion before the Court of Appeal for leave to appeal under Criminal Code, sec. 1015, following his conviction for an indictable offense, but makes default in proceeding with such motion, the Court of Appeal will hear counsel for the Crown and make such disposition of the motion in the absence of the accused as it sees fit. Abeles v. The King, 24 Can. Cr. Cas. 308.

LEAVE TO APPEAL TO PRIVY COUNCIL; REFUSAL TO QUASH SUMMARY CONVICTION; TEMPERANCE ACT.

The Court which has affirmed a summary conviction under the Nova Scotia Temperance Act in certiorari proceedings will decline leave to appeal to the Privy Council from the decision to raise the question whether the Act was not more extensive in its scope than the Legislature had power to enact, if the circumstances in the case in question indicated no probability that the liquor found to have been illegally kept for sale was brought in from another province to be sold outside of Nova Scotia so as to make the question of ultra vires applicable to the facts. R. v. Hoare (No. 2), 25 Can. Cr. Cas. 87. See also 24 Can. Cr. Cas. 279.

LEAVE TO APPEAL ON QUESTION OF LAW.

On a motion under Cr. Code, sec. 1015,

for leave to appeal from a conviction at a County Judge's Criminal Court for the court of appeal is restricted in the determination of the legal question of jurisdiction to such facts as appear on the face of the proceedings in the lower Court, as there is no appeal on questions of fact except under Cr. Code, secs. 1012 and 1021. (Per MARTIN and MCPHILLIPS, JJ. A.) [R. v. Carter (No. 2), 6 Can. Cr. Cas. 507; R. v. Spintlum, 22 Can. Cr. Cas. 483, 15 D.L.R. 778, 18 B.C.R. 606, and Mulvihill v. The King, 23 Can. Cr. Cas. 194, 18 D.L.R. 217, 49 Can. S.C.R. 587, specially referred to.] R. v. Jun Goon, 25 Can. Cr. Cas. 415, 28 D.L.R. 374.

LEAVE TO APPEAL; SHORTHAND NOTES OF TRIAL.

Where it is material to the hearing of a motion under Cr. Code, sec. 1015 for leave to appeal from a conviction that the Court of Appeal should have a transcript of the official stenographic notes of evidence, and these are not presently available because of the stenographer having left the jurisdiction and having taken his shortland notes with him, the Court of Appeal may direct that the Crown bring in and file a transcript within a limited time because of the failure of the Crown officers to retain the custody of the notes, and may further order that, in default, the conviction be quashed. R. v. Jennings; R. v. Hamilton, 26 Can. Cr Cas. 270, 29 D.L.R. 604. See also 28 Can. Cr. Cas. 164.

LEAVE TO APPEAL; INVALID CONVICTION; THEFT; RECEIVING.

Although a conviction has improperly been made against the same defendant for both stealing and receiving, and had a case been reserved the Court of Appeal would have quashed the conviction on the count for receiving and supported the conviction on the count for theft, yet it need not grant leave to appeal and direct a case to be stated, if no additional punishment was imposed by reason of the conviction for receiving. R. v. Carmichael, 26 Can. Cr. Cas. 443.

LEAVE TO APPEAL; RESERVED CASE; RECORD.

Where a reserved case is applied for on several questions of law and granted only as to some of them by the trial Judge, the Court of Appeal, on granting leave to appeal on one of the questions which the trial Judge refused to reserve, will ordinarily direct that the reserved case shall stand over to be considered at the same time so that the entire appeal may be disposed of in one judgment. [Compare R. v. Bela Singh, 27 Can. Cr. Cas. 40, 22 B.C.R. 321.] The Court of Appeal, in granting leave to appeal in a criminal case may direct that the whole record should be transmitted by the trial Court, and that the latter shall add a statement declaring whether the stenographic notes of the reasons for the judgment appealed against are correct. Giroux v. The King, 27 Can. Cr. Cas. 366, 34 D.L.R. 642 (affirmed by Canada Supreme Court). See also 30 Can. Cr. Cas. 101, 26 Que. K. B. 323, affirmed in 56 Can. S. C. R. 63, 39 D.L.R. 190.

LEAVE TO APPEAL; RESERVED CASE APPLIED FOR.

On a motion to the Appellate Court for leave to appeal from a conviction where the trial Judge refused to reserve a case, the Appellate Court will not consider possible objections not included in the points on which the accused moved below for a reserved case. R. v. Jennings; R. v. Hamilton (No. 2), 28 Can. Cr. Cas. 164. See 26 Can. Cr. Cas. 270, 29 D.L.R. 604.

APPEARANCE.

Note on appearance of accused compelled by irregular process; Subsequent detention and commitment; Validity of. 3 Can. Cr. Cas. 150.

When irregular process cured by appearance; Note. 4 Can. Cr. Cas. 537.

DEFECT IN SERVICE; APPEARANCE BY COUNSEL.

The defendant's appearance by counsel upon the return of a magistrate's summons is a waiver of any irregularity in respect of the service not having been effected by a peace officer, although counsel objects on that ground to the hearing being proceeded with. The absence of defendant's counsel from the adjourned sittings at which the magistrate pronounced his judgment, the evidence having been closed at the former sittings at which counsel appeared, does not affect the power of the magistrate to convict, notwithstanding any such irregularity in the service. R. v. Doherty, 3 Can. Cr. Cas. 505.

ARRAIGNMENT.

Note on the arraignment of accused persons. 3 Can. Cr. Cas. 271.

Before County Judge; Election of mode of trial. 3 Can. Cr. Cas. 589.

GAOL DELIVERY; FAILURE TO ARRAIGN PRISONER.

The failure to arraign a prisoner for trial at the sittings of the Court at which he should have been tried does not entitle him to a discharge on habeas corpus. R. v. Wright, 2 Can. Cr. Cas. 83.

SPEEDY TRIAL; SUBSTITUTING NEW CHARGE; RIGHT TO ELECT ON SUBSTITUTED CHARGE; RE-ARRAIGNMENT.

A County Court Judge holding a speedy trial upon a charge of seduction may substi-

tute a new charge to conform to the evidence of the prosecution by stating it as of a prior date upon which a different occurrence is sought to be proved, but such substitution is subject to the right of the accused to re-elect the mode of trial. As regards the offense of seduction the change of the date of the alleged offence by an amendment of the indictment or charge is in substance the laying of a new charge to which a different defense might be applicable. Code, sec. 723 applies to authorize an amendment as to time or place in a speedy trial charge without re-election, only where the act or transaction which forms the foundation of the charge is the same, and a mistake was made in the evidence or charge as to the true date of the occurrence. The King v. Lacelle, 10 Can. Cr. Cas. 229.

[Referred to in R. v. Sylvester, 19 Can. Cr. Cas. 310, 1 D.L.R. 192; R. v. Dawn, 11 Can Cr Cas 246; Dufresne v R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

ARREST.

Creditor procuring goods from debtor by threatening arrest. 2 Can. Cr. Cas. 242.

Under warrant of commitment; Deposit of money with constable; Delay at defendant's request. 5 Can. Cr. Cas. 94.

Arrest without warrant on criminal charge. 27 Can. Cr. Cas. 400.

ARREST BY OFFICER WITHOUT WARRANT; WANT OF SWORN INFORMATION; SUSPICION FOR EVADING ARREST.

A constable in the service of a municipality is not justified in taking a person into custody and depriving him of his liberty on a criminal charge, without any sworn complaint having been made, and without a warrant issued by competent authority, more especially where there was no reason to suspect that he would attempt to evade arrest. Unsworn statements made to the officer to the effect that the person had committed a larceny on the previous day are insufficient. But where the officer has acted in good faith and on information which excuses him to some extent, these facts should be taken into consideration in the award of damages. Mousseau v. City of Montreal, 12 Que. S.C. 61.

ARREST BY PRIVATE PERSON WITHOUT A WARRANT; WHAT NECESSARY TO JUSTIFY.

When a private person—not being by office a keeper of the peace, or a justice or constable—takes upon himself to arrest another, without a warrant, for a supposed offense, he must be prepared to prove, and to affirm it clearly and unequivocally in his plea, that felony has been committed; strong suspicions of a felony having been committed will not do. McKenzie v. Gibson (1851), 8 U.C.Q.B. 100.

ARREST ON SUNDAY; CANADA TEMPERANCE ACT; DEFAULT OF PAYMENT OF FINE.

On Sunday, January 10th, Archibald Frecker was arrested on a warrant of commitment issued by the parish court commissioner for the parish of Chatham, in the county of Northumberland, in default of payment of fine for violation of the Canada Temperance Act, and was sent to gaol:—Held, that the arrest being on Sunday, was void, and that prisoner must be forthwith discharged from custody. The order was made exempting the gaoler from liability. Ex parte Frecker (1897), 33 C.L.J. 248.

ARREST WITHOUT WARRANT; ABSENCE OF FORCE OR RESISTANCE.

The plaintiff and defendant had a disagreement on the London market. Defendant telephoned for a policeman, who soon arrived, and said to the defendant: "Is this the man?" The constable, after hearing both sides of the dispute, said to plaintiff: "You will have to come along with me to the police station." No other words were used, and no resistance offered. Plaintiff, defendant and policeman walked down together to the station and talked the matter over there with the chief. No information was laid, and plaintiff was not further detained. The constable swore he did not arrest plaintiff. As to this, Ross, J., ruled that that was a question of law; that if an officer, known to be such, took charge of a man, and the man reasonably thought he was under arrest from the conduct of the officer, this is an arrest. Forsyth v. Goden, 32 C.L.J. 288.

ARREST WITHOUT WARRANT; PROBABLE GROUNDS FOR OFFENCE.

The question whether a peace officer, under sec. 30 of the Criminal Code, on reasonable and probable grounds, believed that an offence for which the offender might be arrested without a warrant had been committed and whether the officer, on reasonable and probable grounds, believed that a fugitive had committed that offence, is one for the jury and not for the Judge to decide. R. v. Smith (1907), 17 Man. R. 200

ARREST IN ANOTHER COUNTY; ASSISTANCE AND PROTECTION OF CONSTABLES.

Where an offense 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. Regina v. Chasson, 16 N.B.R. 546.

ARREST ON UNINDORSED WARRANT; DEFAULT OF FINE UNDER LIQUOR LICENCE ACT; DETENTION UNDER ILLEGAL WARRANT.

A warrant for the arrest of the plaintiff, who had made default in paying a fine on conviction for an infraction of the liquor

license law, was sent from an outlying county to a city. Before it was endorsed by a magistrate in the city the plaintiff was arrested there by two of the defendants, the chief constable and a detective, and confined. Some hours after the arrest the warrant was properly endorsed and the detention of the plaintiff was continued until payment of the fine:—Held, that the only damages recoverable by the plaintiff was for the trespass, up to the time of the backing of the warrant. Held, also, that the plaintiff being illegally in custody under a criminal charge, his subsequent detention on a similar charge, under a proper warrant, was lawful. Distinction between subsequent civil and criminal procedings in such cases pointed out. Southwick v. Hare et al. (1893), 24 O. R. 528.

FALSE ARREST; CHARGE ON FALSE PRETENCES; BONA FIDE PROSECUTION; DEFECTIVE WARRANT.

In July, 1878, on returning with the defendant from cashing a draft which the plaintiff had received from Scotland, the plaintiff boasted to defendant that he was going to get very much larger remittances in May, 1879 and 1880, but there was nothing to shew that that statement was made with a view to obtaining credit. Nearly the whole of the proceeds of the draft, after paying defendant an account then due for goods obtained, was deposited with the defendant, the plaintiff continuing to deal with him until not only the whole of this sum was absorbed, but a further indebtedness had been incurred. The defendant caused a warrant to be issued to arrest the plaintiff for obtaining goods by false pretences, though with the real object of obtaining a settlement of his account. After the plaintiff was arrested and brought before the magistrate he was allowed to go on his own recognizance to appear next day, but being unwell he could not appear, and the charge not being pressed by the defendant, and the magistrate not thinking there was sufficient evidence to commit, the matter was allowed to drop:—Held, that though the evidence shewed that the charge was not legally sustainable, yet, if the defendant acted bona fide, which was a matter for the jury, he would be justified in prosecuting. Held, also, that it sufficiently appeared that the prosecution had terminated. The warrant was issued in the United Counties of Northumberland and Durham and was endorsed by a magistrate in the County of Peterborough, "This is to certify that I have endorsed this warrant, to be executed in the County of Peterborough," but there was no proof of the handwriting of the justice who issued the warrant, or recital of such proof, as required by 32 and 33 Vict. ch. 30, sec. 23 (*d*), sched. K. Held, that the warrant was therefore defective and the arrest illegal, for which the defendant was liable in trespass. Under the circumstances a verdict having been entered for the defendant, a new trial was ordered. Reid v. Maybee, 31 U.C.C.P. 384.

FALSE IMPRISONMENT; WHO LIABLE.

Plaintiff took possession of Mason's float, which he found adrift on a lake. Mason, although aware that plaintiff claimed a lien for salvage, made no move towards recovering the float until after twelve weeks, when he in company with a constable, demanded it, and on plaintiff refusing to give it up without compensation, he was arrested without a warrant and taken to gaol, and subsequently an information laid against him under sec. 338 of the Code for taking and holding timber found adrift, was dismissed:—Held, on the facts, affirming Forin, Co. J., that the arrest was the joint act of Mason and the constable, and that Mason was therefore liable for damages for false imprisonment. Robitaille v. Mason and Young, 9 B.C.R. 499.

FALSE ARREST; ABSENCE OF PROBABLE CAUSE; THEFT; INSUFFICIENT CHARGE.

The trial Judge found the following facts:—The defendant went before a justice of the peace with the intention of laying an information against the plaintiff for stealing the defendant's calf. He asked the justice to take such an information, but the justice declined, and prepared one disclosing no criminal offence, charging the plaintiff with unlawfully taking the defendant's calf into his possession. The defendant swore to the information, and the plaintiff, as the result of the preliminary investigation, at which the defendant and a number of witnesses subpœnaed at his request appeared, was held to bail to appear for trial. The defendant intended to prosecute, and believed he was prosecuting, the plaintiff for a criminal offence. He honestly believed the calf to be his (though the Judge found it to be, in fact, the plaintiff's), but did not honestly believe that the plaintiff was guilty of a theft; and, though he did honestly believe him guilty of some criminal offence in relation thereto, his belief was not based upon a conviction founded upon reasonable grounds of the existence of a state of circumstances, which, assuming them to be true, would lead an ordinarily prudent and cautious man, placed in the position of the defendant, to the conclusion that the plaintiff was probably guilty of a criminal offence. The Crown prosecutor at the next sittings of a proper Court, after examining the papers transmitted to the magistrate, and without having had an interview with the defendant, laid a charge of theft. The defendant, when the charge was preferred to the Court, was then at least aware that the charge was one of theft, and he lent his aid and assistance

in endeavouring to secure a conviction for the offence so charged. The defendant was, both in laying the charge and in aiding the prosecution before the justice and the Court, actuated by actual malice. On the facts so found by himself, as the trial Judge, Wetmore, J.:—Held, (1) That the defendant, without reasonable and probable cause, laid the information before the justice as for an indictable offence and procured the plaintiff to be prsecuted for theft before the Court, and was liable in damages to the plaintiff. (2) Against the contention that, inasmuch that the information disclosed no criminal offence, the defendant could not quoad that information be held liable for malicious prosecution—that though no action will lie for maliciously and without reasonable and probable cause bringing a civil action, an action will lie where the procedure is criminal in form, though the charge be bad in law. Jones v. Gwynn (1713), 10 Mod. R. 148; Gilb. K.B. 185; Attwood v. Moringer (1653), Sty. 378; Quartz Hill Mining Co. v. Eyre, 52 L.J.Q.B. 488, 11 Q.B.D. 674, 49 L.T. 249, 31 W.R. 668 (C.A.); Rayson v. South London Tramway Co., 62 L.J.Q.B. 593, [1893] 2 Q.B. 204, 17 Cox C.C. 691 (C.A.), considered. (3) That the defendant was liable for the part he took in prosecuting the charge before the Court. Fitzjohn v. MacKinder, 9 C.B. (N.S.) 505; 30 L.J.C.P. 257; 7 Jur. (N.S.) 283; 4 L.T. 149; 9 W.R. 477, followed. (4) Against the contention that the laying of the charge by the Crown prosecutor was an act of that officer for which the defendant was not responsible—that the defendant, having "set the stone rolling," was responsible for the consequences, inasmuch as he had not, as he should have voluntarily done, informed the Crown prosecutor of the facts, not appearing on the depositions, which would have probably resulted in the proceedings being dropped. (5) That the following items should be allowed as special damages:—(a) Amount paid witnesses attending trial of criminal charge. (b) Amount paid for subpœnas and serving. (c) Counsel fee paid at trial of criminal charge. (d) Expenses of plaintiff and wife attending such trial. (e) Expenses of plaintiff and man attending preliminary examination. Powell v. Hiltgon, 5 Terr. L.R. 16.

FALSE ARREST; LIABILITY OF MAGISTRATE; ARREST ON VERBAL ORDER.

Where a magistrate allows a prisoner to depart, without examining into the charges against him, with a direction to appear the next morning at the police office, and in the meantime, on the ground that he was assaulted by the prisoner when in custody before him, gives a verbal order to a constable to apprehend him and take him to the station-house or gaol, such imprisonment is illegal, and the magistrate cannot justify the arrest. Powell v. Williamson (1843), 1 U.C.Q.B. 154.

INFRACTION OF RULES MADE BY INSPECTOR OF PRISONS.

Under the authority conferred by sec. 6 of R.S.O. ch. 217 (1877), on the Inspector of Prisons to "make rules and regulations for the management, discipline, and police of the Central Prison, and for fixing and prescribing the duties and conduct of the warden and every other officer or servant employed therein," the following rules were made, providing, amongst other things (Rule 201), that any officer or employee who should knowingly bring or attempt to bring in to any prisoner any tobacco, should be at once dismissed and criminally prosecuted; and (Rule 219) that employees of contractors must strictly conform to all rules and regulations laid down for the guidance of guards or employees of the prison, and any infraction of such rules and regulations by such employees will be promptly dealt with. By sec. 27 of the Act, any person giving any tobacco to any convict (except under the rules of the institution), or conveying the same to any convict, shall forfeit any pay the sum of $40 to the warden, to be by him recovered in any Court of competent jurisdiction. The plaintiff, a workman in the Central Prison, in the employment of a contractor therein, was detected conveying tobacco to a convict, whereupon the warden directed a constable to arrest him, which he did, and though under no apprehension of plaintiff making any attempt to escape, handcuffed him, and led him through the public streets of Toronto to the police station. On the charge preferred the plaintiff was indicted. —Held, that the plaintiff was subject to an indictment and therefore the arrest was legal. Under sec. 6, authority was conferred to make the rules, and for disobedience thereof the plaintiff was subject to indictment, the remedy not being limited to that prescribed by sec. 27. Per Galt, C.J., and Rose, J. The power confered by sec. 6 is limited to the objects therein expressed, and does not authorize the making of a rule to conflict with sec. 27, or which would cause an offence to be created indictable at common law, but that the plaintiff was by virtue of sec. 25 R.S.C. ch. 173, subject to indictment under sec. 27, the remedy thereunder not being limited to the recovery of the penalty. Per MacMahon, J.:—Held, however, that under the circumstances the handcuffing was not justifiable and the constable was liable in trespass therefor, but no liability attached to the warden as the evidence failed to shew that he was a party to it. Hamilton v. Massie et al., 18 O.R. 585.

IRREGULARITY OF WARRANT; OMISSION TO STATE THAT INFORMATION IS UNDER OATH.

Where an information is on oath, the omission to state that fact in a warrant to arrest is an irregularity only. Kingston v. Wallace et al. (1886), 25 N.B.R. 573.

OFFICER EXECUTING WARRANT OF ARREST FOR OFFENCE LESS THAN FELONY.

Though the officer executing a warrant for an offence less than felony must have it in his possession at the time the arrest need not be by his hand, nor need he be actually in sight, but he must be so near as to be near at hand and acting in the arrest. Semble, a defendant may be detained under a commitment on a summary conviction, though, at the time it was lodged with the gaoler, he was in custody under a commitment in another case, on which he had been illegally arrested. Per Tuck, J. Ex parte McManus, 32 N.B.R. 481.

PROOF OF IN ACTION FOR MALICIOUS ARREST.

The arrest is not proved by shewing that the bailiff with the warrant went to the plaintiff's house and told him at the door that he had a writ against him, but did not enter the house, nor touch him, and afterwards left him, on his promise to put in bail the next day, which he did. Perrin v. Joyce, 3 U.C.O.S. 300.

WARRANT OF; PRIMA FACIE EVIDENCE OF ITS CONTENTS.

The warrant of a magistrate to arrest, issued in the first instance, is only prima facie, not conclusive evidence of its contents; as, for instance, of an information on oath and in writing having been laid before him. Friel v. Ferguson (1865), 15 U.C.C.P. 584.

WHAT CONSTITUTES; VOLUNTARY SUBMISSION ON PRESENTMENT OF WARRANT; STATUTORY PROTECTION OF OFFICER.

Plaintiff having been convicted of an assault and fined by a magistrate in the county of H., the magistrate issued a warrant for his arrest for the nonpayment of the fine, directed to a constable, who went after the plaintiff and found him in an adjoining county, when he told him he had a warrant of commitment for him for his arrest, at his request, allowing him to read it when the plaintiff said he would go with him, which he did, the constable taking him before the magistrate in the county where he was convicted, where he paid the fine, costs and constable's fees:—Held, that what took place constituted an arrest. Semble, that if the constable had merely told the plaintiff he had a warrant of commitment for him, without shewing it, and the plaintiff on being so told had gone with him, it would have been an arrest. Held, also, that the constable was not entitled to the protection of 24 Geo. II. ch. 44, sec. 6. Held, also, that as the evidence shewed that the constable was acting with the bona fide intention of executing the warrant, he was entitled to the protection of R.S.O. 1887, ch. 73, and to notice of action, but that as the notice of action given stated that the arrest took place in a township other than the correct one, it was insufficient. Held, also, that as the evidence of both the plaintiff and defendant shewed where the arrest took place, the trial Judge was right in telling the jury so, instead of leaving to them to find as a fact. Held, also, that the constable was entitled to plead not guilty by statute to the statement which alleged the arrest in the county where it was made. Held, also, that if there had been any evidence to warrant it, the plaintiff might have required the jury to be asked to find that the constable did not act in good faith in making the arrest. Aldrigh v. Humphrey (1898), 34 C.L.J. 385.

LEGALITY OF; ARREST ON TELEGRAM.

The arrest of a person, charged with obtaining goods by false pretences with intent to defraud, on a request by telegram from another province of Canada, where the offence is alleged to have been committed, may be justified by a peace officer by alleging either that the prisoner has actually commited such offence or that such officer, on reasonable and probable grounds, believes that the prisoner has committed the offence charged. Cr. Code, sec. 22 operates, not merely to protect the officer from civil or criminal proceedings, but also to authorize the arrest and make it lawful; and it applies, not only when the arrest could be made by any person without a warrant, but also to cases in which a peace officer only may so arrest. Cr. Code, sec. 552 (7a), applies only to cases coming within sub-sec. 7, and it is not necessary in other cases to bring the person arrested before a justice of the peace before noon of the day following the arrest. R. v. Cloutier, 2 Can. Cr. Cas. 43.

[Followed in R. v. Sabeans, 7 Can. Cr. Cas. 502; referred to in Cheng Fun v. Campbell, 16 Can. Cr. Cas. 515.]

WARRANT OF ARREST; MAGISTRATE'S REFUSAL TO ISSUE.

A magistrate is not under a legal obligation to issue a warrant of arrest upon an information in respect of an indictable offence, if on the consideration of the complainant's allegations he is of opinion that a case for so doing is not made out. (Cr. Code, sec. 559.) A magistrate refusing to issue a warrant on an information for an indictable offense is not bound to state his reason for so doing; he has merely to express his opinion, after a consideration of the complainant's allegations as to whether a warrant should be issued or not. That a mag-

istrate did not properly appreciate the evidence submitted upon an application for the issue of a warrant of arrest for an indictable offence is not a ground for a mandamus to compel him to grant a warrant against his opinion, formed in good faith. Thompson v. Desnoyers, 3 Can. Cr. Cas. 68.

WARRANT WITHOUT SWORN INFORMATION; PEACE OFFICER.

If a justice of the peace is not himself personally arresting the offender on view or upon suspicion, or personally acting in effecting an arrest by calling some one to his assistance in making the same, he can legally direct the arrest only by a warrant issued upon a written complaint or information upon oath. A justice of the peace who illegally issues a warrant without having received a sworn information in respect of the charge is liable in trespass for the arrest made thereunder, and he cannot justify the commanding of the constable to make the arrest by shewing that he, the justice, had a reasonable suspicion that an offence had been committed. (Cr. Code, sec. 22.) McGuiness v. Dafoe, 3 Can. Cr. Cas. 139.

[Referred to in Campbell v. Welsh, 18 Can. Cr. Cas. 316; Re Paul (No. 1), 20 Can. Cr. Cas. 160, 7 D.L.R. 24; Papillo v. R., 20 Can. Cr. Cas. 329.]

INFORMATION MUST BE SWORN.

A summons may be issued upon an information before a justice of the peace for an offence punishable on summary conviction, although the information has not been sworn (Cr. Code, secs. 843, 845), but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath (Cr. Code, secs. 588, 843). R. v. William McDonald, 3 Can. Cr. Cas. 287.

ILLEGALITY OF, AS AFFECTING MAGISTRATE'S JURISDICTION.

If the accused is in fact present before the magistrate, and the magistrate has jurisdiction over the person and the offence, he may lawfully proceed with the hearing of the charge, notwithstanding that the warrant on which the accused was arrested was executed by a person not legally qualified for that purpose. Ex parte Giberson, 4 Can. Cr. Cas. 537.

ARREST WITHOUT WARRANT; ENTRY IN POLICE CHARGE BOOK; WANT OF SWORN INFORMATION.

When the accused found committing a criminal offence is arrested without warrant by a peace officer, and on being brought before a police magistrate a written charge not under oath is read over to him, and he thereupon consents to be tried summarily, the police magistrate has jurisdiction to try the case, although no information has been laid under oath. The King v. McLean, 5 Can. Cr. Cas. 67.

ARREST AND SEARCH; REASONABLE AND PROBABLE CAUSE.

Where a police officer, acting under the instructions of the Post Office department in investigating the alleged theft of letters by letter carriers, believed that the carrier had stolen the letter and detained and searched him, an action for false arrest will not lie in the absence of malice. Myer v. Vaughan, 5 Can. Cr. Cas. 392, affirmed in 6 Can. Cr. Cas. 68.

UNDER WARRANT OF COMMITMENT; TEMPORARY RELEASE OF PRISONER; PROMISE OF PRISONER TO SURRENDER HIMSELF; RE-ARREST.

Where the officer executing a warrant of commitment releases the prisoner, at his request, for a temporary period, on his promise to surrender himself, such does not constitute a voluntary abandonment of the arrest, and a rearrest is justified upon the same warrant. The King v. O'Hearon (No. 2), 5 Can. Cr. Cas. 531.

FALSE ARREST; ISSUING A WARRANT OF ARREST WITHOUT INQUIRING INTO COMPLAINANT'S GROUNDS.

A justice of the peace who issues a warrant of arrest without inquiring into the grounds which the complainant had to suspect the accused, becomes liable towards the latter under the laws of Quebec, when the complaint was not justified by any serious, reasonable or plausible ground. Maurfina v. Sauvé, 6 Can. Cr. Cas. 275.

MISNOMER OF ACCUSED IN WARRANT; ARREST JUSTIFIABLE WITHOUT WARRANT.

Where a peace officer would be justfied by virtue of Code, sec. 22 in arresting a person without a warrant, the justification will extend to an arrest in respect of which he held a warrant which was insufficient because of the misnomer of the person intended to be charged. The King v. Sabeans, 7 Can. Cr. Cas. 498.

SEIZURE BY POLICE OF PRISONER'S EFFECTS; RESTORATION TO ACCUSED OF GOODS NOT CONNECTED WITH THE CHARGE.

A superior Court of criminal jurisdiction may order the restoration, to an accused person committed for trial, of articles taken possession of by the police, which are not connected with the offence charged, and are not required for the purpose of evidence. Ex parte MacMichael, 7 Can. Cr. Cas. 549.

INTERROGATION OF PRISONER BY POLICE OFFICER; ALTERING CHARGE.

(1) There is a distinction between confessions obtained before and after arrest, the arrest itself constituting an inducement or pressure upon the accused to speak; and in order to satisfy the onus upon the Crown of proving that a confession in answer to questions put by a constable to a prisoner was voluntary, it must be shewn that the

accused was warned that what he said might be used against him. (2) A confession obtained from a person under arrest for theft in answer to questions put by a police officer without any warning being given him the prisoner is not admissible against him upon a charge of murder subsequently preferred. The King v. Kay, 9 Can. Cr. Cas. 403.

[Discussed in R. v. Hoo Sam, 19 Can. Cr. Cas. 269, 1 D.L.R. 569, 20 W.L.R. 571.]

WARRANT OF ARREST; INFORMATION AND BELIEF OF INFORMANT; FAILURE TO DISCLOSE CAUSES OF SUSPICION.

(1) An information to lead a warrant for the apprehension and trial of a person charged with an offence punishable on summary conviction must disclose reasonable or probable grounds for believing that the accused committed the offence. (2) An information stating that the deponent has just cause to suspect and believe, and does suspect and believe, that the accused committed the offence, but stating no grounds of suspicion, does not justify the issue of a warrant, unless supplemented by the examination upon oath of the informant, or of his witnesses, to prove the causes of suspicion. The King v. Lizotte, 10 Can. Cr. Cas. 316.

ISSUING WARRANT OF; QUASHING CONVICTION BECAUSE WARRANT OF ARREST ISSUED WITHOUT JURISDICTION.

A magistrate has no jurisdiction to issue a warrant of arrest in the first instance in proceedings under the Summary Convictions clauses of the Code (Part XV. of the Revised Code) upon an information pledging the informant's suspicions and belief, but not stating the grounds therefor, without first examining the informant or his witnesses as to the grounds of suspicion. Ex parte Grundy, 12 Can. Cr. Cas. 65.

[Referred to in R. v. Sweeney, 1 D.L.R. 477; followed in R. v. Lorrimer, 14 Can. Cr. Cas. 432; inapplicable in Ex parte Archambault, 16 Can. Cr. Cas. 434.]

WARRANT OF ARREST; OBJECTION THAT WARRANT UNSTAMPED UNDER PROVINCIAL TARIFF.

(1) An objection to the regularity of the warrant of arrest on the ground that no law stamp had been affixed under the provincial tariff is made too late when first raised at the hearing under the speedy trial clauses, after a committal for trial and subsequent arraignment and election of trial without a jury. (2) Law stamps are not payable by the Crown in criminal proceedings before a district magistrate in Quebec. The King v. Rodrigue, 13 Can. Cr. Cas. 249.

INFORMATION FOR WARRANT TO APPREHEND; FAILURE TO SECURE COPY OF WARRANT.

(1) Where there is an absolute and positive statement by the informant in the sworn information of the commission of the offence by the accused, a warrant of arrest may be issued without an examination of the informant or of his witness. (2) Failure to serve at the time of arrest, a copy of the warrant to apprehend, does not go to the jurisdiction of the magistrate and is not a ground for setting aside a conviction. [Ex parte Coffon, 11 Can. Cr. Cas. 48, 37 N. B.R. 122, distinguished.] Ex parte Madden, 13 Can Cr. Cas. 273.

OMISSION OF LAW STAMPS ON WARRANT OF ARREST.

(1) No law stamp is required in the Province of Quebec on a warrant of arrest in a criminal matter where the proceedings are instituted by the Crown. (2) The ommission to affix a law stamp to a warrant of arrest would not affect the validity of the proceedings subsequent to the execution of the same, the defect, if any, being cured by sec. 669 of the Criminal Code, 1906. The King v. Hamelin, 13 Can. Cr. Cas. 333.

WARRANT OF ARREST; ARREST ON TELEGRAM IN ANOTHER PROVINCE; DETENTION ON WARRANT ENDORSED AFTER ARREST; DESIGNATION OF MAGISTRATE RECITED IN WARRANT.

(1) It is not essential that a magistrate signing a warrant should add to his signature the full designation of his office and the name of the district for which he was appointed, if such is recited in the body of the warrant. (2) A warrant of arrest for perjury is sufficient under Code, sec. 1152 if it charges that the accused committed perjury by swearing that he did not do a particular act specified, without alleging therein that the statement was sworn with intent to mislead the Court. (3) Where the accused was arrested for an offence alleged to have been committed in another province in respect of which a warrant of arrest had been there issued and notified by telegram to the police department at the place of arrest, the accused is not entitled to be discharged on habeas corpus in respect of the irregularity of his arrest if the original warrant in due form and duly endorsed is returned in answer to the writ. The King v. Lee Chu, 14 Can. Cr. Cas. 322.

A WARRANT OF ARREST NOT TO ISSUE WITHOUT A SWORN INFORMATION UNLESS THE OBJECTION IS WAIVED.

Semble, a warrant, to arrest the accused could not have been issued without a sworn information, had he failed to attend on the summons. The King v. Thompson, 15 Can. Cr. Cas. 162.

WARRANT OF ARREST; WARRANT VALID WITHOUT PRELIMINARY HEARING OF COMPLAINANT'S WITNESSES.

A warrant of arrest issued by a justice on the sworn information of the complainant is not invalid for failure of the justice

to first examine the complainant's witnesses as permitted by Code sec. 655 (amendment of 1909). Ex parte Edmond Archambault, 16 Can. Cr. Cas. 433.

[But see R. v. Smith, 16 Can. Cr. Cas. 425. Approved in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

INFORMATION; ISSUING WARRANT OF ARREST; LIABILITY OF INFORMANT RESTRICTED.

(1) Where a magistrate has a general jurisdiction over the subject-matter and a party comes before him and lays an information in good faith, upon which the magistrate erroneously thinking it a case within his authority grants a warrant which is not justifiable in point of law, the party complaining is not liable in damages for the unlawful issue of the warrant if he has not acted maliciously in laying the charge nor done any other act in furtherance of the prosecution. (2) A peace officer may be held liable in damages for holding a prisoner arrested without a warrant an unreasonable length of time before taking him before a magistrate, in case the prisoner is eventually acquitted. Cheng Fun v. Campbell, 16 Can. Cr. Cas. 508.

THEFT; ACCUSED NOT AN ACCOUNTING PARTY; NO ARREST WITHOUT WARRANT OR FRESH PURSUIT.

(1) A charge of having received a chattel for gratuitous delivery to a third person and of having fraudulently converted it to his own use is one of ordinary theft under Code, sec. 347 and not theft by an accounting party under Code, sec. 355, and an arrest can legally be made on such charge only upon a warrant or in fresh pursuit. (2) The prisoner arrested without warrant on a request by telegraph from the police of another province for such an offence alleged to have been committed there, will be discharged on habeas corpus. (3) The fact that a police officer came from the other province several weeks afterwards upon the arrest of the accused to take him back to answer the charge does not constitute a fresh pursuit under Code, sec. 649. The King v. Shyffer, 17 Can. Cr. Cas. 191.

BENCH WARRANT TO BRING IN ACCUSED; ISSUE OF WARRANT WITHOUT CALLING ACCUSED IN OPEN COURT.

(1) When a grand jury finds a true bill against any person absent from the Court, it is the Judge's duty to direct the issue of a bench warrant to have the accused brought to the Court to answer the indictment. (2) When the trial of the indictment has been continued until the following term and the accused admitted to bail upon a recognizance to appear on the first day of the next sittings and to surrender himself and plead and take his trial, not departing the Court without leave, he is liable to arrest upon a bench warrant, issued upon his failure to conform with the terms of the recognizance. (3) It is not a valid objection to a warrant issued for the arrest of the accused upon default under such recognizance, that the warrant directed incarceration in the gaol until delivered in due course and omitted any special direction to bring him before the Judge presiding at the trial sittings then pending, as the prisoner would in such case have to be taken at once before the presiding Judge. (4) Semble, it was not necessary to first call the accused in open Court, before ordering his arrest. (5) Semble, the warrant having been signed by the clerk of the Court and issued under the Court seal, it was not necessary that it should be signed by the Judge under whose direction it was issued. The King v. Keizer (No. 1), 18 Can. Cr. Cas. 32.

WARRANT OF COMMITMENT; AUTHORITY TO ALL PEACE OFFICERS TO EXECUTE.

(1) An arrest under a warrant of commitment is not invalid because of the warrant being addressed to "all or any peace officers" of the county and consequently including the complainant, who was a peace officer, if in fact the complainant did not make or interfere with the arrest. (2) Semble, if a warrant against the accused were directed to and executed by the prosecutor, who was a constable or peace officer, the warrant would not operate as a protection to the prosecutor. Re McMurrer (No. 2), 18 Can. Cr. Cas. 49.

OFFENCE COMMITTED IN ANOTHER BRITISH TERRITORY; ARREST IN CANADA OF PERSON CHARGED.

(1) A provisional warrant may be issued by a magistrate under the Fugitive Offenders Act for the arrest of a fugitive from another British territory for an offence there committed, coming within the provisions of that statute and the magistrate may order remands of the prisoner for a reasonable time pending the arrival of the warrant from the territory of the offence and the indorsement of same by a Judge in Canada, but he cannot proceed before such indorsement with the inquiry and remand for deportation to the territory of the offence. (2) Semble if the warrant from the territory of the offence has been indorsed by a Judge in Canada after an invalid committal for deportation and the return thereof upon habeas corpus, the prisoner may be rearrested upon same and the magistrate's proceedings may be begun de novo, notwithstanding his discharge under the invalid warrant. The King v. Wishart, 18 Can. Cr. Cas. 146.

VALIDITY OF; EXTRADITION; WARRANT OF ARREST ISSUED TO AND EXECUTED BY SAME OFFICER WHO LAID INFORMATION.

(1) A prisoner held pending an extradition enquiry under the warrant of an extradition commissioner will not be released on habeas corpus on the ground that the arrest was made by the same peace officer who laid the charge. (2) The extradition Judge would have jurisdiction over the person of the accused when brought before him, even if the arrest were illegal. (3) Where a peace officer has no personal interest in a case and lays an information solely in discharge of his official duty, there is no objection to the warrant of arrest being executed by the same officer. Stone v. Vallee, 18 Can. Cr. Cas. 222.

WARRANT OF; ERRONEOUSLY DATED AS OF THE PREVIOUS DAY.

The mere fact that the warrant of arrest issued after the swearing of the information was erroneously dated as of the previous day, will not invalidate it. The King v. Suck Sin, 18 Can. Cr. Cas. 266.

SUMMARY TRIAL; ACCUSED ON BAIL PENDING APPEAL; REARREST ON ORIGINAL WARRANT AFTER CONFIRMATION OF CONVICTION.

The release under bail pending an appeal under Cr. Code, sec. 797, from a conviction on summary trial for keeping a disorderly house does not prevent the rearrest and detention of the defendant under the original warrant of commitment on the conviction being affirmed. The King v. Durlin, 19 Can. Cr. Cas. 392, 4 D. L. R. 660.

EXTRADITION; ILLEGAL ARREST; DISCHARGE FROM CUSTODY NOT A PREREQUISITE TO REARREST.

Where the original arrest or imprisonment upon an extradition charge has been illegal as made without warrant upon a request by telegram, it is not necessary that the prisoner should be first discharged from the illegal custody in order to hold him under good process subsequently issued in a criminal matter. [R. v. Richards, 5 Q.B. 926, referred to; Hooper v. Lane, 6 H.L.C. 443, distinguished.] Re Webber et al., 19 Can. Cr. Cas. 515, 6 D.L.R. 805.

WITHOUT A WARRANT; OFFENCES AGAINST ACT REGULATING SALE OF COCAINE, OR MORPHINE.

An arrest may be made without a warrant in the case of offences under the Act, 1 Geo. V., 2nd session, ch. 35 (Que.), being an Act to regulate the sale of cocaine, morphine and their compounds. The King v. Langlois; City of Montreal mis-en-cause, 20 Can. Cr. Cas. 183.

ILLEGALITY; SUMMARY CONVICTION PROCEDURE.

A person illegally apprehended without warrant in a matter triable under the summary conviction procedure cannot demand to be discharged solely on the ground of the illegality of the apprehension; his remedy is by civil action of damages for the unlawful arrest. [McGuinnis v. Dafoe, 3 Can. Cr. Cas. 139, and R. v. Clarke, 20 O.R. 642, referred to; Cr. Code (1906), secs. 608 and 724, considered.] Papillo v. The King, 20 Can. Cr. Cas. 329.

FALSE IMPRISONMENT; MAGISTRATE WITHOUT JURISDICTION; JUSTIFICATION; WARRANT.

A magistrate who unlawfully issues a warrant of arrest without the sworn information required by law acts without jurisdiction and is liable in damages in an action for false arrest. The fact that the constable making the arrest for a continuing offence, such as peddling without a license contrary to a provincial statute, might have arrested without a warrant because of his finding the accused still infringing the statute, does not constitute a justification if the magistrate who illegally issued a warrant without a sworn information and is sued for false arrest. McCatherin v. James; Rolston v. James, 21 Can. Cr. Cas. 116, 9 D.L.R. 874.

REGULARITY; CHARGE FOR ATTEMPT AFTER ACQUITTAL FOR PRINCIPAL OFFENCE.

An arrest upon a warrant for an attempt to commit an indictable offence is not illegal merely because a plea of autrefois acquit was available to the accused in respect of a prior acquittal for the principal offence, upon the charge of which the attempt might have been enquired into and punished, if the evidence warranted it, by virtue of Cr. Code (1906), sec. 949. R. v. Weiss and Williams (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 633. See also 21 Can. Cr. Cas. 438, 13 D.L.R. 166.

REARREST ON ORIGINAL WARRANT AFTER APPEAL.

Pending the hearing of an appeal duly lodged against a summary conviction the appellant cannot be rearrested on the original warrant as its operation is suspended by the appeal. R. v. Trottier, 22 Can. Cr. Cas. 102, 14 D.L.R. 355.

ILLEGAL ARREST; SECOND CHARGE; DISMISSAL; JURISDICTION.

The fact that the accused had been illegally arrested without a warrant on a charge which was dismissed, and that pending the hearing another charge was laid for a different offence, will not deprive the magistrate having jurisdiction in respect of time and place over the latter offence from proceeding to trial and conviction where objection was raised only in that case and not in the case upon the prior charge which was dismissed. [R. v. Hughes, 4 Q.B.D. 614, R. v. Paul, 20 Can. Cr. Cas. 159, 7

D.L.R. 24, followed; Pearks v. Richardson, [1902] 1 K.B. 91, distinguished.] R. v. Hurst, 23 Can. Cr. Cas. 389, 20 D.L.R. 129.

[Not followed in R. v. Young Kee, 28 Can. Cr. Cas. 236, 37 D.L.R. 121; followed in R. v. Pudwell, 26 Can. Cr. Cas. 47.]

WITNESSES ON APPLICATION FOR WARRANT.

Sec. 655 of the Crim. Code as amended 1909 does not make it essential that witnesses should be produced on an application to a justice for a warrant of arrest, but requires that if any witnesses are produced their evidence must be given upon oath and taken down in writing by the justice. [To same effect see Ex p. Archambault, 16 Can. Cr. Cas. 433; R. v. Mitchell, 19 Can. Cr. Cas. 113.] White v. Dunning, 24 Can. Cr. Cas. 85, 21 D.L.R. 528.

WITHOUT WARRANT; LIABILITY; MUNICIPALITY; CONSTABLE.

A city policeman appointed by a justice of the peace under the Constables Ordinance, Alta. (C.O. 1905), and paid by the city to carry on his duties as a police constable, especially within the boundaries of the city, but at the same time having jurisdiction throughout the province, is not a servant of the municipality in the ordinary sense, and the municipality is not liable under the doctrine of "respondeat superior" for an arrest wrongfully made by the constable without a warrant. [McCleave v. Moncton, 6 Can. Cr. Cas. 219, 32 Can. S.C.R. 106, referred to.] A police constable paid by the city has no claim for indemnity against the city for damages awarded against him in an action for false arrest where a person charged with a criminal offence was arrested without warrant under circumstances in which a warrant was necessary, the warrant being afterwards granted but the charge being finally dismissed. Pon Yin v. City of Edmonton, 24 Can. Cr. Cas. 327.

ASSAULT; PEACE OFFICER; WARRANT.

A constable may at the time of an assault with bodily harm committed upon him arrest the person so assaulting him, and he may also arrest him in fresh pursuit while there is no danger of the guilty person escaping; no warrant is in such case required, but he is not justified, after the lapse of several months, in arresting without a warrant in a case in which he is the injured party. [Powell v. Williamson, 1 U.C.Q.B. 154; Ex parte McCleave, 6 Can. Cr. Cas. 15, 3 O.L.R. 438, and Reg v. Heffernan, 13 Ont. R. 616, referred to.] A peace officer is justified under Cr. Code, sec. 30, in arresting without warrant a person who, on reasonable and probable grounds, he believes has committed an indictable offence for which the law provides that the offender may be arrested without warrant, but in acting under sec. 30, it is essential that the officer should stand indifferent so that he may act without bias or partiality in deciding whether or not there are reasonable and probable grounds for the arrest; consequently sec. 30 cannot apply where the officer is himself the person specially aggrieved by the offence. R. v. Belyea, 24 Can. Cr. Cas. 395.

WARRANT; VAGRANCY.

Vagrancy under Cr. Code, secs. 238 and 239 being the subject of summary conviction proceedings and not of indictment, Code, sec. 652 does not apply to justify an arrest on suspicion by a peace officer without warrant where the peace officer did not find the accused committing the particular act relied upon as constituting statutory vagrancy (Cr. Code, sec. 648). R. v. Lachance, 24 Can. Cr. Cas. 421.

ARREST WITHOUT WARRANT; SUMMARY TRIAL; JURISDICTION; DISORDERLY HOUSE.

Where a defendant was illegally arrested without a warrant on a charge of keeping a disorderly house, and is brought before the magistrate having power of summary trial without the consent of the accused (Code, sec. 774, as amended 1909), there is a lack of jurisdiction over the person, which may be effectively raised by an objection, but which it is competent for the accused to waive. [R. v. Baptiste Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25; R. v. Davis, 20 Can. Cr. Cas. 293, 7 D.L.R. 608, followed.] R. v. Miller, 25 Can. Cr. Cas. 151.

[Followed in R. v. Willson, 29 Can. Cr. Cas. 42; R. v. Young Kee, 28 Can. Cr. Cas. 161.]

LIABILITY OF MUNICIPALITY FOR UNLAWFUL ACTS OF ITS CONSTABLES.

A municipal corporation in the Province of Quebec may be held liable in damages for an unlawful arrest made by constables in the employ of the municipality where no information had been laid or warrant issued and where there were no circumstances to justify an arrest without warrant. [Compare Mousseau v. City of Montreal (1898), 12 Que. S.C. 61; Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15, 3 O.L.R. 438; McCleare v. City of Moncton, 6 Can. Cr. Cas. 219, 32 Can. S.C.R. 106; Tremblay v. City of Quebec, 7 Can. Cr. Cas. 343; Pon Yin v. City of Edmonton (1915), 24 Can. Cr. Cas. 327; Woodforde v. Town of Chatham, 37 N.B.R. 21; Dubé v. City of Montreal, 7 D.L.R. 87; Chevalier v. City of Three Rivers, 43 Que. S.C. 436; Wah Kie v. City of Calgary and Cuddy, 23 Can. Cr. Cas. 325, 19 D.L.R. 378, and, in appeal, 23 Can. Cr. Cas. 383, 20 D.L.R. 351, 8 A.L.R. 111.] Lacombe v. City of Lachine, 27 Can. Cr. Cas. 313.

WITHOUT WARRANT; DISORDERLY HOUSE CHARGE; EFFECT ON SUMMARY TRIAL JURISDICTION.

If the accused was illegally arrested and brought before the police magistrate without a warrant and objection taken at the summary trial for keeping a disorderly house (Code, secs. 773 (*f*), 774 and 228), the magistrate acted without jurisdiction and the accused will be discharged on habeas corpus following the conviction made by the magistrate. [R. v. Miller, 25 Can. Cr. Cas. 151; R. v. Wilson, 24 Can. Cr. Cas. 370; R. v. Davis, 20 Can. Cr. Cas. 293, 7 D.L.R. 608, followed; R. v. Hurst, 23 Can. Cr. Cas. 389, 20 D.L.R. 129, not followed.] R. v. Young Kee (No. 1), 28 Can. Cr. Cas. 161. See 28 Can. Cr. Cas. 236.

WITHOUT WARRANT; ARREST OF WRONG MAN ON DESCRIPTION AND PHOTOGRAPH SUPPLIED TO POLICE.

Cr. Code, sec. 30, which justifies an arrest without warrant on suspicion of a crime for which, if the accused were guilty, he would be liable to arrest by a peace officer without warrant, justifies also the detention of the person arrested for such time as may be necessary to identify him or to permit the process of law to be enforced. The circumstances may justify the taking of a photograph of the person arrested and forwarding it for identification to the police of another city who had forwarded a photograph of the person against whom they held a warrant of arrest, where the resemblance to this photograph and the accompanying description was the cause of the arrest, but the police officer effecting the arrest and detention of the wrong man will be liable in damages for unnecessary delay in releasing him, due to amateur efforts in taking the photograph of the arrested person and in holding him in custody after the expiration of the time requisite for receiving information by wire that he was not the person wanted. Anderson v. Johnston, 29 Can. Cr. Cas. 24, 38 D.L.R. 563, affirmed in 30 Can. Cr. Cas. 268, 43 D.L.R. 183.

ILLEGALITY OF ARREST WITHOUT WARRANT; JURISDICTION OF MAGISTRATE.

In the absence of any statutory provision in the Liquor License Act, Alta., enabling a peace officer to arrest without warrant a person whom he finds committng an offence under it, such an arrest is illegal, and the magistrate before whom the accused is brought in custody without a warrant or summons after such illegal arrest has no jurisdiction to proceed with the trial in the face of defendant's objection then taken that he was not properly before the magistrate. [Re Baptiste Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25, and R. v. Davis, 20 Can. Cr. Cas. 293, 7 D.L.R. 608, followed.] Neither Cr. Code, sec. 35, nor Cr. Code, sec. 648, applies to authorize a peace officer to arrest without warrant a person whom he finds committing an offence against a provincial statute which itself provides a penalty and is therefore not within Cr. Code, sec. 164, as to wilful disobedience of provincial statutes. [R. v. McMurrer, 18 Can. Cr. Cas. 385, approved.] R. v. Pollard, 29 Can. Cr. Cas. 35, 39 D.L.R. 111.

OF PERSON UNDER ILLEGAL DETENTION OF POLICE.

An arrest in criminal proceedings is not invalidated by the circumstance that at the time of the arrest the accused is already in the custody of the police under an unlawful arrest or detention. A subsequent valid arrest can be made without a previous discharge from the unlawful custody. An arrest under warrant in a criminal matter may be made by the same officer who laid the information, but it is undesirable that the informing officer should act if he has any personal feeling against the accused or any monetary interest in the subject-matter of the charge. R. v. Harrison, 29 Can. Cr. Cas. 420.

ADDRESS OF WARRANT TO PEACE OFFICERS OF PROVINCE.

A warrant of arrest addressed to "all or any of the peace officers of the province" may be executed by a city police officer within the limits of the city. Such address is not to be construed as limited to peace officers having jurisdiction throughout the province. R. v. Clarke, 30 Can. R. Cas. 200. See 41 D.L.R. 713.

ARREST WITHOUT WARRANT; WHEN HANDCUFFING JUSTIFIABLE.

Where an arrest of several persons without warrant is justifiable, the persons arrested may be handcuffed by the police officer if that course is reasonably neccessary to prevent the escape of some of the accused which the police officer had good grounds to think would likely be attempted if they were not handcuffed. Fraser v. Soy, 30 Can. Cr. Cas. 367, 44 D.L.R. 437.

ARSON.

ATTEMPT TO COMMIT; EVIDENCE.

On an indictment for attempt to commit arson, the evidence shewed that one W., under the direction of the prisoner, after so arranging a blanket, saturated with oil, that, if the flame were communicated to it, the building would have caught fire, lighted a match, held it till it was burning well, and then put it down to within an inch or two of the blanket, when the match went out, the flame not having touched the blanket:—Held, that the prisoner was properly convicted, under 32 and 33 Vict. ch. 22, sec. 12, of an attempt to commit arson. The Queen v. Goodman, 22 U.C.C.P. 338.

PROCURING ANOTHER TO SET FIRE TO HOUSE; "INTENT TO INJURE OR DEFRAUD;" OBTAINING INSURANCE AWARDS.

Under an indictment for arson, the prisoner was proved to have requested or procured one S. to set fire to the house, telling S. that he had his house insured, and asked if he would not set fire to it. He also stated that "his insurance would run out next day, and that he (S.) must set the house on fire that night." The evidence also shewed that a sum had been awarded the prisoner for his insurance, in payment of which he was seen to have a bill of exchange on London in his possession:—Held, that under C.S.C. ch 93, sec. 4, it is necessary, where the setting fire is to a man's own house, to prove an intent to injure and defraud, although the words "with intent thereby to injure or defraud any person," introduced into the Imperial Act, are omitted in ours. The indictment alleged that the prisoner did incite, etc., one F. S., the said felony in form aforesaid to do and commit, with intent then and there to injure and defraud a certain insurance company called, etc.:—Held, necessary to prove that the premises were insured, but Draper, C.J., was of opinion that the indictment would have been sufficient if it had ended with the words "to injure and defraud," the insurance being a matter of proof, and that the prisoner's statement or admission was evidence sufficient to support the indictment. Hagarty, J., dissenting. Regina v. Bryans, 12 U.C.C.P. 161.

SETTING FIRE WITH INTENT TO DEFRAUD; FRAUD ON INSURANCE; SUFFICIENCY OF INDICTMENT AND PROOF; AMENDMENT.

Defendant was charged with having set fire to a building, the property of one J. H. "with intent to defraud." The case opened by the Crown was that the prisoner intended to defraud several insurance companies, but the legal proof of the policies was wanting, and an amendment was allowed by striking out the words with "intent to defraud." The evidence shewed that different persons were interested as mortgagees of the building, a large hotel, and J. H., who was the prisoner's brother-in-law, as owner of the equity of redemption. It was left to the jury to say whether the prisoner intended to injure any of those interested, and they found a verdict of guilty:—Held, that the amendment was authorized and proper, and that the conviction was warranted by the evidence. The indictment in such a case is sufficient without alleging any intent, there being no such averment in the statutory form; but an intent to injure or defraud must be shewn on the trial. Regina v. Cronin (1875), 36 U.C.Q.B. 342.

CHARGE AGAINST TWO PERSONS JOINTLY; INSUFFICIENCY OF EVIDENCE.

A conviction of two persons jointly charged with arson will be set aside where the evidence warrants a finding that the act was committed either by one or the other of them but does not enable the court to determine which one committed the offence nor justify a finding implicating them both. R. v. Upton, 25 Can. Cr. Cas. 28, 26 D.L.R. 209.

ARSON; SUFFICIENCY OF EVIDENCE; CR. CODE, SEC. 511.

R. v. Rosca, 28 Can. Cr. Cas. 449.

ASSAULT.

Note on conviction as bar to civil action. 2 Can. Cr. Cas. 4.

Limitation of time for summary proceedings for assault. 2 Can. Cr. Cas. 96, 101.

Conviction or dismissal by justices of assault charge, as affecting subsequent indictment for manslaughter. 2 Can. Cr. Cas. 233, 238.

Common assault; Procedure on charge of. 3 Can. Cr. Cas. 595.

Summary trial. 4 Can. Cr. Cas. 163.

Summary trial; Limit of punishment. 7 Can. Cr. Cas. 340.

Indecent assault; Proof of complaint by prosecutrix; Lapse of time. 9 Can. Cr. Cas. 23.

Attempt to commit rape; Assault with intent to commit rape; Identity of charge: Cr. Code, sec. 268. 9 Can. Cr. Cas. 201, 202.

Prosecution for assault; Bar of civil action. 11 Can. Cr. Cas. 79.

Jurisdiction of the summoning magistrate when exclusive. 2 Can. Cr. Cas. 49.

CONSENT; AGE FOR CONSENT.

A prosecution for indecent assault on a boy about thirteen years of age cannot be maintained where it is clearly shewn that the boy assented to the act. R. v. Laprise, 3 Mont. L.N. 139.

ASSAULTING CONSTABLE EXECUTING WARRANT; WARRANT VALID ON ITS FACE.

A warrant of commitment issued by two justices of the peace, for nonpayment of a fine and costs imposed on J. D., who had been convicted of an offence under the Indian Act, directed the constables of the county of B. to take and deliver J. D. to the keeper of the common gaol of the county, to be kept there for two months, unless the fine and costs imposed, including the costs of conveying to the gaol, should be sooner paid:—Held, that the justices having had jurisdiction over the offence, and the warrant being valid on its face, it afforded a complete protection to the constable executing it, and that the defendant was properly convicted of assaulting the constable while attempting to execute the warrant, notwithstanding that the awarding of the punishment may have been erroneous, in directing imprisonment for nonpayment

of the fine and costs, including costs of conveying to gaol, as not authorized by the said Act. Regina v. King (1889), 18 O.R. 566.

CIVIL ACTION; PREVIOUS CONVICTION AND FINE; AGGRAVATED ASSAULT.

The conviction of a person by a justice for an aggravated assault and the payment by him of the amount adjudged to be paid, does not release him from a civil proceeding for the recovery of damages for the same cause, art. 866 Criminal Code not applying to such a case. Grantillo v. Caporici, 16 Que. S.C. 44.

SPEEDY TRIAL; ACQUITTAL; JURISDICTION OF MAGISTRATE TO CONVICT FOR SECOND CHARGE.

Defendant was committed for trial by the stipendiary magistrate for the city of Halifax charged with an assault upon LeP. He elected to be tried under the Speedy Trials Act by the County Court Judge for the district of Halifax and was tried and acquitted. The prosecuting attorney thereupon, under sec. 12 of the Act, preferred a charge of an assault upon M. Objection was taken to the jurisdiction of the Court to try the defendant upon this charge, but the objection having been overruled, defendant consented to be tried, and was tried and convicted:—Held, following The Queen v. Lonar, 25 N.S.R. 124, that the Judge had no jurisdiction to try the defendant for the offence for which he was convicted. The Queen v. Smith, 25 N.S.R. 138.

EVIDENCE OF PRIOR CONVICTION; ADDITIONAL PUNISHMENT; CHARACTER AND REPUTATION.

An indictment for an assault occasioning actual bodily harm contained a second count charging a prior conviction for an indictable offence. The offence disclosed by the indictment upon which the prisoner was tried was not one of that class of offences for which, after a previous conviction for felony, etc., additional punishment might be imposed. The first part of the indictment only was read in arraigning the prisoner, and no allusion was made to the second part charging the prior conviction. The prisoner in his defence gave evidence of good character. The Crown gave some general evidence in rebuttal, and then tendered under sec. 26 of ch. 29, 32-33 Vict. a certificate to prove a prior conviction, and read the second clause of the inidctment charging such prior conviction:—Held, that this evidence was not properly admissible as to character, and that such evidence can only be as to general reputation; evidence of a prior conviction going to the matter of punishment, and not to general character. [Regina v. Rowton, 10 Cox C.C. 25, followed.] Reg. v. Triganzie (1888), 15 O.R. 294.

GRIEVOUS BODILY HARM; CONVICTION FOR COMMON ASSAULT.

L. was tried on an indictment under 32 and 33 Vict. ch. 20, containing four counts. The first charged that he did unlawfully, etc., kick, strike, wound and do grievous bodily harm to W. with intent to disfigure; the third charged with intent to disable; the fourth charged with intent to do grievous bodily harm. The prisoner was found guilty of a common assault:—Held, that L. was rightly convicted, sec. 51 of Act 32 and 33 Vict. ch. 20, authorizing such conviction. R. v. Lackey, 1 P. & B. (N.S.) 194.

INDICTMENT FOR RIOT AND ASSAULT; CONVICTION FOR ASSAULT ONLY.

Defendant was indicted for a riot and assault, and the jury found him guilty of a riot, but not of the assault charged:—Held, that a conviction for riot could not be sustained, the assault, the object of the riotous assembly, not having been executed although the defendant might have been guilty of riot or joining in an unlawful assembly. Regina v. Kelly (1857), 6 U.C. C.P. 372.

MALICIOUS WOUNDING; JURISDICTION OF MAGISTRATE TO CONVICT.

The conviction charged that the prisoner did "unlawfully and maliciously cut and wound one Mary Kelly with intent to do her grievous bodily harm":—Held, affirming the judgment of the Queen's Bench, that if not sufficient to charge a felony under sec. 17 of 32 Vict. (D.) ch. 20, it was a good conviction for a misdemeanour under sec. 19, the unnecessary statement of the intent being immaterial. The police magistrate has jurisdiction under the constitution to try either of these offences. Re Boucher (1879), 4 Ont. App. R. 191.

REDUCING CHARGE FROM MURDER, EFFECT.

Held, following Regina v. Bird, 2 Den. C.C. 94, and Regina v. Phelps, 2 Moo. C.C. 240, that on an indictment for murder the prisoner cannot be convicted of an assault under 32 and 33 Vict. ch. 29, sec. 5. Regina v. Ganes et al. (1872), 22 U.C.C.P. 185.

SHOOTING WITH FELONIOUS INTENT; CONVICTION OF COMMON ASSAULT; SUFFICIENCY OF EVIDENCE.

Upon an indictment for shooting with a felonious intent, the prisoner, if acquitted of the felony, may be convicted of common assault. 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. It was held that there was sufficient evidence of the prisoner having done this, and a conviction for assault was upheld. The Queen v. Cronon (1874), 24 U.C.C.P. 106.

STANDING IN FRONT OF HORSES IN HOSTILE MANNER.

The defendants were convicted for unlawfully assaulting F. V. "by standing in front of the horses and carriage driven by the said V., in a hostile manner, and thereby forcibly detaining him, the said V., in the public highway against his will":—Held, that the conviction was bad in stating the detention as a conclusion, and not as part of the charge, which, as shewn by the conviction, was merely standing in front of the horses, and did not amount to an assault. Reg. v. McElligott (1883), 3 O.R. 535.

ASSAULT OCCASIONING BODILY HARM; CIVIL ACTION NOT BARRED BY CONVICTION.

(1) A conviction upon a charge of assault occasioning bodily harm tried summarily by a magistrate with the consent of the accused and the undergoing of the punishment imposed do not constitute a bar to a civil action for damages for the assault. (2) Sec. 866 Cr. Code applies to bar the civil action, only where the charge is triable summarily under sec. 864 without regard to the consent of the accused, and does not have that effect where the charge is under sec. 262 for the indictable offence of assault causing actual bodily harm. Nevills v. Ballard, 1 Can. Cr. Cas. 434.

[Referred to in Larin v. Boyd, 11 Can. Cr. Cas. 77.]

ASSAULT; CIVIL ACTION BARRED BY CONVICTION.

(1) A conviction upon a charge of assault tried by a magistrate under sec. 864 of the Criminal Code, and the payment of the fine thereby imposed, will constitute a bar to a civil action for damages for such assault. (2) The word "assaults" in sec. 864, Cr. Code, authorizing a summary hearing, must be taken to include aggravated as well as common assaults. (3) The injury to clothing or loss of property from the person by reason of the assault does not constitute a cause of action distinguishable from the civil action for assault, and any claim in respect of such injury or loss will likewise be barred where sec. 866 Cr. Code applies. Hardigan v. Graham, 1 Can. Cr. Cas. 437.

[Disc. Hebert v. Hebert, 15 Can. Cr. Cas. 262, referred to in Larin v. Boyd, 11 Can. Cr. Cas. 777.]

CONSENT TO FIGHT.

A blow struck in anger or which is intended or is likely to do corporal hurt, is a criminal assault notwithstanding the consent to fight of the person struck. R. v. Buchanan, 1 Can. Cr. Cas. 442.

CONVICTION AS A BAR TO CIVIL ACTION.

Cr. Code, sec. 866 does not apply to bar a civil action for assault, after conviction and payment of the fine, where such conviction is by a petit jury on a trial upon an indictment. Clermont v. Lagacé, 2 Can. Cr. Cas. 1.

WOUNDING WITH INTENT; PRELIMINARY INQUIRY; REDUCING CHARGE TO ASSAULT; BAR OF CIVIL ACTION.

Justices of the peace have no jurisdiction to summarily convict for "assault" when the only information before them is for an offence beyond their summary jurisdiction. On a charge of shooting and wounding with intent, the justices holding a preliminary enquiry cannot, of their own motion, vary or reduce the charge to one of common assault and so acquire jurisdiction to adjudicate thereupon. The presence of the wounded person as a witness at the preliminary enquiry in which a peace officer was the complainant, and the failure of such person to object to the charge being so dealt with by the justices, do not constitute acquiescence therein by him. The wounded person being in such case a witness only, is not bound to object; and his failure to do so is not an election on his part to proceed before the justices as regards their powers of summary trial. A certificate of conviction by justices for common assault under those circumstances, and the payment of the fine imposed, do not bar a civil action by the injured party for damages against the wrongdoer, and sec. 866 of the Criminal Code does not apply. Miller v. Lea, 2 Can. Cr. Cas. 282.

[Followed in Goodwin v. Hoffman, 15 Can. S.C.R. 271.]

ON OFFICER; ACTING DETECTIVE.

To justify a sentence of more than three years' imprisonment for assault and wounding a public officer, the charge must allege that the offence was committed while the officer was engaged in the execution of his duty (Code, sec. 243). A mere description of the assaulted party in the information as an active detective does not justify a sentence of seven years on a plea of guilty, nor does it imply that the assault took place while the officer was engaged in the execution of his duty. R. v. Dupont, 4 Can. Cr. Cas. 566.

[Referred to in R. v. Williams, 16 Can. Cr. Cas. 486, 21 O.L.R. 467; discussed in R. v. Amyot, 11 Can. Cr. Cas. 232, 242, 15 Que. K.B. 28.]

LIMIT OF SENTENCE ON SUMMARY TRIAL.

On a charge under Cr. Code, sec. 783 (c) of aggravated assault with grievous bodily harm, a police magistrate in Ontario trying the case on the consent of the accused to be tried summarily, the sentence which the magistrate may impose is not limited to six months' imprisonment, but may be as great as can be imposed therefor on a trial on

indictment at General Sessions. R. v. Archibald 4 Can. Cr. Cas. 159.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 77, 39 N.S.R. 122; R. v. Coolen, 7 Can. Cr. Cas. 524; R. v. Crawford, 20 Can. Cr. Cas. 53, 6 O.L.R. 380.]

AGGRAVATED ASSAULT; SUMMARY TRIAL; CIVIL ACTION NOT BARRED.

Where a magistrate invested with the powers of two justices tries a case of aggravated assault under the summary trials procedure with the consent of the accused (Code, sec. 786), the conviction is a bar to further criminal proceedings for the same cause (Code, sec. 799), but not to a civil action for damages. The provisions of Code, sec. 866 do not apply to such a case. Clarke v. Rutherford, 5 Can. Cr. Cas. 13.

[Referred to in R. v. Hannay, 11 Can. Cr. Cas. 25.]

ASSAULT WITH INTENT TO COMMIT MURDER; PROOF OF INTENT.

In extradition proceedings for the offence of assault with intent to commit murder, the prosecution must prove such intent as well as the assault, and a committal for extradition is only authorized where the evidence, had the crime been committed in Canada, would have justified a "committal for trial" for the extradition crime charged and not merely for a less serious offence included therein. Re Kelly, 5 Can. Cr. Cas. 541.

COMMON ASSAULT; LIMIT OF PUNISHMENT UPON SUMMARY TRIAL; CITY STIPENDIARY MAGISTRATE.

(1) A city stipendiary magistrate holding a summary trial under Code, sec. 785 may impose imprisonment not exceeding one year for common assault, although Code, sec. 265 specifies such punishment with the addition of the words "if convicted upon indictment." (Per Graham, E.J.) (2) Sec. 785 gives to police and stipendiary magistrates of towns and cities the power to award on summary trials held with the consent of the accused, the same punishment as an Ontario Court of General Sessions might impose on a trial on indictment. (Per Graham, E.J.) (3) Upon a summary trial for common assault, the imprisonment authorized by Code, sec. 265 can only be imposed in the first instance; and where a fine is imposed the imprisonment in default of payment thereof is controlled by Code, sec. 872 (b) and is therefore limited to three months. Per Townshend, J. The King v. Hawes, 6 Can. Cr. Cas. 238.

NORTH-WEST TERRITORIES ACT; ASSAULT OCCASIONING BODILY HARM.

(1) A person charged under Code, sec. 262 with assault occasioning bodily harm is not entitled in the North-West Territories to a trial by jury. (2) The term "actual bodily harm" does not imply a wounding or breaking of the skin. (3) The offences triable in the Territories without a jury, and enumerated in sec. 66 of the N.W.T. Act, must be taken to include the lesser offences included in those specified. The King v. Hostetter, 7 Can. Cr. Cas. 221.

[Followed in R. v. Taylor, 12 Can. Cr. Cas. 246.]

COMMON ASSAULT; PUNISHMENT ON SUMMARY TRIAL FOR GREATER OFFENCE.

(1) Upon a summary trial for inflicting grievous bodily harm, the magistrate may convict instead for the lesser offence of common assault in like manner as a jury might do. (2) The punishment which may be imposed by a city stipendiary magistrate convicting of common assault upon a summary trial for a greater offence, is that which is provided in case of conviction upon indictment, i.e., one year's imprisonment or a fine of $100. The King v. Coolen, 7 Can. Cr. Cas. 522.

[Referred to in R. v. Coolen, 7 Can. Cr. Cas. 523.]

ASSAULT CAUSING BODILY HARM; CONVICTION FOR COMMON ASSAULT AFTER PRELIMINARY ENQUIRY.

(1) A magistrate holding a preliminary enquiry for an indictable offence may not proceed to summarily convict on the evidence given therein for both the accused and the prosecutor for a lesser offence included in the offence charged, although such lesser offence, if originally charged, would have been within his jurisdiction for trial. (2) A conviction made by a magistrate after proceeding upon a preliminary enquiry under Part XLV. is invalid, and will be quashed, although neither the accused nor his counsel made objection before the magistrate. Ex parte Duffy, 8 Can. Cr. Cas. 277.

ASSAULT; SUMMARY TRIAL; HARD LABOUR UPON IMPRISONMENT.

Where the sentence imposed upon a summary trial by consent before a city stipendiary magistrate for common assault was, in the first instance, three months' imprisonment without mention of hard labour, and the minute of adjudication did not include hard labour, a formal conviction, including hard labour, and a commitment thereon in similar terms are invalid and the accused will be discharged on habeas corpus. Ex parte Carmichael, 8 Can. Cr. Cas. 19.

[Distinguished in R. v. Grattan, 17 Can. Cr. Cas. 324.]

SCHOOL TEACHER AND PUPIL; PERSONAL CHASTISEMENT; UNLAWFUL AND EXCESSIVE CORPORAL PUNISHMENT.

A school teacher who inflicts unreasonably severe chastisement upon a pupil is criminally responsible, under Code, secs. 55 and 58, for the excess of force used, al-

though the punishment occasioned no permanent injury and was inflicted without malice. The King v. Gaul, 8 Can. Cr. Cas. 178.

[Distinguished in R. v. Zink, 18 Can. Cr. Cas. 458.]

INDECENT ASSAULT; EVIDENCE OF COMPLAINT MADE; PARTICULARS OF COMPLAINT ADMISSIBLE; TIME INTERVENING BETWEEN ASSAULT AND COMPLAINT.

(1) Upon a civil action for damages under circumstances constituting the criminal offence of indecent assault, evidence is admissible of complaint made by the woman shortly after the assault was committed, in like manner as upon a criminal trial. (2) Complaint made by the woman to her husband, on her first meeting him some hours after the assault, but on the same day, was admissible in evidence under the circumstances of the case. (3) The proof of such complaint by the evidence of both the woman and her husband is corroborative of the woman's evidence that she did not consent to the acts complained of. (4) Where evidence of complaint is admissible on a charge of indecent assault, not only the fact of complaint may be shewn, but the particulars of the complaint. Hopkinson v. Perdue, 8 Can. Cr. Cas. 286.

INDECENT ASSAULT; COMPLAINT BY PROSECUTRIX; LAPSE OF TIME AFTER ASSAULT.

Under exceptional circumstances evidence of a complaint made by an adult female of an indecent assault may be admitted although five days had intervened between the assault and the complaint. The King v. Charles Smith, 9 Can. Cr. Cas. 21.

ATTEMPT TO CARNALLY KNOW; GIRL'S EVIDENCE NOT UNDER OATH; CORROBORATION.

Upon the trial of a charge of attempted carnal knowledge of a girl under fourteen who is too young to understand the nature of an oath, a conviction for that offence is not warranted unless her evidence not under oath is corroborated by some other material evidence implicating the accused. (Cr. Code, sec. 685), but the accused may be convicted of common assault upon the charge so laid if there be corroboration merely by some other material evidence. (Can. Evidence Act, sec. 25.) The King v. De Wolfe, 9 Can. Cr. Cas. 38.

INDECENT ASSAULT; EVIDENCE OF COMPLAINT BY THE GIRL; REASONABLE TIME; SPECIAL CIRCUMSTANCES; CHILD OF TENDER YEARS.

(1) It is not essential in all cases of indecent assault that complaint should have been made at the earliest opportunity after the offence, and evidence of such complaint may, under special circumstances, be received after the lapse of several days' delay. (2) The fact of the girl being only seven years of age, and that the act was committed without violence and that the girl did not realize the serious nature of the act, are circumstances which make a complaint made ten days afterwards admissible in evidence. The King v. Baron, 9 Can. Cr. Cas. 196.

ENTERING A DWELLING HOUSE IN THE NIGHT TIME WITH INTENT; ASSAULT IN EFFORT TO BREAK OUT.

(1) On an indictment for being unlawfully in a dwelling house by night with intent to assault, a written verdict of "guilty of being in the house unlawfully, also guilty of assault," is a good verdict of guilty on the charge, as the assault necessarily includes the intent. (2) To complete the offence of being unlawfully in a dwelling house with intent to assault, it is sufficient that the intent originated after the entry, and that the assault was threatened by the accused in his efforts to escape from the house after being discovered therein. (3) Semble, the verdict as to intent while in the house is not affected by the circumstance that the same count of the indictment charged also the entering of the house with intent to make the assault. The King v. Higgins, 10 Can. Cr. Cas. 456.

ASSAULT; CIVIL ACTION; PREVIOUS CONVICTION AND FINE; COMMON ASSAULT; ASSAULT OCCASIONING BODILY HARM.

(1) No action of damages for assault lies in favour of the party aggrieved against an assailant who has been convicted under Code, sec. 864 and who has paid the amount of the fine. (2) A summary conviction for assault upon a female, causing bruises, will be presumed to be one of common assault under Code, secs. 265 and 864, and not of an assault occasioning bodily harm under sec. 262, where there has been no election of summary trial under Part LV. (3) The conviction for common assault would be a bar to a subsequent prosecution for assault occasioning bodily harm. Larin v. Boyd, 11 Can. Cr. Cas. 74.

COMMON ASSAULT; SENTENCE OF SIXTY DAYS; HABEAS CORPUS.

A summary conviction imposing a sentence of sixty days is not invalid where the statutory maximum is two months, unless there is a reasonable probability of the sixty days' term being in the particular case more than two months. Per Graham, E.J. It being possible that the prisoner might be detained in gaol for a longer period than if the sentence had been for one or two months, the conviction is bad and the prisoner entitled to be discharged on habeas corpus. Per Russell, J. The King v. Brindley, 12 Can. Cr. Cas. 170.

FORCIBLE RETAKING OF MONEY LOST IN CARD GAME.

(1) Where the loser in a card game was informed shortly after its termination that he had been cheated and thereupon, in the bona fide belief (whether mistaken or not) that such was the case, assaulted the winner and by force took from him a part of the money won in the game, such assault and retaking does not constitute theft or robbery. (2) Under such circumstances the accused may properly be convicted of common assault. The King v. Ford, 12 Can. Cr. Cas. 555.

COMMON ASSAULT; CIVIL ACTION FOR DAMAGES.

A summary conviction on complaint of the person assaulted on a charge of common assault followed by payment of the fine imposed is a bar to a subsequent civil action for damages for the same assault instituted by the person assaulted. [Hebert v. Hebert, 15 Can. Cr. Cas. 258, affirmed.] Hebert v. Hebert (No. 2), 16 Can. Cr. Cas. 199.

INDECENT ASSAULTS ON BOYS.

On a charge under Cr. Code, sec. 293, of indecent assault on a male evidence is not admissible to prove an attempt by the accused of a similar offence at another time, with another male. The King v. Iman Din, 18 Can. Cr. Cas. 82.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 50; R. v. Whistnant, 20 Can. Cr. Cas. 322.]

SELF-DEFENCE; DEFENCE OF LANDS OR GOODS ENTRUSTED TO ACCUSED.

On a charge of assault, where the accused pleads self-defence and justifies the force used by him in preventing the prosecutor from dispossessing him of his lands or goods, it should be shewn that the force so used by the accused was not greater than was reasonably necessary to accomplish the lawful purpose intended to be effected; a conviction is properly made if the blow was unnecessarily severe and was vindictive rather than preventative. The King v. Kinman, 18 Can. Cr. Cas. 139.

INDECENT ASSAULT; TRIAL; CONVICTION FOR ATTEMPT ONLY.

On a charge of indecent assault where there is no evidence to go to the jury upon the question of attempt if they found against the principal charge, but the trial Judge directed the jury that, if they could not find the prisoner guilty of indecent assault they might find him guilty of an attempt, and the jury found a verdict for the attempt only, the conviction will be set aside. The King v. Menary, 18 Can. Cr. Cas. 237.

CHASTISEMENT OF SCHOLAR BY TEACHER.

A boy fourteen years of age and of strong physique, who attends a public school, may legally be whipped by his teacher for continued insubordination and misconduct, affecting the discipline and control of the school. The King v. Zinck, 18 Can. Cr. Cas. 456.

INDICTMENT FOR SHOOTING WITH INTENT; CONVICTION FOR COMMON ASSAULT.

A conviction for a common assault may be sustained under an indictment for shooting at a person with intent to kill, where an accused person, when within shooting distance, pointed a gun at another, the bullet from which struck a horse the latter was riding. [Regina v. St. George, 9 C. & P. 483, followed.] The King v. Chartrand, 20 Can. Cr. Cas. 116, 4 D.L.R. 397.

PUNISHMENT; FINE ON INDICTMENT.

Sec. 1035 of the Criminal Code 1906, by which a fine may be imposed in lieu of imprisonment, is, as to the offence of common assault, subject to the limitations of sec. 291 of the Crim. Code, so that a fine for that offence must not exceed $100 upon indictment, whether or not it is intended to be in lieu of a sentence of imprisonment. R. v. Johnson, 21 Can. Cr. Cas. 215, 10 D.L.R. 822.

INDECENT ASSAULT; INTENT SHEWN BY WORDS.

An act which otherwise would have no indecent import and would constitute a common assault only, may by reason of the surrounding circumstances and by words spoken at the time, constitute an indecent assault. R. v. Louie Chong, 23 Can. Cr. Cas. 250.

SUMMARY CONVICTION AS BAR TO CIVIL ACTION.

A charge of assault occasioning actual bodily harm under Crim. Code, sec. 295, is one which two justices would have power to try only under the Summary Trials clauses, Pt. XVI of the Criminal Code; and if the information be not amended so as to charge common assault and they proceed to make a summary conviction for common assault only, the payment of the fine and costs by the accused will not bar a civil action for damages for the assault under Crim. Code, sec. 734, it not being competent for the justices to treat the case as triable under the Summary Convictions clauses (Pt. XV of the Code) so as to affect the prosecutor's civil rights without his consent. [Miller v. Lea (1898), 2 Can. Cr. Cas. 282, 25 A.R. 428, applied; Nevills v Ballard (1897), 1 Can. Cr. Cas. 434, 28 O.R. 588; Clarke v. Rutherford (1901), 5 Can. Cr. Cas. 13, 2 O.L.R. 206; Larin v. Boyd (1904), 11 Can. Cr. Cas. 74, referred to.] Twiss v. Curry, 24 Can. Cr. Cas. 438.

PREVENTING BREACH OF PEACE.

An excess of violence in using force to

prevent a breach of the peace is in itself an assault. Whether or not the accused was justified in using the force he did and in respect of which he was being tried by a justice on a charge of common assault, is a question for the justice to decide; and a superior Court will not upon certiorari weigh the evidence for the purpose of giving effect to defendant's contention that he used no more force than was required to prevent a breach of the peace by the complainant. Ex parte Kane, 26 Can. Cr. Cas. 156, 27 D.L.R. 494.

WHAT CONSTITUTES COMMON ASSAULT; TRAMWAY CONDUCTOR AND JUVENILE PASSENGER.

Leclerc v. Marti, 28 Can. Cr. Cas. 160, 36 D.L.R. 775.

ASSOCIATE JUSTICE.

See Police Magistrate; Jurisdiction.

JURISDICTION OF ASSOCIATE JUSTICES.

Where a single justice of the peace has authority to try a charge, he may ask other justices to sit with him and a conviction made by all of them jointly is valid. The King v. Leconte, 11 Can. Cr. Cas. 41.

[Followed in R. v. Irving, 14 Can. Cr. Cas. 489, 18 O.L.R. 320, 12 O.W.R. 316; referred to in R. v. Holmes, 14 O.L.R. 124; Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 423.]

ATTAINDER.

CONVICT UNDER DEATH SENTENCE; ABOLITION OF ATTAINDER.

A prisoner under sentence of death is a competent witness on a criminal trial since the abolition of attainder by sec. 1033 of the Criminal Code. The King v. Hatch, 16 Can. Cr. Cas. 196.

EFFECT OF CONVICTION ON VALIDITY OF ANY TRANSACTION IN RESPECT TO CONVICT'S GOODS AND LANDS.

(1) Under sec. 1033, Cr. Code 1906, providing that no conviction or judgment for any treason or indictable offence shall cause any attainder or corruption of blood or any forfeiture or escheat, a convicted offender serving his term may deal with his goods and lands as other men who are free from custody may deal with theirs. (2) Under sec. 1033 Cr. Code 1906, providing that no conviction or judgment for any treason or indictable offence shall cause any attainder or corruption of blood or any forfeiture or escheat, a renewal of a prior lease of hotel premises will not be set aside merely because it was made by a convict while serving his term in a penitentiary. (3) The Forfeiture Act, 33 and 34 Vict. ch. 23 (Imp.), is not in force in Canada. [Dumphy v. Kehoe, 21 Rev. Leg. 119, Jetté, J., pp. 126, 127, followed.] Young v. Carter, 19 Can. Cr. Cas. 489, 5 D.L.R. 655.

ATTEMPT.

Attempted murder; Cruelty to child. 1 Can. Cr. Cas. 413.

Attempt to carnally know; Corroboration. 9 Can. Cr. Cas. 38.

Attempt to commit rape; Assault with intent to commit rape; Identity of charge; Cr. Code, sec. 268. 9 Can. Cr. Cas. 201, 202.

What are criminal attempts. 24 Can. Cr. Cas. 110.

ATTEMPT TO BURN PRISONER'S OWN HOUSE; EVIDENCE TO SHEW THE ACT UNLAWFUL AND MALICIOUS.

In an indictment for arson it is unnecessary to charge any intent, as our statute (differing from the English Act) does not make the intent part of the crime. This omission, however, if a defect, would not be ground for a new trial, under Consol. Stats. U.C., ch. 113. This prisoner being indicted for unlawfully and maliciously attempting to burn his own house by setting fire to a bed in it, it appeared in evidence that the dead body of a woman was in the bed at the time; that her death had been caused by violence; that she had been recently delivered of a child, whose body was found in the kitchen; and that she had lived in the house since it had been rented by the prisoner, who frequently went there at night. It was also shewn that the prisoner had been indicted for the murder of this woman and acquitted, and the record of his acquittal was put in. This evidence was objected to as tending to prejudice the prisoner's case; but:—Held admissible, for the house being the prisoner's, it was necessary to shew that his attempt to set fire to it was unlawful and malicious, and these facts might satisfy the jury that the murder being committed by another, the prisoner's act was intended to conceal it. The Queen v. Greenwood (1864), 23 U.C.Q.B. 250.

ATTEMPT TO COMMIT RAPE; CONSENT OF GIRL UNDER TEN; NO CONVICTION FOR ASSAULT.

On an indictment for attempting to have connection with a girl under ten, consent is immaterial; but in such a case there can be no conviction for assault if there was consent. Regina v. Connolly, 26 U.C.Q.B. 317.

ATTEMPT TO STEAL; INDICTMENT AND CONVICTION FOR.

(1) An indictment, charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom

the offence was committed, or the description of the property the accused attempted to steal, is sufficient. (2) Where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the Court discharges the jury and directs that the prisoner be indicted for the complete offence. Criminal Code of Canada, art. 712. Regina v. Taylor (1895), R.J.Q. 4 Q.B. 226.

ATTEMPT TO STEAL GOODS; INSPECTION OF PREMISES WITH VIEW OF COMMITTING OFFENCE; ACCOMPLICES; COMMON PURPOSE.

The prisoner was convicted of unlawfully attempting to steal the goods of one J. G. It appeared that he had gone out with one A. to Cooksville, and examined J. G.'s store with a view of robbing it, and that afterwards A. and three others, having arranged the scheme, with the prisoner, started from Toronto and made the attempt, but were disturbed after one had got into the store, through a panel taken out by them. Prisoner saw them off from Toronto but did not go himself:—Held, that as those actually engaged were guilty of the attempt to steal, the prisoner under 27-28 Vict. ch. 19, sec. 9, was properly convicted. R. v. Esmonde, 26 U.C.Q.B. 152.

VERDICT FOR, ON EVIDENCE OF PRINCIPAL OFFENCE.

Where on an indictment for a principal offence and for an attempt to commit such an offence, the evidence is wholly directed to the proof of the principal offence, the jury's verdict of guilt of the attempt only, will not be set aside although there were no other witnesses in respect of the attempt than those whose testimony, if wholly believed, shewed the commission of the greater offence. R. v. Hamilton, 4 Can. Cr. Cas. 251.

ABSENCE OF COMPLETE PROOF OF OFFENCE CHARGED; ATTEMPT ESTABLISHED.

The provision of sec. 711 of the Code that when the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of the attempt applies to summary trials before city and town police magistrates under sec. 785 of the Code, as well as to trials upon indictment. On a summary trial before the police magistrate of a city or town under sec. 785 of the Code, the consent of the accused to be tried summarily is to be taken as a consent to a summary trial for whatever offence he might be found guilty of at a Court of General Sessions, were he being there tried on a like charge. An indictment for an attempt to commit theft from the person would be sufficient if it charged that at a specified time and place the accused did attempt to "pick the pocket" of a person named (sec. 611). Quære, whether a magistrate trying a case summarily under sec. 783 and not under sec. 785, on a charge of theft where the value is under $10 could convict for an attempt. Per Armour, C.J.O. The King v. Morgan (No. 2), 5 Can. Cr. Cas. 272.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238.]

ATTEMPT TO OBTAIN MONEY BY FALSE PRETENSES; TRANSACTION COMPLETED; CONVICTION FOR ATTEMPT ALTHOUGH VENDEE NOT DECEIVED.

(1) A storekeeper who advertises to sell a drug preparation under the registered trade mark name by which it is commonly known, with the intention of passing off, to persons calling for the advertised goods, his own similar preparation which he had labelled so as not to infringe the trade mark, may be convicted of an attempt to obtain money by false pretences on proof that he took the advertised price and delivered his own preparation in carrying out the fraudulent intent, although a conviction for obtaining money by false pretences could not be had, as the purchasers in the particular case being conversant with the drug trade, knew they were not getting the trade mark goods and were not deceived. (2) Where the purchase is made and the money parted with from a desire to secure the conviction of the seller, there is no obtaining by false pretences, but the seller may yet be liable for the attempt. (3) Semble, it is not necessary for the prosecution to shew that the commodity passed off is inferior in quality to the trade mark article, or that it is less in quantity; and the accused may be convicted, although it appears that the ingredients are nearly identical. The King v. Lyons (No. 1), 16 Can. Cr. Cas. 152.

ATTEMPT TO DEFRAUD; WILFULLY SETTING FIRE TO SUBSTANCE AND ENDANGERING BUILDING.

(1) Upon an indictment for an attempt to defraud by setting fire with intent to defraud the fire insurance company, evidence is admissible on the question of intent of a fire on defendant's premises, although nine years previous, upon which his insurance claim had been disputed and compromised for a lesser amount. (2) It is for the jury to say what weight should be attached to such evidence of intent in view of the lapse of time and other circumstances. The King v. Beardsley, 18 Can. Cr. Cas. 389.

DEFINITION OF ATTEMPT.

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would

constitute its actual commission if it were not interrupted. [See Annotation on Criminal Attempts at end of this case.] R. v. Snyder, 24 Can. Cr. Cas. 101, 25 D.L.R. 1.

BODILY HARM; AUTOMOBILE; INTENT.

An attempt to do grievous bodily harm to the other occupants of an automobile may be found from evidence of reckless driving, the question of intent or no intent being one for the jury. R. v. McCarthy, 29 Can. Cr. Cas. 348.

AUTOMOBILES.

INJURING PERSONS BY WANTON OR FURIOUS DRIVING; CR. CODE (1906) SEC. 285.

Where a person drives an automobile on a city street at an excessive speed knowing that the motor is in bad working order, that circumstance is evidence that the act is wanton, and a conviction for causing personal injury by wanton and furious driving will not be disturbed. The King v. Seager, 15 Can. Cr. Cas. 483.

AUTOMOBILE SPEED REGULATIONS.

(1) Under the Quebec Motor Vehicles Act, the owner of an automobile may be summarily convicted for an infraction of the speed limit made upon a public highway with his registered automobile when taken out without his consent by a machinist of the garage where it had been left for repairs. (2) The doctrine of mens rea or guilty knowledge does not apply to that offence under the Quebec Motor Vehicles Act in view of the clause therein (art. 1406), which provides that the "owner" shall be held responsible for any violation and for accidents or damages caused by his motor vehicle upon a highway. (3) The onus is upon the prosecution to prove the fact of registration of the automobile on a charge against the owner for an offence committed by some one else while operating his motor car. (4) (On a preliminary motion):—As the statute provides that prosecutions for infractions of the Quebec Motor Vehicles Act shall be "governed" by Part XV. of the Criminal Code, an appeal may be taken from a summary conviction in the manner set out in arts. 749 et seq. of the Criminal Code. Per Trenholme, J. The King v. Labbe, 17 Can. Cr. Cas. 417.

DUTY OF AUTOMOBILE DRIVER TO STOP ON SIGNAL FROM CARRIAGE DRIVER APPROACHING.

Under the Quebec statute 6 Edw. VII., ch. 13, sec. 24, it is the duty of the driver of a motor vehicle to stop on signal from a person approaching and driving a carriage, although the horse does not at the time of the signal appear to be frightened. The King v. Hyndman, 17 Can. Cr. Cas. 469.

PUBLIC REGULATION; OFFENCE UNDER ONTARIO MOTOR VEHICLES ACT; SUMMARY CONVICTION.

A summary conviction under sec. 18 of the Ontario Motor Vehicles Act, 2 Geo. V., ch. 48, providing that if an accident occurs to any vehicle in charge of any person owing to the presence of a motor vehicle on the highway, the person in charge of such motor vehicle shall return to the scene of the accident and give in writing, to anyone sustaining loss or injury, the name and address of himself and of the owner of the motor vehicle and the number of the permit, will be quashed, though the motor vehicle driven by the convicted person grazed the wheel of a passing buggy with sufficient force to loosen two spokes in its wheel, if it appeared at the trial that the person in charge of the motor vehicle did not know or have reason to know that such an injury had resulted to the buggy. [Core v. James, L.R. 7 Q.B. 135; Nicholls v. Hall, L.R. 8 C.P. 322; Reg. v. Sleep, 1 L. & C. 44; Hardcastle, Statutory Law, 3rd ed., 465 (5th ed.—the 2nd ed. of the Craies-Hardcastle—468); Maxwell's Interpretation of Statutes, 2nd ed., 115 (5th ed., 157), specially referred to.] Robertson v. McAllister, 19 Can. Cr. Cas. 441, 5 D.L.R. 476.

REGULATION OF USE FOR HIRE; LICENSE; BY-LAW.

A by-law of city police commissioners placing further restrictions on the operation of automobiles for hire within the city will not be effective to control an unqualified license already held by the accused which remained unrevoked. R. v. Aitcheson, 25 Can. Cr. Cas. 36.

QUEBEC MOTOR VEHICLE LAW; IGNORING SIGNAL BY OFFICER.

A person driving an automobile must stop when signalled or called upon to do so under penalty of fine under the Quebec Motor Vehicles Act, R.S.Q. 1909, art. 1416, although the officer making the signal is not in official uniform or exhibiting his badge of office. Collector of Revenue v. Auger, 25 Can. Cr. Cas. 412.

LICENSING OF GARAGE; QUEBEC MOTOR VEHICLES LAW; MEANING OF "GARAGE."

A "garage" under the Quebec Motor Vehicles Law, R.S. Que. 1909, article 1402b (added by Quebec statutes 1916, ch. 21), for which a license is required does not include a place where automobiles are kept without extra charge while repairs are being made to them. Collector of Revenue v. Verret, 28 Can. Cr. Cas. 314, 38 D.L.R. 630.

PENALTIES; SIDEWALKS.

The Nova Scotia Motor Vehicles Act, 1914, does not supersede a municipal ordinance imposing penalties for driving a mo-

tor car along a city sidewalk. R. v. Archibald, 29 Can. Cr. Cas. 146.

ATTORNEY-GENERAL.

Fiat from, for record of acquittal. 5 Can. Cr. Cas. 1.

Note on proof of acquittal in malicious prosecution. 5 Can. Cr. Cas. 8.

INTERVENTION OF ATTORNEY-GENERAL: RIGHT OF APPEAL.

S. was convicted under the Liquor License Act of Manitoba, 1889, of selling liquor without a license. The information was laid before one justice of the peace, but the prosecution was heard before two justices. The defendant was convicted, and a sum for witness fees was included in the costs awarded against him. The defendant obtained a rule nisi to quash the conviction. On its return Taylor C.J., made the rule absolute. At this stage the Attorney-General, although not a party to the proceedings, intervened and moved before the Full Court against this decision. The parties to the proceedings did not complain of the decision:—Held, 1. That the decision of the single Judge, notwithstanding this being a criminal matter, was subject to review by the Full Court. 2. That the Attorney-General was entitled to intervene. Reg. v. Starkey, 7 Man. L.R. 489.

EXPENSE OF PROSECUTION.

Whether or not the Crown should assume the expense incidental to a prosecution is more particularly a question for the Attorney-General as a part of his executive functions, and is not one to be decided by a Court. Ex parte Hanning, 4 Can. Cr. Cas. 203.

RIGHT OF ACCUSED TO DEMAND CERTIFIED RECORD OF ACQUITTAL; FIAT OF ATTORNEY-GENERAL UNNECESSARY.

A person tried and acquitted in any criminal Court is entitled to a copy of the record of such acquittal and of the indictment without the fiat of or intervention by the Attorney-General of the province, and a mandamus will lie to compel the delivery of certified copies or an exemplification thereof upon tender of the proper fees. Attorney-General v. Scully, 6 Can. Cr. Cas. 167.

LEAVE OF; CONDITION PRECEDENT TO PROSECUTION UNDER LORD'S DAY ACT.

(1) The leave of the Attorney-General is a condition precedent to the commencement of a prosecution under the Lord's Day Act, and a magistrate has no jurisdiction to take the information unless leave has already been granted. (2) Evidence of such leave must appear in the proceedings before the magistrate, and in its absence the prosecutor will not be permitted upon a certiorari application to prove that leave had been granted before the information was laid. The King v. Canadian Pacific Railway Co., 12 Can. Cr. Cas. 549.

CERTIORARI ON ATTORNEY-GENERAL'S APPLICATION.

The Attorney-General has an absolute right to demand the removal of summary conviction proceedings into a superior Court by certiorari. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

LEAVE OF PROVINCIAL ATTORNEY-GENERAL BEFORE INSTITUTING PROCEEDINGS FOR VIOLATION; LEAVE OF DEPUTY ATTORNEY-GENERAL INSUFFICIENT.

(1) The Deputy Attorney-General is not an "agent" of the Attorney-General in either of the provinces of Alberta and Saskatchewan within Code, sec. 873a, and has no authority to prefer a charge under that section unless he has the written consent of the Judge or of the Attorney-General or an order of the Court. (2) The Deputy Attorney-General of a province has no authority to grant the leave of the Attorney-General required under sec. 17 of the Lord's Day Act, R.S.C. ch. 153, for an action or prosecution for a violation of the Act. [The King v. Duff (No. 2), 15 Can. Cr. Cas. 454, 2 Sask. L.R. 388, specially considered.] Re The Criminal Code, Re The Lord's Day Act, 16 Can. Cr. Cas. 459.

[Distinguished in R. v. Faulkner, 19 Can. Cr. Cas. 49.]

SPECIAL LEAVE OF ATTORNEY-GENERAL; PREFERRING INDICTMENT WITHOUT A PRELIMINARY ENQUIRY AND COMMITMENT.

(1) The Attorney-General has the right to directly present to the grand jury an indictment against a person suspected of committing a criminal offence without having recourse to a preliminary enquiry before a magistrate. (2) The fact that an accused person has been sent up to the assizes for trial pursuant to a preliminary inquiry does not deprive the Attorney-General of the right to bring an indictment before the grand jury and to ignore altogether the proceedings already taken before the magistrate. The King v. Houle, 17 Can. Cr. Cas. 407.

ACTING ATTORNEY-GENERAL.

(1) An "acting Attorney-General" is the Attorney-General pro tem., and as such may give a direction to Crown counsel for the preferment of a bill of indictment under Cr. Code, sec. 873. Such direction to prefer an indictment may be in general terms written upon the bill authorizing counsel acting for the Crown at a specified assize sittings to prefer the same. (2) Where an indictment has been preferred by counsel acting

on behalf of the Crown at a Court of criminal jurisdiction, it will not be presumed that he would not have preferred it but for the direction of the Attorney-General or acting Attorney-General written thereon, and the indictment may be sustained under the general powers conferred upon Crown counsel under Code, sec. 872 if for the same charge as that upon which the accused was committed for trial, whether or not the Attorney-General's direction under Code, sec. 873 was regularly given. The King v. Faulkner, 19 Can. Cr. Cas. 47.

CONSENT TO PROSECUTE; FIAT OF ATTORNEY-GENERAL; LORD'S DAY ACT.

A fiat for the commencement of a prosecution for a violation of the Lord's Day Act, R.S.C. 1906, ch. 153, signed by a member of a Provincial Executive Council as "Acting Attorney-General" is valid, and his authority need not be shewn; since it will be presumed that he was properly appointed to act in such capacity. (Per Harvey, C.J., Stuart, and Walsh, J.J.) It is not essential that a fiat from the Attorney-General authorizing the commencement of a prosecution for a violation of the Lord's Day Act, R.S.C. 1906, ch. 153, should be put in evidence on the trial as a part of the case for the prosecution; the absence of such consent being a matter of defence. (Per Harvey, C.J., and Stuart, J.) [Rex v. Canadian Pacific Railway, 12 Can. Cr. Cas. 549, distinguished.] Notwithstanding the fact that the fiat or consent of the Attorney-General to prosecute for a violation of the Lord's Day Act, R.S.C. 1906, ch. 153, a person, upon a charge that he "provided, engaged in, or was present at" a forbidden performance on Sunday, states three separate offences, it is not bad on that account, and a prosecution may be maintained thereunder for any one of the offences mentioned. (Per Harvey, C.J., and Stuart, J.) R. v. Thompson, 22 Can. Cr. Cas. 78, 14 D.L.R. 175.

BREACH OF TRUST; PROSECUTION; ATTORNEY-GENERAL'S AUTHORIZATION.

A charge for criminal breach of trust under Cr. Code, sec. 390 brought against the curator of an insolvent estate can only be brought with the sanction of the Attorney-General (Cr. Code, sec. 596), and if his authorization is not shown the charge will be dismissed. R. v. Jacobs, 25 Can. Cr. Cas. 414.

AUTREFOIS ACQUIT.

Shooting and assault; New trial. 7 Can. Cr. Cas. 38.

Note on plea of. 7 Can. Cr. Cas. 43.

Prosecution for same offence after conviction or commitment quashed on certiorari. 2 Can. Cr. Cas. 241.

IDENTITY OF CHARGE; ONUS.

The dismissal of a prior charge under the Canada Temperance Act, in which the offence was laid as between certain dates, is not necessarily a bar to a subsequent prosecution for an offence committed within the same period of time, but the question of identity of offence is for the magistrate. Upon a defence that the accused has been formerly acquitted in a summary proceeding before magistrates for the same alleged offence, the onus of proving the identity of the charge is upon the defendant. Ex parte Flanagan, 5 Can. Cr. Cas. 82.

[Considered in R. v. Johnson, 17 Can. Cr. Cas. 174.]

PERSONATION OF ELECTOR AND PERJURY; OATH OF IDENTITY; PREVIOUS ACQUITTAL FOR PERSONATION; PLEA OF AUTREFOIS ACQUIT INAPPLICABLE.

(1) Where a person has been acquitted by a Court of competent jurisdiction the acquittal is a bar to all further proceedings to punish him for the same matter, although a plea of autrefois acquit may not be allowed because of the different nature of the charges. (2) A plea of autrefois acquit to a charge of perjury in taking the oath of identity at a polling booth is not supported by a record of acquittal on a charge of personating an elector at the same time and place, although the oath of identity and the alleged personation were in regard to the same elector. (3) A verdict for personation could not have been received under an indictment for perjury in taking the oath of identity, although the facts constituting personation must necessarily be shewn in order to prove the perjury. (4) The acquittal on the first charge became res judicata as between the Crown and the accused, and it was not open to the Crown to proceed on the second charge in which a conviction could only be had by the second jury overruling the contrary verdict of the first jury. The King v. Quinn, 10 Can. Cr. Cas. 412.

ORDER OF ACQUITTAL; DEFENDANT ONCE IN JEOPARDY; PROHIBITION ACT OF 1900 (P.E.I.)

(1) Where a magistrate has decided a case ostensibly upon the merits in favour of the accused and the statute under which the prosecution is brought allows no appeal, a certiorari will not be granted to quash the order of acquittal, with a view to reopening the case, on the ground of the wrongful refusal of the magistrate to compel a witness to answer a material question. (2) Except where it is otherwise provided by statute, a person who has been regularly tried and acquitted by a competent tribunal having full cognizance of his case, is not liable to be again tried for the same offence, and this rule applies to

an acquittal under a section of a provincial liquor law (the Prohibition Act, P.E.I., 1900), under which fine and imprisonment may be imposed. The King v. Reddin, 16 Can. Cr. Cas. 163.

SUMMARY CONVICTION; PRIOR CHARGE DISMISSED FOR IRREGULARITY IN SUMMONS.

A defendant, pleading a former acquittal in answer to a summary proceeding for an offence must shew that the two charges are identical and where the offence is that of keeping liquor for sale between certain dates, the mere fact that the prior charge was for keeping liquor for sale between the same dates will not alone prove the identity of the offences. The King v. Johnson, 17 Can. Cr. Cas. 172.

COMPLAINANT'S DEFAULT IN APPEARANCE AT TRIAL; DISMISSAL.

(1) The dismissal of an information under the Summary Convictions clauses upon the failure of complainant to attend is not a bar to the issue of a new summons upon a fresh complaint for the same cause where the default was due to a misunderstanding with the magistrate as to the date of trial. (2) The certificate of dismissal provided by Code, sec. 730 applies only to the cases which have been "considered" by the magistrate (Code form 38) and the section does not apply to bar the reopening for good cause of an information which had been dismissed upon default. Hall v. Pettingell, 18 Can. Cr. Cas. 196.

IDENTITY OF OFFENCES.

To support a plea of autrefois acquit the accused must shew that the offence for which he is on trial is the same as that for which he was convicted, and the plea will not be allowed merely on the ground that the second offence might have been proved instead of the first on the trial of the first information. The King v. Mitchell, 19 Can. Cr. Cas. 113.

[See also Rex v. Sutherland, 2 O.W.N. 595; R. v. Hazen, 20 A.R. (Ont.) 633.]

FORMER JEOPARDY; TWO OFFENCES FOUNDED ON ONE ACT.

Where a conviction on summary trial has been quashed in certiorari proceedings on the ground that there was no evidence upon which the magistrate could convict, the result is as if no conviction had been made and a plea of *autrefois acquit* will not avail in a subsequent charge setting up another legal aspect of the same facts where the original charge could not properly have been amended to the charge for which the second prosecution was brought (Cr. Code 1906, sec. 907). An accused person is to be held not to have been in former jeopardy for the same offence, where, by reason of some defect in the record in the former proceeding, he was not liable to suffer judgment for the offence charged on that proceeding. [R. v. Drury, 3 C. & K. 193, 18 L.J.M.C. 189, applied; R. v. Quinn, 10 Can. Cr. Cas. 412, 11 O.L.R. 242, considered.] R. v. Weiss and Williams (No. 1), 21 Can. Cr. Cas. 438, 13 D.L.R. 166. See also 22 Can. Cr. Cas. 42, 13 D.L.R. 633.

[Referred to in R. v. Carver, 29 Can. Cr. Cas. 122; dissented from in R. v. Weiss (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 633.]

PRIOR CONVICTION QUASHED ON CERTIORARI; REVIEW ON MERITS; EVIDENCE; CONSPIRACY.

Where a prior conviction by a magistrate upon a summary trial was quashed on certiorari upon the ground that there was not sufficient evidence upon which the magistrate could properly make a conviction, the order to quash is to be viewed as having been made by the court in the exercise of its inherent jurisdiction to supervise the proceedings of inferior courts as distinct from a ground of absence of jurisdiction in the latter; the quashing of the conviction under such circumstances is equivalent to an acquittal on the merits and may, under Cr. Code 1906, sec. 907, be pleaded on a plea of *autrefois acquit* to a second charge of an attempt to commit the same offence, [R. v. Weiss (No. 1), 21 Can. Cr. Cas. 438, 13 D.L.R. 166, dissented from, upon this point.] A conspiracy to commit an indictable offence is quite distinct from the offence alleged to have been the subject of the conspiracy, and a former acquittal for the offence itself is not a bar to a subsequent prosecution for a conspiracy to commit it, although founded upon the same evidence. R. v. Weiss and Williams (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 633. See also 21 Can. Cr. Cas. 438, 13 D.L.R. 166.

[Referred to in R. v. Carver, 29 Can. Cr. Cas. 122.]

ASSISTING ESCAPE; ASSAULT.

An acquittal upon a charge of assisting a prisoner to escape from the charge of a constable is a bar upon a plea of autrefois acquit to a subsequent charge of assaulting a police officer while assisting the constable in the pursuit of such escaping prisoner. R. v. Stanhope et al, 22 Can. Cr. Cas. 76.

PRIOR DISCHARGE ON HABEAS CORPUS.

An indictment may regularly be laid at the instance of the Attorney-General against a person who had been arrested for the same offence in proceedings before a magistrate, but who had been set at liberty on a writ of habeas corpus allowed for irregularities in essential parts of the procedure before magistrates and not on the merits as to conviction. R. v. Dick, 22 Can. Cr. Cas. 188, 15 D.L.R. 330.

QUASHING FIRST CONVICTION; SUMMARY TRIAL; CR. CODE, SECS. 228, 773, 774.

An order discharging the accused on habeas corpus and quashing on certiorari his conviction made by a magistrate on a summary trial upon the ground that the defendant was not properly before the magistrate as he had been arrested without warrant for keeping a disorderly house and that consequently the magistrate was entirely without jurisdiction to try him, will not constitute a bar to a subsequent prosecution for the same offence to answer which the accused was regularly brought before the magistrate by warrant. [R. v. Weiss and Williams, 22 Can. Cr. Cas. 42, 13 D.L.R. 632, and Atty.-General v. Kwok-a-Sing (1873), L.R. 5 P.C. 179, referred to; and see Annotation at end of this case.] R. v. Young Kee (No. 2), 28 Can. Cr. Cas. 236, 37 D.L.R. 121. See 28 Can. Cr. Cas. 161.

[Referred to in R. v. Carver, 29 Can. C. Cas. 122.]

AUTREFOIS CONVICT.

See Previous Conviction.

BAIL.

See also Estreat; Recognizance.

In extradition, see Extradition.

Note on admitting prisoner to bail. 2 Can. Cr. Cas. 41.

Surrender by. 1 Can. Cr. Cas. 301.

Note on recognizance of bail; Form of condition; Estreat. 3 Can. Cr. Cas. 7.

Recognizance on remand; Breach of. 3 Can. Cr. Cas. 578.

Recognizance for next Court of Sessions. 3 Can. Cr. Cas. 579.

Recognizance of; Amended form of 1900. 3 Can. Cr. Cas. 602.

In criminal cases; Note. 4 Can. Cr. Cas. 133.

Note on bail in homicide cases; Cr. Code, secs. 603, 604. 5 Can. Cr. Cas. 232.

Note on bail in extradition cases. 5 Can. Cr. Cas. 539.

Estreat of. 7 Can. Cr. Cas. 22.

ADMISSION TO BAIL AFTER A TRUE BILL FOR MURDER.

Where the grand jury have found a true bill for murder bail will generally be refused. In this case, where there was evidence, if believed, sufficient to warrant a conviction, and only one assize had elapsed without a trial, an application to admit to bail was refused and the prisoners left to their remedy under the Habeas Corpus Act The considerations which should govern the exercise of discretion in granting or refusing bail dealt with. Reg. v. Keeler, 7 P.R. (Ont.) 117.

APPLICATION FOR; CHARGE OF FORGERY; SUFFICIENCY OF EVIDENCE.

A prisoner charged with forgery in Canada, having been arrested in, and surrendered by the government of, the United States, under the Ashburton Treaty, upon application for bail, on the ground that there was no evidence of the corpus delicti:—Held, that the surrender of the prisoner by the United States Government was sufficient evidence. Reg. v. Van Aerman (1854), 4 U.C.C.P. 288.

CASE OF CAPITAL FELONY; WHERE DEFENDANT MAY BE ADMITTED TO BAIL.

Held, that a prisoner confined in gaol upon a charge of capital felony, may be admitted to bail after the finding of a true bill by the grand jury, if, upon reading the depositions against him, these depositions are found to create but a very slight suspicion of the prisoner's guilt. R. v. Maguire, 7 Low. Can. Rep. 57.

CHARGE OF MURDER; ADMISSION TO BAIL; NOT A MATTER OF RIGHT.

On an application by prisoners in custody on a charge of murder, under a coroner's warrant, to be admitted to bail, it is proper to consider the probability of their forfeiting their bail if they know themselves to be guilty. Where in such case there is such a presumption of the guilt of the prisoners as to warrant a grand jury in finding a true bill, they should not be admitted to bail. The fact of one Assize having passed over since the committal of the prisoners, without an indictment having been preferred is in itself no ground for admitting them to bail. The application is one of discretion, and not of right, the prisoners not having brought themselves within 31 Car. II., ch. 2, sec. 7, by applying on the first day of the Assize to be brought to trial. Reg. v. Mullady and Donovan (1868), 4 P.R. (Ont.) 314.

CHARGE OF MURDER; WHEN PRISONER ADMITTED TO.

Prisoners charged with murder cannot be admitted to bail unless it be under very extreme circumstances, as where facts are brought before a Court to shew that the bill cannot be sustained. The Queen v. Murphy and others (1853), 2 N.S.R. 158.

JURISDICTION OF THE COURT ON APPLICATION FOR.

A prisoner charged with murder may in some cases be admitted to bail; and on such an application the Court may look into the information, and if they find good ground for a charge of felony, may remedy a defect in a commitment, by charging a felony in it. Rex. v. Higgins, 4 U.C.R. (O. S.) 83.

JURISDICTION OF A JUDGE IN CHAMBERS. CONDITIONAL ORDER.

Where a prisoner charged with felony has

been admitted to bail upon an order of a Judge in Chambers, and an application was subsequently made to rescind such order, and to recommit the prisoner to gaol, on the ground that he had not been committed for trial at the time such order was granted, and also upon the ground that the bail put in was fictitious:—Held, that a Judge in Chambers has power to make the order asked for; but the order in this case was conditional upon the failure of the prisoner to find new sureties within a specified time. The Queen v. Mason (1869), 5 P.R. (Ont.) 125.

MURDER COMMITTED ABROAD; REFUSAL TO ADMIT TO BAIL.

The Court refused to discharge a prisoner brought up on habeas corpus, charged with having murdered his wife in Ireland, communications having been made by the provincial to the home government on the subject, and no answer received, and the prisoner having been in custody less than a year, bail in such case will not be allowed until a year has elapsed from the time of the first imprisonment, although no proceedings have in the meantime been taken by the coroner. R. v. Fitzgerald, 3 U.C.R. (O.S.) 300.

QUESTIONS TO BE CONSIDERED ON APPLICATION FOR BAIL.

The guilt or innocence of prisoner not the question to decide on application for bail on a criminal charge. The seriousness of the charge, the nature of punishment and evidence and probability of prisoner's appearing to take his trial are the important questions to be considered:—Held, when it is shewn prisoner attempted to bribe the constable to allow him to escape, the probability of his appearing to take his trial was too slight for the Judge to order bail. Bail refused, although it was some months before a criminal Court competent to try the case would sit. Regina v. Brynes, 8 U.C.L.J. 76.

WHEN REFUSED; NO FINAL COMMITMENT FOR TRIAL; SERIOUSNESS OF CHARGE.

A Judge of the High Court has power under sec. 83 of the Criminal Procedure Act, R.S.C. ch. 174, to admit to bail in cases where the accused has not been finally committed for trial if he "think it right so to do;" but in this case, the charge being a serious one, the magistrate before whom the prisoner appeared having refused to admit him to bail, and no depositions having been taken, an order for bail was refused. Regina v. Cox (1888), 16 O.R. 228.

REFUSAL OF; MURDER.

Application was made on a petition for habeas corpus to admit to bail a prisoner charged with the murder of his wife's mother, the prisoner filing affidavits of his innocence. On the other hand some forty witnesses had been examined at the coroner's inquest, and the evidence against him was very strong. After argument, and the most careful deliberation on the part of the Judge before whom the application was made, bail was refused. Ex parte Corriveau (1856), 6 L.C.R. 249.

WHEN REFUSED; SHOOTING WITH INTENT TO MURDER.

The Court will not bail a prisoner accused of shooting with intent to murder, if the evidence be positive and strong against the prisoner. Ex parte Cheevers (1880), Ramsey's Cases 180.

CONSTRUCTIVE IMPRISONMENT.

A person admitted to bail is in custody and is constructively in goal, so as to entitle him to the benefit of a statute providing for the discharge of the accused from imprisonment in default of his indictment within a limited time. R. v. H. B. Cameron, 1 Can. Cr. Cas. 169.

RIGHT OF SPEEDY TRIAL NOTWWITHSTANDING.

The admission to bail under Cr. Code, sec. 601, does not deprive the accused of the right to a speedy trial under Cr. Code, sec. 765. R. v. Lawrence, 1 Can. Cr. Cas. 295.

[Disapproved in R. v. Smith, 3 Can. Cr. Cas. 469; referred to in R. v. Wener, 6 Can. Cr. Cas. 406; distinguished in R. v. Smith, 31 N.S.R. 414; approved in R. v. Thompson, 17 Man. L.R. 612, 14 Can. Cr. Cas. 31.]

SURRENDER FOR SPEEDY TRIAL.

The words "committed to goal for trial" used in Cr. Code, sec. 765, should be constructed as including any case where the accused is found in custody charged with an offence in respect of which he had the right to elect in favor of a speedy trial, and although he is so in custody by reason of his surrender for the purpose of appearing before the Judge to elect a speedy trial after having been admitted to bail. R. v. Lawrence, 1 Can. Cr. Cas. 295.

PERJURY; PROSECUTION DIRECTED BY COURT.

A committal of a witness under R.S.C. 1886, ch. 154, sec. 4, pursuant to the Judge's direction that he be held and prosecuted for perjury, does not prevent the same Judge from making an order for bail under that Act, and the Judge is not functus officio by reason of the first order. Re Ruthven, 2 Can. Cr. Cas. 39.

BAIL; RECOGNIZANCE TO APPEAR FOR "SENTENCE."

Where on a trial upon an indictment a verdict of guilty was returned, but a reserved case was granted upon a question of law, and the accused admitted to bail, the condition of the recognizance taken being that the accused would appear at the next sitting of the Court "to receive sentence," the condition of the recognizance is not

broken if the accused fails to appear after judgment is given on the reserved case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called on for sentence, and the sureties were not bound for his appearance for any other purpose than to receive sentence. A roll of estreated recognizance and a writ of fieri facias against the sureties thereon will in such a case be set aside on motion to the Full Court. R. v. Alexander Hamilton, 3 Can. Cr. Cas. 1.

RECOGNIZANCE OF BAIL; ESTREAT; DISCRETIONARY DISCHARGE.

An order made under Cr. Code, sec. 922 for the discharge of a forfeited recognizance is a civil and not a criminal proceeding. The discretionary order for the discharge of a forfeited recognizance authorized by sec. 922 of the Criminal Code to be made by the Court into which any writ of fieri facias and capias issued under Part LIX. of the Code is returnable, must be made by the Court en banc, and not by a single Judge. Re McArthur's Bail, 3 Can. Cr. Cas. 195.

[Referred to in Re Burns' Bail, 17 Can. Cr. Cas. 292.]

AT ELECTION; BAIL AFTER COMMITTED.

Where there is danger that accused persons, committed for trial for alleged offences against the election laws, may purposely allow their bail to be forfeited with the view of avoiding scandal, the Court, on an application to admit them to bail, should require the bail to be of a substantial amount. R. v. Stewart, 4 Can. Cr. Cas. 131.

ESTREAT; LOCUS STANDI OF PRIVATE PROSECUTOR.

Where a convicted person, instead of being sentenced is dicharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. In Ontario a private prosecutor in a prosecution for defamatory libel has no locus standi to make the application. R. v. Young, 4 Can. Cr. Cas. 580.

[Followed in R. v. Siteman, 6 Can. Cr. Cas. 226.]

FIXING AMOUNT OF.

Where there is danger that accused persons, committed for trial for alleged offences against the election laws, may purposely allow their bail to be forfeited with the view of avoiding scandal, the Court, on an application to admit them to bail, should require the bail to be of a substantial amount. R. v. Stewart; R. v. Stallan; R. v. Taylor, 4 Can. Cr. Cas. 131.

HOMICIDE; SELF-DEFENCE; CHARGE OF MANSLAUGHTER.

Where a prisoner committed for trial on a charge of manslaughter would ordinarily be admitted to bail, bail will not be refused because the Crown prosecutor swears to a belief that he can prove the offence to have been murder. The King v. Spicer, 5 Can. Cr. Cas. 229.

COUNSELLING OR PROCURING PERJURY; COMMON LAW OFFENCES NOT PROVIDED FOR IN CRIMINAL CODE; WHEN ONE JUSTICE MAY ADMIT TO BAIL.

It is an offence at common law to offer money to a witness to testify regardless of its truth or falsehood, to certain allegations which are false, although not shewn to be false to the knowledge of the accused, and although the proposed testimony was not in fact given. The common law jurisdiction as to crime is still operative notwithstanding the Criminal Code, but subject to the latter prevailing where there is a repugnancy between the common law and the Code. Where the charge in respect of which the accused person has been committed for trial is an offence at common law not provided for by the Code and formerly a misdemeanor, one justice of the peace may commit for trial and admit to bail as at common law. The King v. Cole, 5 Can. Cr. Cas. 330.

[Relied on in R. v. Walkem, 14 Can. Cr. Cas. 122, 128, 14 B.C.R. 7.]

EXTRADITION; BAIL PENDING HABEAS CORPUS; PROPRIETY OF BAIL IN EXTRADITION.

Under ordinary circumstances bail should not be granted to a person committed for extradition. Where bail was granted to the accused in extradition proceedings pending a habeas corpus application on his behalf, and afterwards the application for his discharge under habeas corpus was refused, the accused must surrender himself into close custody before a fresh application will be entertained to bail him pending an appeal from the order refusing his discharge. Re Watts, 5 Can. Cr. Cas. 538.

[Referred to in Re Bartels, 13 Can. Cr. Cas. 63.]

FELONY OR MISDEMEANOR BEFORE THE CRIMINAL CODE; DISTINCTION AFFECTING RIGHT TO BAIL.

(1) A person committed for trial in respect of an indictable offence which was a felony before the Criminal Code 1892 is not entitled as of right to bail and it is discretionary with the Superior Court exercising habeas corpus jurisdiction to allow or refuse bail in such cases. (2) In determining whether or not bail should be granted, the probability of the party appearing for trial in case he is bailed is the principal consideration, and the question of guilt may properly be considered in determining the

degree of such probability. (3) Where the evidence upon which the committal was made raises a serious doubt as to the guilt of the accused, or if it stands indifferent whether the accused is guilty or innocent, an application for bail should be granted. (4) With respect to indictable offences which were misdemeanours before the Criminal Code, 1892, the accused committed for trial is entitled to bail as a matter of right on habeas corpus. Ex parte Fortier, 6 Can. Cr. Cas. 191.

ESTREAT OF RECOGNIZANCE TO KEEP THE PEACE.

A recognizance to keep the peace for two years, being beyond the powers conferred upon justices by Code, sec. 959 and only authorized to be taken by a stipendiary magistrate under certain circumstances and when exercising a power of "summary trial," must shew on its face that the magistrate had jurisdiction to require it to be given, or its estreat will be refused. (2) Where a stipendiary magistrate taking recognizance to keep the peace follows form XXX. of the Code without reference therein to any pending prosecution or to any obligation to appear in Court it is to be assumed that he was proceeding in his capacity of a justice of the peace under Code, sec. 959, to which alone that form is applicable, and if the term exceeds twelve months the recognizance is void. Re Sarah Smith's Bail, 6 Can. Cr. Cas. 416.

ESTREAT OF RECOGNIZANCE; NOTICE TO SURETIES OF APPLICATION.

(1) Notwithstanding Nova Scotia Crown Rule No. 86, a recognizance given upon a remand in a preliminary enquiry for the appearance of the accused and for his good behaviour meanwhile, may be estreated in Nova Scotia by the Supreme Court upon the justice's certificate of default in appearance, without previous notice of the application being given to the sureties. Per Townshend, J., and Meagher, J. (2) Notice to the sureties is necessary under N. S. Crown Rule 86 before the recognizance can be estreated. (Per McDonald, C.J., and Graham, E.J.) Re Frederick Barrett's Bail, 7 Can. Cr. Cas. 1.

[Considered in Re Burns' Bail, 17 Can. Cr. Cas. 292.]

PRELIMINARY ENQUIRY; RECOGNIZANCE ON REMAND; ESTREAT; ALLEGED AGREEMENT TO ADJOURN THE ENQUIRY.

On a motion to avacate an estreat of bail, the Court should not interfere on matters extrinsic to the record as to which the affidavits filed on the motion are conflicting. The King v. Bole, 9 Can. Cr. Cas. 500.

PRELIMINARY ENQUIRY; RECOGNIZANCE ON REMAND; CERTIFICATE OF NONAPPEARANCE; INFORMALITY.

The use of Code form R. in endorsing a certificate of nonappearance upon a recognizance of bail is not imperative, and where an estreat had been directed upon an informal certificate initialled but not more fully signed by the magistrate, a motion made after a long delay to vacate the estreat for irregularity should be refused. The King v. May, 9 Can. Cr. Cas. 529.

APPLICATION AFTER COMMITTAL FOR TRIAL: PROBABILITY OF VOLUNTARY APPEARANCE FOR TRIAL; NATURE OF CHARGE UPON DEPOSITIONS.

Upon an application to bail a prisoner committed for trial, the Court is to have regard to the nature of the crime charged upon the depositions, the probability of a conviction and the severity of the possible punishment. The King v. Gottfriedson, 10 Can. Cr. Cas. 239.

BAIL BEFORE COMMITTAL FOR TRIAL.

(1) A superior Court has jurisdiction to admit the accused to bail while the preliminary enquiry is pending before the magistrate. (2) In making an order for bail pending the preliminary enquiry a Judge of a superior Court may impose the condition that the proposed bail shall not only make affidavits of justification but attend before a magistrate for examination as to their qualification. The King v. Hall, 12 Can. Cr. Cas. 492.

PRISONER FOUND GUILTY OF MURDER; ORDER FOR NEW TRIAL; APPLICATION FOR DISCHARGE ON BAIL.

When a prisoner charged with wilful murder, has been tried, found guilty and sentenced to death, but, upon appeal, has obtained a reversal of the conviction on technical grounds, and stands committed for a second trial, he should not be admitted to bail unless there has been an unreasonable and unjust delay on the part of the Crown in bringing on the second trial. McCraw v. The King, 13 Can. Cr. Cas. 337.

ADMITTING CONVICT TO BAIL PENDING APPEAL.

(1) On reserving a case by way of appeal after conviction, the trial Judge has power to postpone sentence and admit the accused to bail meanwhile or after sentencing the accused to stay the execution of the sentence pending the determination of the reserved case upon bail being given. (2) Where the trial Judge has ordered bail and has fixed the amount thereof and the method of testing the sufficiency of the sureties, the taking of the recognizance is a ministerial act which may be delegated to justices of the peace. (3) When the recognizance of bail is taken by justices under the Judge's order, the justices become for the purposes of such recognizance, temporary officers of the Court in which the order was made, and the recognizance is subject to estreat in such Court. (4) A recognizance

of bail may likewise be validly taken, on granting a reserved case after the trial and during the currency of the term of imprisonment conditioned for the surrender of the convict forthwith on the determination of the reserved case, if the Court of Appeal should either affirm the conviction or set it aside and order a new trial. Johnston v. Attorney-General, the King v. Johnston, 16 Can. Cr. Cas. 296.

RECOGNIZANCE TO APPEAR IN COURT ON ADJOURNED ENQUIRY; ESTREAT.

(1) Where the accused fails to appear in Court as required by by a recognizance entered into by himself and his bail, a notice to the bail requiring the performance of the condition which has already been broken is not necessary, and the recognizance may be estreated on notice to the bail of the default and of an application to estreat without serving a notice upon the bail under Nova Scotia Crown Rule No. 84 to perform the condition of the recognizance. R. v. Barrett, 7 Can. Cr. Cas. 1, considered. (2) Where a preliminary enquiry is adjourned with the consent of the accused for a period of more than eight days contrary to Code, sec. 679, the recognizance of the accused and of his bail then taken for his appearance at the adjourned hearing is not thereby invalidated. (3) The consent of the accused to the longer adjournment was a waiver of the irregularity and the bail having been expressly given for longer than eight days the surety could not complain. Re Burns' Bail, 17 Can. Cr. Cas. 292.

BAIL ON CONTINUANCE OF TRIAL; TERMS OF RECOGNIZANCE.

(1) When the trial of the indictment has been continued until the following term and the accused admitted to bail upon a recognizance to appear on the first day of the next sittings and to surrender himself and plead and take his trial, not departing the Court without leave, he is liable to arrest upon a bench warrant, issued upon his failure to conform with the terms of the recognizance. (2) It is not a valid objection to a warrant issued for the arrest of the accused upon default under such recognizance, that the warrant directed incarceration in the gaol until delivered in due course and omitted any special direction to bring him before the Judge presiding at the trial sittings then pending, as the prisoner would in such case have to be taken at once before the presiding Judge. The King v. Keizer (No. 1), 18 Can. Cr. Cas. 32.

CHARGE OF MURDER; EVIDENCE SUFFICIENT FOR COMMITMENT FOR TRIAL.

Where the depositions taken on the preliminary enquiry were sufficient to warrant the committal for trial on a charge of murder and no facts are disclosed to shew that an indictment could not be sustained, an application for bail will be refused. The King v. Monvoisin, 18 Can. Cr. Code, 122.

RELIEF OF BAIL AFTER ESTREAT IF DEFENDANT IN CLOSE CUSTODY.

(1) Where there has been no election of speedy trial without a jury, a recognizance to appear "at the next Court of competent jurisdiction" for the county, is sufficiently definite to indicate the next Court sittings at which the defendant could be tried other than those of the County Court Judge's Criminal Court. (2) It is not essential to the validity of an estreat of bail given for appearance for trial that the record of proposed estreats should be made and passed upon at the same sittings at which the default occurred; the trial Judge may direct that the estreat record be held over until the following sittings and it may then be dealt with. (3) Relief was granted to the sureties in respect of an estreat of their recognizance for defendant's appearance when the defendant was subsequently taken into custody and so remained at the time of the application, but only upon condition that the sureties pay the Crown's costs of the application. The King v. Bailly, 18 Can. Cr. Cas. 298.

ORDER IN HABEAS CORPUS.

Where it appears from the record on a habeas corpus application that the applicant is held in custody on a committal for trial and that the offence is one for which he should be omitted to bail, but the question of the validity of the commitment cannot be decided for failure of the applicant to produce a copy of the warrant, the Court may, nevertheless, make an order for bail. Ex parte Aubin, 19 Can. Cr. Cas. 94.

RECOVERY BACK OF MONEY DEPOSITED AS BAIL; DEDUCTION OF COSTS; TENDER OF BALANCE.

(1) In an action brought after the allowance by a County Court of an appeal from a conviction by a police magistrate to recover cash deposited as bail, an allegation in the plaint to the effect that such money was deposited with the defendants as security for the appearance of the appellant, while in another paragraph the money was referred to as having been given as security for costs, does not embarrass or confuse defendants as to what money was claimed by the plaintiff, where the bail money was paid to one of the defendants, since it was received by him as bail only and for no other purpose, notwithstanding that in the order allowing the appeal and requiring the money to be returned, it was referred to as having been given as security for costs. (2) Cash deposited as bail with the attorney for the prosecution upon an appeal to a County Court from a conviction by a police magistrate may, upon an allowance of the appeal, be recovered by the appellant. (3) Where, before the granting of an

order by a higher Court prohibiting a County Court hearing an appeal from a conviction by a police magistrate which order carried $75 costs, such appeal was allowed by the County Court with costs of the same amount, upon a subsequent action being brought by the appellant to recover cash deposited as bail, a tender by the defendants to the plaintiff of the amount of the bail, less the costs of such prohibiting order, was refused, the Court declining on the ground that a counterclaim had not been filed, nor a tender pleaded, nor any money paid into Court, to consider whether the defendants were entitled to deduct the amount of such costs from the bail money. Robinson v. District of Saanich and Aikman, 20 Can. Cr. Cas. 241, 7 D.L.R. 499.

BAIL ON HABEAS CORPUS; COMMITTAL FOR TRIAL.

Although sec. 698 of the Criminal Code does not confer jurisdiction upon a judge of a superior Court to grant bail in respect of an indictable offence until the accused has been committed for trial, a defendant has his remedy by way of habeas corpus upon the return of which the court may order bail pending a remand by a magistrate, and this remedy is applicable as well where the charge upon which the remand was made is a subject of summary conviction and not indictable. [Rex v. Hall, 12 Can. Cr. Cas. 492; R. v. Cox, 16 O.R. 228, referred to.] R. v. Vincent and Fair, 22 Can. Cr. Cas. 98, 14 D.L.R. 221.

RAPE; JURISDICTION OF JUSTICES; ESTREAT OF BAIL.

Rape is a capital offence in Canada, and justices of the peace have no jurisdiction to grant bail after the holding of the preliminary enquiry before the justices upon which the accused was committed for trial before a court of competent jurisdiction. Where an order has been made estreating bail and for a writ of fi. fa. and capias, the court before which the writ is returned for further disposition of the matter may, with the concurrence of the judge who made the order, set aside the same and the writ issued thereunder, if it appears that the bail was taken by justices in a case in which they had no jurisdiction to bail and that the estreat order was in consequence made improvidently. Re Hopfe's bail, 22 Can. Cr. Cas. 116, 10 D.L.R. 216.

DISCHARGE; ESTREAT; QUEBEC PRACTICE.

Where, after verdict of "guilty," the accused is taken into custody thereunder, his bail are discharged; so where on a plea of guilty by the accused appearing for summary trial, imprisonment is first adjudged, but after the accused has been taken in charge by the deputy sheriff, the magistrate has the accused recalled and imposes instead a fine with imprisonment in default, the bail is not responsible for the fine where the accused was not held in custody until paid, under a recognizance in terms to "appear and answer the charge and to be further on treated according to law." A previous notice to the bail is essential before a certificate of forfeiture can legally be issued for default of the accused to appear, where the latter and his bail were not called upon their recognizance on the day when he was bound to appear, and it is sought to estreat the recognizance at a latter date. [R. v. Croteau, 9 L.C.R. 67, and Atty.-Genl. v. Beaulieu, 3 L.C. Jur. 117, referred to.] The ex parte entry of judgment by the prothonotary of the Superior Court in Quebec on a certificate of forfeiture of recognizance whether from the Court of King's Bench, criminal side, or from a magistrate's Court, is subject to attack in the Superior Court by any one of the modes of procedure authorized by its practice in regard to ex parte or default judgments. In the Province of Quebec (differing from the practice in other provinces) two modes of procedure are available for the collection of recognizances forfeited in the criminal Courts; one is by means of the ex parte judgment resulting upon the entry in the records of the Superior Court of the Province of Quebec of the recognizance and certificate of default, and the other by direct action at the suit of the Attorney-General of Canada, or of the Attorney-General of Quebec, or of other officer authorized to sue for the Crown. [Cr. Codes, secs. 1114, 1115, and 1117, and R.S. Que. articles 3396, 3398, 3399, considered; Re Hopfe's Bail, 22 Can. Cr. Cas. 116, 10 D.L.R. 216, referred to.] A certificate of forfeiture of recognizance for appearance taken before a justice of the peace or police magistrate in Quebec is "conclusive evidence" under Cr. Code sec. 1114, and R.S. Que. article 3395, only for the purposes of the entry of the ex parte judgment authorized by Cr. Code, sec. 1115; after such entry is made, the certificate of the breach of the recognizance as well as the judgment thereon may be attached by an "opposition to judgment" under the Quebec Code of Civil Procedure. [Cr. Code, secs. 1097, 1114 and 1117, and R.S. Que. 3397, considered.] R. v. Edwards, 23 Can. Cr. Cas. 296, 19 D.L.R. 207.

RECOGNIZANCE OF BAIL; JURISDICTION ON ESTREATING.

In the Province of Quebec the bail against whom an ex parte judgment has been entered in the Superior Court on the removal thereto of the original recognizance and certificate of default (Cr. Code, sec. 1113) from a criminal Court has no remedy in revocation of such certificate in the Court from which it issued; the sole jurisdiction in that regard is in the Superior Court after such removal, and may be exercised either before or after a writ of fieri facias has been issued thereon. [R. v. Hogue, 21 Que. K.B.

24, dissented from.] R. v. Edwards, 23 Can. Cr. Cas. 296, 19 D.L.R. 207.

DIRECTION FOR BAIL IN LIEU OF COMMITTAL FOR TRIAL; RECORD.

Where an order is made on a preliminary enquiry that the accused give bail under Code, sec. 696 to appear for trial, but no committal for trial is made as the magistrate does not consider the case sufficiently strong to order committal, the recognizance of bail acknowledged before the magistrate or two justices and duly signed, is the only necessary record to go before the trial Court with the depositions and information; and a speedy trial without jury on defendant's subsequent election of same is not annulled by the lack of a formal order signed by the magistrate to further evidence the direction to give such bail. On the order being made under Code, sec. 696 that the accused shall give bail to answer any indictment at the jury court upon the charge, in lieu of a committal for trial thereon, the accused may, without waiting for an indictment, elect speedy trial without a jury upon the charge. R. v. Daigle, 23 Can. Cr. Cas. 92, 18 D.L.R. 56.

MURDER CHARGE; POSTPONED BY CROWN.

That the prisoner against whom a true bill had been found for murder had been ready for trial at the Assizes and that the trial had been postponed at the request of the Crown will not constitute sufficient ground for concurrently making an order to admit to bail; semble, the prisoner's recourse is to apply on the first day of the following Assize to be brought to trial, under the Habeas Corpus Act, 31 Car. 2, ch. 2, and in default that he be granted bail. [R. v. Keeler (1877), 7 P.R. (Ont.) 117, and R. v. Mullady (1868), 4 P.R. (Ont.) 314, followed; R. v. Chapman, 8 C. & P. 558, considered.] R. v. Rae, 23 Can. Cr. Cas. 266.

[Applied in R. v. Gentile, 24 Can. Cr. Cas. 342.]

NOTICE TO SURETIES; DEFAULT OF APPEARANCE; ESTREAT.

No preliminary notice to the sureties is required in the Yukon Territory, under the English Crown Rules or otherwise on estreating bail given for appearance before justices in the event of default of appearance by the accused. [R. v. Creelan, 25 N.S.R. 404; Re Barrett's bail, 7 Can. Cr. Cas. 1, 36 N.S.R. 135, and Re Burns' bail 17 Can. Cr. Cas. 292, considered.] The sureties to a recognizance of bail expressly given for an adjournment of a preliminary enquiry by consent, for longer than the eight days provided by Code, sec. 679, are not released for nonconformity with the statutory direction that adjournments shall not be for more than eight days, that being a matter of procedure only which it was competent for the parties to waive, if indeed the statutory direction applies at all where bail is given. [Re Burns' bail, 17 Can. Cr. Cas. 292, and R. v. Hazen, 20 A.R. (Ont.) 663, applied; Dick v. The King, 19 Can. Cr. Cas. 44, considered.] Where bail was given for the accused's appearance on a fixed date and he defaulted, failure to call the bondsmen three times within and three times without the courtroom, will not invalidate a certificate of default and the subsequent estreat of the recognizance, where it was shewn that the bondsmen were not in court on the date fixed for appearance. R. v. Sullivan, 23 Can. Cr. Cas. 174, 18 D.L.R. 535.

TREASON.

A person committed for trial in time of war upon a charge of the treasonable offence of aiding the King's enemies to leave Canada, is properly refused bail. R. v. Rowens, 23 Can. Cr. Cas. 340.

AMENDMENT OF ORDER OR MAKING NEW ORDER; SUFFICIENCY; DUTY OF JUDGE; JURISDICTION.

After an order for bail made by a district Court Judge has been issued and acted upon, there is no jurisdiction to amend it, but if after release of the prisoner thereunder he is rearrested for alleged irregularity in the warrant of deliverance, bail may be applied for de novo. A judge's order for bail should not delegate absolutely to the representative of the Attorney-General the duty of the Court to stand between the Crown and the prisoner, and should therefore provide for submission to the Judge of the sufficiency of the bondsmen in case the Attorney-General is not satisfied in that regard. Where bail is granted by a judge of a superior or county court under Cr. Code, sec. 698, the sufficiency of the sureties is to be passed upon by the Judge who grants the bail; the duty of the Justices before whom the recognizance is taken is in such case of a merely ministerial character to carry out the Judge's order. The practice in Saskatchewan is to require the bail to justify unless the Judge or magistrate making the order for bail dispenses with their justification because of his personal knowledge of their sufficiency. Upon an application for bail to a Judge or magistrate, the practice which should be followed is for the accused to submit the names of his sureties and their residence and occupation, and for the Judge or magistrate, in his discretion, to give leave to the Crown prosecutor to make inquiries as to whether the proposed sureties have sufficient means to satisfy the amount in which they are to be bound, and that, after inquiries have been made and the parties heard, the Judge or magistrate should thereupon decide whether or not the bondsmen offered by the accused are sufficient. Where owing to the lack of a jail in the district in which a prisoner

has been committed for trial there is no place where prisoners who are committed for safe keeping to await their trial can be confined and they are sent to a provincial jail outside of the district of the district Court Judge where the committal took place, it is to be assumed that such confinement is a confinement within such district so as to enable such district Court Judge to make an order for bail under Cr. Code, sec. 698. R. v. Greig, 23 Can. Cr. Cas. 352.

CHARGE OF MURDER.

The general rule is that a person committed for trial on a charge of murder will not be granted bail. [R. v. Rae, 23 Can. Cr. Cas. 266, 32 O.L.R. 89, affirmed.] R. v. Gentile, 24 Can. Cr. Cas. 342.

HABEAS CORPUS; BAIL ON CONCURRENT CHARGES.

R. v. Drake, 29 Can. Cr. Cas. 174.

ESTREAT; SUFFICIENCY OF AFFIDAVIT; ACKNOWLEDGMENT; NOTICE TO SURETIES; ORDER OF JUDGE.

R. v. Zarkes, 29 Can. Cr. Cas. 183, 39 D.L.R. 776.

BAIL ON APPEAL.

While the Court of King's Bench (Que.) has jurisdiction to admit a prisoner to bail after sentence pending his appeal to the Supreme Court of Canada, it will leave him to his recourse to an application to the latter court when the appeal has already been lodged. R. v. Brunet, 30 Can. Cr. Cas. 9. See 30 Can. Cr. Cas. 16, 42 D.L.R. 405.

BAIL PENDING DISPOSAL OF HABEAS CORPUS.

The express provisions of the Criminal Code as to bail do not exclude the common law jurisdiction of a superior court having the inherent powers of the former English Court of King's Bench to order bail pending the disposal of habeas corpus and certiorari motions unless the commitment be one in execution on a criminal charge tried on indictment according to the course of the common law or unless the remedy by certiorari or by habeas corpus be excluded by statute. R. v. Iwanachuk, 30 Can. Cr. Cas. 139.

BANK.

False return by bank official; Bank Act (Can.) secs. 85, 99. 3 Can. Cr. Cas. 262.

FALSE STATUTORY RETURN BY OFFICER; CLASSIFICATION OF OVERDRAFTS.

The Banking Act of 1871 required monthly statements of the affairs of banks to be made to the Government, signed by the president or other officer, and the form of return prescribed certain headings under which the liabilities and assets should be classed. The defendant, a bank president, was indicted for making a wilfully false and deceptive return, the falsity of the return consisting in the improper classification of the assets and liabilities. First, large sums borrowed by the defendant's bank from other banks, and for which deposit receipts were given, were classed as "other deposits payable after notice or on a fixed day;" secondly, demand notes were classed as "bills and notes discounted and current," and thirdly, overdrafts were also classed as "notes and bills discounted and current:"—Held, 1st, The question as to whether the items firstly and secondly mentioned had been improperly classified was a question of fact for the jury, and not one of law for the Court. 2nd, As to the item thirdly mentioned, as matter of law, an overdraft is not current, and the classification of overdrafts under the heading of "Notes and bills discounted and current," was properly held by the presiding Judge to be illegal. 3rd, The instruction to the jury, that wilful intent to make a false return may be inferred by the jury from all the circumstances of the case proved to their satisfaction, was correct. R. v. Hincks, 24 L.C. Jur. 116.

OFFICER MAKING FALSE STATUTORY RETURN.

An indictment charging bank officials with having made a monthly report, etc., "a wilful, false and deceptive statement" of and concerning the affairs of the bank, with intent to deceive, sufficiently charges the offence, under sec. 99 of the Bank Act, of having made, "a wilfully false or deceptive statement in any return or report" with such intent. R. v. Weir (No. 1), 3 Can. Cr. Cas. 102.

FALSE BANK RETURN.

(1) It is a ground for a new trial of a charge under the Bank Act for wilfully making a false bank return, that evidence of other returns both before and after that in question was admitted and no instruction was given to the jury as to the limited purpose for which such other returns were admissible in evidence. (2) To sustain a conviction against the president of a bank for wilfully making a false return to the Government it must appear that the accused knew that he was signing a statement which misrepresented the bank's affairs, and not merely that he adopted and signed the return prepared by other officials and neglected to take any steps to verify the statements it contained. The King v. Lovitt, 13 Can. Cr. Cas. 15. [Applied in Oldstadt v. Lineham, 1 A.L.R. 423; discussed in R. v. Browne, 14 Can. Cr. Cas. 250.]

FALSE BANK RETURN; LOCAL MANAGER SIGNING RETURN PREPARED BY HEAD OFFICE STAFF.

In a prosecution under sec. 153 of the Bank Act against a local bank manager for

signing a false statement in the Government returns, it must be made to appear that the accused knew that he was signing a statement which misrepresented the bank's affairs, and the signing of such statement is not a presumption juris et de jure of wilful intent or guilty knowledge. The King v. Browne, 14 Can. Cr. Cas. 247.

BANK ACT; PROHIBITED PLEDGE, ASSIGNMENT OR HYPOTHECATION BY CHARTERED BANK OF ITS OWN BANKNOTE ISSUE.

A deposit of a quantity of its own banknotes by a chartered bank to its own credit with a trust company subject to withdrawal by cheque and without any agreement for the return to the bank of the notes so deposited is not a "pledge, assignment, or hypothecation" by the bank of its own notes, the giving or acceptance whereof is an indictable offence under sec. 139 of the Bank Act. The King v. Warren, 17 Can. Cr. Cas. 504.

FRAUDULENT COMPILATION AND FILING OF RETURNS; TAKING DEPOSITS WHEN INSOLVENT; EXTRADITABLE OFFENCE.

(1) The fraudulent compilation and filing of bank returns, is an extraditable offence, under sub-sec. 1 of sec 153 of the Bank Act, R.S.C. 1906, ch. 29, making any wilful, false, or deceptive statements in such documents indictable. (2) A warrant for the extradition to a foreign state of a bank officer for receiving deposits with knowledge of the insolvency of the bank may be sustained under sec. 405, Crim. Code 1906, providing that everyone is guilty of an indictable offence who, with intent to defraud, by any false pretence, either directly or through the medium of any contract obtained by such false pretences, obtains anything capable of being stolen or procures anything capable of being stolen to be delivered to any other person than himself, and under sec. 405a of the Code, sec. 6 of 7 and 8 Edw. VII: (Can.) ch. 18, making everyone guilty of an indictable offence who, in incurring any debt or liability, obtains credit under false pretences, or by means of any fraud, though that part of the foreign statute pertaining to the receipt of deposits with such knowledge was amended by striking out the words: "fraudulently and with intent to cheat and defraud any person." [Rex v. Stone (1911), 17 Can. Cr. Cas. 377, applied.] In re O'Neill, 19 Can. Cr. Cas. 410, 5 D.L.R. 646.

BANKRUPTCY.

See Insolvency; Extradition.

BASTARDY.

VALIDITY OF PROCEEDINGS; CERTIORARI.

Where, by statute, certain defects in proceedings under the Bastardy Act, C.S.N.S. 1903, ch. 182, are declared not to prevent the trial of the accused or to avail as a defence upon the trial, the discretion of the court to grant or refuse a certiorari will be exercised by refusing to remove the information and preliminary proceedings thereon for defects of the class which, if raised before the trial tribunal, would be cured by the statute. Ex parte Seriesky, 21 Can. Cr. Cas. 140, 10 D.L.R. 612.

WAIVER OF PROCEDURE; AFFILIATION PROSECUTION; ILLEGITIMATE CHILDREN'S ACT; DISMISSAL; JURISDICTION.

The provision of sec. 9 of the Illegitimate Children's Act, R.S.M. 1913, ch. 92, that the justice of the peace shall take the information of the mother in affiliation proceedings brought by her or on her behalf is one which concerns procedure only and may be waived as it does not go to the jurisdiction; such waiver operates against the mother to prevent her repudiating the proceedings which were dismissed where the parties went to a hearing on the merits without objection in respect thereof on which the mother attended and gave evidence. [Reg. v. Hughes, 4 Q.B.D. 614; Turner v. Postmaster-General, 5 B. & S. 756; R. v. Doherty, 3 Can. Cr. Cas. 505, referred to.] The effect of a certificate of dismissal of affiliation proceedings under the Illegitimate Children's Act R.S.M. 1913, ch. 92, granted after a hearing on the merits pursuant to Cr. Code, sec. 730 (made applicable to such proceedings by the Summary Convictions Act, R.S.M. 1913, ch. 180, sec. 4), is to bar further proceedings upon a second information before another magistrate for the same matter on production of the certificate; the jurisdiction of the second magistrate is at an end when in hearing the facts relevant to the defence of the previous acquittal or dismissal of the charge the conclusion is clear that the matter before him has been previously disposed of by a competent tribunal. [R. v. Quinn, 10 Can. Cr. Cas. 412, 11 O.L.R. 242, and R. v. Herrington (1864), 3 N.R. 468, referred to; Reg. v. Machen, 14 A. & E. 74; Reg. v. Gaunt, L.R. 2 Q.B. 466, and Williams v. Davies, 11 Q.B.D. 74, distinguished.] Davis v. Feinstein, 24 Can. Cr. Cas. 160, 24 D.L.R. 798.

DEPOSITIONS; WAIVER; BASTARDY ACT: HABEAS CORPUS.

It is not a ground for discharge on habeas corpus where the accused was arrested for default under a filiation order under R.S. N.S. 1900, ch. 51, that no depositions had been taken in the filiation proceedings, if he had consented to the filiation order for he thereby effectively waived the taking of

evidence. [Re Piers, 44 N.S.R. 254, referred to.] R. v. Locke, 24 Can. Cr. Cas. 337.

AFFILIATION; STATUTORY PROCEEDINGS.

Where a county judge hearing an appeal from the dismissal of an information under the Illegitimate Children's Act, R.S.M. 1913, ch. 92, has compelled the accused respondent to give evidence on behalf of the prosecution on the rehearing of the case on appeal pursuant to Cr. Code, sec 752, made applicable by the provincial law, that fact does not furnish any ground for prohibition against his decision in the event of such ruling not being justifiable, as to which quære. Re Sigurdson (No. 1), 25 Can. Cr. Cas. 291, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 313, 28 D.L.R. 376.

AFFILIATION; STATUTORY PROCEEDINGS; COMMITMENT.

A filiation order made under the Illegitimate Children's Act, R.S.M. 1913, ch. 92, may direct payment of a lump sum for past maintenance, a monthly allowance for future maintenance for a fixed term and the giving of a bond for the fulfilment of the order, or in default the payment of a fixed sum in lieu of the maintenance allowance; and imprisonment may be imposed for default in complying with such order. [Davis v. Feinstein, 24 Can. Cr. Cas. 160, 24 D.L.R. 798, 25 Man. L.R. 507, and R. v. Book, 25 Can. Cr. Cas 89, 25 Man. L.R. 480, referred to.] Re Sigurdson (No. 2), 25 Can. Cr. Cas. 313, 28 D.L.R. 376. See also 25 Can. Cr. Cas. 291, 28 D.L.R. 375.

BAWDY HOUSE.

See Disorderly House.

BENCH WARRANT.

See Arrest.

BETTING.

See Gaming; Lottery.

PUBLISHING BETTING INFORMATION.

An unlawful intent to publish, sell, etc., information intended for use in connection with betting on horse-races may be inferred from the fact that the seller of the newspaper which featured "racing tips" was advertised in it as having been appointed "distributor" for the paper. [R. v. Luttrell (1911), 18 Can. Cr. Cas. 295, distinguished.] R. v. Roher, 26 Can. Cr. Cas. 376.

BIAS.

See Disqualification; Trial; Verdict.

BIGAMY.

Extra-territorial offence, jurisdiction of British or Canadian Parliament. 1 Can. Cr. Cas. 172.

Imperial legislation affecting foreign bigamous marriage by British subject. 1 Can. Cr. Cas. 205, 206.

Foreign divorce as a defence; Note. 7 Can. Cr. Cas. 235.

Marriage in belief of invalidity of prior marriage; Mens rea; Cr. Code, secs. 7, 275, 9 Can. Cr. Cas. 155.

AUTHORITIES ON.

On a trial for bigamy it was held that American authorities could not be received. Regina v. Creamer, 10 L.C.R. 404.

EVIDENCE; BURDEN OF PROOF.

It is for the Crown to prove, on an indictment for bigamy, that a person marrying a second time, whose husband or wife has been continually absent from such person for seven years immediately prior thereto, knew such person to be living within that time. Regina v. Fontaine, 15 L.C. Jur. 141.

INDICTMENT FOR.

In an indictment for bigamy, committed in a foreign country, it is necessary to aver that the accused is a British subject, that he was or is a resident in the province, and that he left the same for the purpose of committing the offence. Regina v. McQuiggan, 2 L.C.R. 340.

PROVING FIRST MARRIAGE.

Upon an indictment for bigamy the first marriage must be strictly proved as a marriage de jure. Evidence of a confession by the prisoner of his first marriage is not evidence upon which he can be convicted. Regina v. Ray (1890), 20 O.R. 212.

SECOND MARRIAGE; EXTRA-PROVINCIAL MARRIAGE; LEAVING PROVINCE WITH INTENT TO COMMIT OFFENCE.

The prisoner was convicted of bigamy under 32 and 33 Vict. ch. 20, sec. 58, which enacts that whosoever, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in Canada or elsewhere, is guilty of felony . . . provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in Canada, by any other than a subject of Her Majesty, resident in Canada, and leaving the same with the intent to commit the offence. The first marriage was contracted in Toronto, the second in Detroit, U. S. The Judge at the trial directed the jury that if the prisoner was married to his first wife in Toronto and to the second in Detroit they should find him guilty:—Held, a misdirection, and that the jury should have been told in addition that before they found him guilty they ought to

be satisfied of his being at the time of his second marriage a subject of Her Majesty resident in Canada, and had left Canada with the intent to commit the offence; and held, that it was incumbent on the Crown to prove these matters. Quære, per Wilson, C. J., whether the trial should not have been declared a nullity. Regina v. Pierce, 13 O.R. 226.

SUFFICIENCY OF PROOF OF FIRST MARRIAGE.

On a trial for bigamy, in proof of an alleged prior marriage a deed was produced executed by the prisoner, containing a recital of the prisoner having a wife and child in England, and conveying certain lands and premises to two trustees, in trust to receive and pay over the rents and profits to such wife and child; but with a power of revocation to the prisoner. B., one of the trustees, proved that at the time of the execution of the deed the prisoner informed him that he had quarrelled with his present wife, and had a lawsuit with her; that the place had been bought with the first wife's money, and he wished it to go to her, and that he requested B. to act as trustee and to receive and pay over to them the rents and profits, but B. never paid anything over, nor had he ever written to or heard from such alleged wife:—Held, that this was not sufficient evidence to prove the alleged prior marriage. Regina v. Duff (1878), 29 U.C. C.P. 255.

SEVEN YEARS' ABSENCE OF FIRST WIFE; BURDEN OF PROOF.

On a trial for bigamy, the Crown having proved the second marriage of the prisoner while his first wife was living, it is for the prisoner to prove the absence of the first wife during 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. Druyer, 27 L.C. Jur. 201.

TESTIMONY OF FIRST WIFE; ADMISSIBILITY.

In an indictment for bigamy, the first wife cannot be allowed to give evidence either for or against the prisoner. Regina v. Fontaine, 15 L.C. Jur. 141.

LEAVING CANADA WITH INTENT TO COMMIT; JURISDICTION.

The Parliament of Canada has jurisdiction to constitute the leaving Canada by a British subject resident therein with an intent to perform elsewhere a prohibited act, an indictable offence upon the act itself being performed. Re Bigamy Sections of Code, 1 Can. Cr. Cas. 172.

[Followed in R. v. Brinkley, 12 Can. Cr. Cas. 457.]

FOREIGN DIVORCE AS A DEFENCE.

(1) Where both parties to a marriage in Canada are of Canadian domicile but afterwards became bona fide domiciled in a foreign country, a decree of divorce obtained in the foreign country while they were domiciled there will be valid in Canada as a defence to a prosecution of either for bigamy in having remarried. (2) A decree of divorce granted by a Court foreign to the domicile of both parties, pronounced by consent or collusion of the parties both temporarily resident within its jurisdiction and which recites due proof of grounds sufficient under the foreign law for dissolving a marriage, is invalid in Canada if it be proved that such recital is incorrect and that, in fact, no evidence was given. The King v. Woods, 7 Can. Cr. Cas. 226.

[Followed in R. v. Brinkley, 12 Can. Cr. Cas. 464.]

MENS REA; SEPARATION IN HONEST AND REASONABLE BELIEF THAT OTHER PARTY TO FORM OF MARRIAGE IS ALREADY MARRIED; SUBSEQUENT MARRIAGE OF ACCUSED.

(1) A guilty mind is an essential ingredient of the offence of bigamy, and if a woman, after obtaining information that the man with whom she has gone through a form of marriage is already married, leaves him and marries another man, her honest and reasonable belief that the man she left had a wife living, is a good defence to a charge of bigamy. (2) Semble, the fact of such honest and reasonable belief may be found from the circumstances of the case without strict proof of the man's former marriage. The King v. Sellars, 9 Can. Cr. Cas. 153.

[Disapproved in R. v. Bleiler, 19 Can. Cr. Cas. 250, 1 D.L.R. 878.]

LEAVING CANADA FOR PURPOSE OF CONTRACTING BIGAMOUS MARRIAGE IN FOREIGN COUNTRY.

(1) A foreign divorce obtained by the wife of a British subject domiciled in Canada without service of process on the husband or submission on his part to the jurisdiction of the foreign Court, is ineffective to dissolve a marriage performed in Canada, although the wife had some years before applying for the divorce left her husband and taken up her residence in the foreign country. (2) A British subject married and domiciled in Canada who goes to the United States accompanied by another woman for the purpose of marrying her there and who goes through the form of marriage there with her and forthwith returns with her to Canada, is guilty of bigamy and is properly convicted thereof in Canada under sec. 307 of the Revised Criminal Code 1906, notwithstanding such foreign divorce obtained by his first wife. (3) That part of sec 307 of the Revised Criminal Code 1906 (former sec 275 of the Cr. Code of 1892) which purports to include

in the offence of bigamy punishable by Canadian Courts, the case of a domiciled Canadian leaving Canada with intent to go through a form of marriage with another woman and doing so in a foreign country during his wife's lifetime, in intra vires of the Dominion Parliament. (4) An absence of mens rea is not to be inferred from the knowledge of the husband that a divorce has been decreed by the foreign Court on his wife's application and from his having first obtained legal advice that he could legally marry again. Re Bigamy Sections of Criminal Code (1897), 1 Can. Cr. Cas. 172 followed. The King v. Brinkley, 12 Can. Cr. Cas. 454.

[Referred to in R. v. Hamilton, 17 Can. Cr. Cas. 413; followed in R. v. Bleiler, 19 Can. Cr. Cas. 250, 1 D.L.R. 878.]

PROOF OF FIRST MARRIAGE ON BIGAMY CHARGE.

(1) On a prosecution for bigamy the admission of his first marriage made by the accused after his arrest, and the testimony of witnesses to that marriage which took place in a foreign country affirming that the same took place in the ecclesiastical form usual there, and was followed by cohabitation of the parties, will, if believed, be sufficient proof of the first marriage to support a conviction without expert evidence of the foreign marriage law. [Reg. v. Creamer (1860), 10 Lower Can. R. 404; R. v. Newton, 2 Moo. & Rob. 503; R. v. Simmonsto, 1 C. & K. 164, 1 Cox C.C. 30; and Reg v. Ray, 20 O.R. 212, specially referred to.] (2) An admission of the first marriage is to be received with caution on a prosecution for bigamy, because of the motives which might induce such a representation to be made whether true or not, and because it is an admission of a mixed question of law and fact. The King v. Naoum, 19 Can. Cr. Cas. 102.

[See Taylor on Evidence, 10th ed., sec. 865; 1 Wharton's Crim. Evid., 10th ed., secs. 171, 172. Referred to in Zdrahal v. Shatney, 20 Can. Cr. Cas. 206, 7 D.L.R. 554.]

EVIDENCE; FOREIGN LAWS; BELIEF IN DIVORCE.

(1) In a prosecution for bigamy the clergyman who performed the marriage ceremony is competent to testify that he was an ordained minister and therefore authorized to perform such ceremony. (2) In a prosecution for bigamy the clergyman who, in a foreign country performed the marriage ceremony is competent to give expert evidence regarding the statute from which he derived his authority. [See also Phipson on Evidence, 4th ed., p. 356, Wharton's Cr. Evid., 10th ed., p. 414.] (3) An honest belief on the part of the defendant that he was divorced constitutes no defence to the charge of bigamy either at common law or under secs. 16 and 307 of the Criminal Code (1906). [R. v. Brinkley, 12 Can. Cr. Cas. 454, 14 O.L.R. 434, followed; R. v. Sellars, 9 Can. Cr. Cas. 153, disapproved.] The King v. Bleiler, 19 Can. Cr. Cas. 249, 1 D.L.R. 878.

PROOF OF SECOND MARRIAGE; SUFFICIENCY.

A conviction of bigamy cannot be sustained where the sole proof of the second marriage is an admission of the accused that he and the woman "went through a form of marriage." R. v. Hutchins, 22 Can. Cr. Cas. 27, 12 D.L.R. 648.

ABSENCE AS DEFENCE.

The continuous absence referred to in Cr. Code, sec. 307 (3) as an answer or excuse to a bigamy charge is absence from the person, and it is not essential to a defence under that heading that the absence of the spouse should have been either out of Canada or out of the province in which the first marriage took place and in which both parties were domiciled until their separation, ten years before the alleged bigamous marriage. R. v. Rafuse, 25 Can. Cr. Cas. 161, 28 D.L.R. 182.

PROOF THAT OFFICIATING MINISTER QUALIFIED.

On a charge of bigamy the celebration of the first marriage by a minister of some religious denomination "recognized as duly ordained" (R.S.N.S. ch. 111), is sufficiently shewn by proof that the person officiating was a clergyman de facto in charge of the church where the ceremony took place and made return thereof as "locum tenens." R. v. Adeline Cameron, 29 Can. Cr Cas. 113.

PROOF OF FOREIGN MARRIAGE; DE FACTO OFFICER.

The presumption that a person acting in a public or official capacity in a foreign country is entitled so to act will apply to the proof of the first marriage in a charge of bigamy to support the testimony of the first wife that she and the accused were married by a justice of the peace in one of the United States, such an officer being shewn by proof of the foreign law to be qualified to perform the ceremony, although there was no formal proof of the election of this particular justce to the office. [R. v. Naoum, 19 Can. Cr. Cas. 102, 24 O.L.R. 316, referred to.] R. v. Debard, 31 Can. Cr. Cas. 122.

BODILY HARM.

See Assault.

BOOKS OF ACCOUNT.

TRADER FAILING TO KEEP BOOKS; SUFFICIENCY OF INDICTMENT.

The failure by a trader to keep books of

account must have subsisted for five years before he became unable to pay his debts, otherwise sub-sec. (c) of Cr. Code, sec. 417, as amended by 4 Edw. VII. (Can.) ch. 7 does not apply to make such neglect indictable; and an indictment under the subsection is bad, as disclosing no offence, if it omits all reference to the time for which the failure to keep books had continued. R. v. Porter, 26 Can. Cr. Cas. 39, 28 D.L.R. 555.

BOTTLES.

ILLEGAL DEALINGS WITH BOTTLES OR SYPHONS.

(1) A soda water manufacturer who fills for the purpose of sale bottles having the name of another manufacturer permanently placed thereon is guilty of an indictable offence under sec. 449 of the Criminal Code unless the manufacturer whose name appears on the bottles has given a written consent to such filling. (2) It is not essential to the offence that the name on the bottles should be registered as a trade mark. The King v. Irvine, 9 Can. Cr. Cas. 407.

BRIBERY.

BRIBING WITNESS TO TELL WHAT BRIBER BELIEVES TO BE TRUE.

It is an offence under Code, sec. 180 (a) to attempt to dissuade a witness by bribery or other corrupt means to give in lieu of the witness' own belief that version of the facts which the person making the corrupt offer believed to be the truth. The King v. Silverman, 14 Can. Cr. Cas. 79.

CORRUPT GIFT TO ASSISTANT CITY ENGINEER; BRIBERY OF MUNICIPAL OFFICER.

The receiving of a sum of money from contractors with the municipal corporation by the officer of the corporation having the supervision of the contractors' work as a payment made to corruptly influence him in the performance of his official duties, constitutes the offence of bribery by sec. 161 of the Criminal Code of Canada and by the statutes of the State of Ohio, and extradition will be granted therefor in respect of an indictment in Ohio for such offence. Re Cannon, 14 Can. Cr. Cas. 186.

ATTEMPT TO BUY RECOMMENDATION FOR PUBLIC OFFICE.

It is an indictable offence under Criminal Code, sec. 158 (*f*) to offer a sum of money to a defeated candidate for the legislature who has influence with the Government of the province in respect of the appointment of gaoler; to obtain his assistance and recommendation for the position. **The King v. Youngs, 19 Can. Cr. Cas. 98.**

COUNSELING AND PROCURING.

To establish a conviction for "counselling and procuring" another to bribe a peace officer, it is essential to prove that the peace officer had in fact been bribed. R. v. Ryan, 22 Can. Cr. Cas. 115, 9 D.L.R. 871.

CORRUPT OFFER FOR OFFICIAL INFLUENCE.

To corruptly offer to give a sum of money to a member of the Police Commission appointed for a city by its municipal council from amongst its members, for the purpose of inducing such Commissioner to use his official position to aid in procuring the appointment of a third party as Chief of Police by the Board of Police Commissioners is an indictable offence under sec. 163 of the Criminal Code. [R. v. Vaughan, 4 Burr. 2494; R. v. Casano, 5 Esp. 231; R. v. Pollman, 2 Camp. 229, referred to.] An attempt to improperly procure the appointment of another to the position of Chief of Police for a city by promising a reward to a member of the appointing board for his influence, will not support a charge under sub-section (*b*) of Code, sec. 162 making it an indictable offence directly or indirectly to give a reward for the purchase of an appointment to an office or to agree or promise to do so; such facts do not disclose an attempted sale or purchase of an office under sec. 162 (*b*), but may sustain a count laid for an attempted offence under sec. 163 (*b*) relating to giving or procuring rewards "for any interest, request or negotiation about any office." R. v. Hogg, 23 Can. Cr. Cas. 228, 19 D.L.R. 113.

OFFER TO PERSON TO INDUCE ANOTHER TO VOTE; ELECTION ACT.

It is a bribery offence under the Alberta Election Act, sec. 254, to give or offer money to any person "in order to induce any voter to vote or refrain from voting" at an election which is subject to that Act, but the essence of the offence is, that the payment or offer of the money should itself influence the mind of the voter; the section does not make it an offence to send $10 to a person who had consented to work for one of the election parties to pay for his own time, trouble and expense in getting to the polls five voters who were believed to have already decided to vote on a plebiscite in the way favored by such election party. R. v. Ingram, 26 Can. Cr. Cas. 12.

ATTEMPTS; SOLICITATION OF OFFER TO BRIBE; MUNICIPAL CORPORATION.

For a municipal councillor to ask from a contractor doing business with the municipal council a sum of money for himself for his assistance in obtaining contracts with the municipality and in renewing contracts then current, is not an offence under sec. 161 of the Criminal Code if such offer is not acceded to, nor can the councillor be convicted under sec. 72 of the Code of

attempting the offence of which the contractor would have been guilty under sec. 161 had he paid the money or even offered to pay it. But the unsuccessful solicitation by the councillor is a substantive offence under sec. 60 (*d*) of the Code. R. v. Brousseau, 28 Can. Cr. Cas. 435, affirmed in 29 Can. Cr. Cas. 207, 56 Can. S.C.R. 22, 39 D.L.R. 114.

BROKER.

MARGIN CONTRACTS IN STOCKS AND MERCHANDISE.

A broker, who merely acts as such for two parties, one a buyer, and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the contracting parties to gamble in stocks or merchandise, is not liable to prosecution under sec. 201, pars. (*a*) and (*b*), of the Criminal Code of Canada, nor as accessory under sec. 61. R. v. Dowd, 4 Can. Cr. Cas. 170.

GRAIN EXCHANGE; SALES ON MARGIN; WAGERING CONTRACTS.

Where neither the customer or the broker, in respect of transactions of purchases and sales to be made on a "grain exchange," has in contemplation that delivery of the grain sold should be made or taken under the agreements purporting to be contracts for the sale or purchase of the grain, as the case may be, but it was intended to meet the obligation to deliver by an off-set of a contract to purchase a like quantity of grain and to adjust the differences between the selling and buying prices, the dealing in such differences to make gain or profit by an anticipated rise or fall in the price of the grain is illegal under Cr. Code, sec. 231. The customer buying and selling options through a broker on a grain exchange in connection with which there was a clearing house association, of which his broker was a member, but which association did not include all the members of the "exchange," is not to be assumed to have authorized his broker to close transactions through the clearing house under a system the effect of which would be that no one but his broker became directly responsible to him that the so-called purchases and sales on the exchange made by the broker were set off one against the other so that they became closed by an adjustment of accounts between the clearing house and the broker without regard to the customer; and apart from the question of illegality under Cr. Code, sec. 231, and as regards a customer having no notice of the methods employed, there was a failure to carry out what the broker was commissioned to do under the customer's orders to buy and sell grain on margin for future delivery although it was stipulated that "all purchases and sales are made in accordance with and subject to the rules, regulations and customs of the Winnipeg Grain Exchange." Beamish v. Richardson, 23 Can. Cr. Cas. 394, 16 D.L.R. 855, reversing 21 Can. Cr. Cas. 487, 13 D.L.R. 400.

[Applied in Richardson v. Gilbertson, 28 Can. Cr. Cas. 431, 39 D.L.R. 56.]

GRAIN EXCHANGE; MARGIN TRANSACTIONS.

Dealing in "futures" on the grain exchange where the intent of the transaction is to meet the obligations to deliver by a set-off of a contract to purchase a like quantity of grain, and to adjust the differences between the selling and the buying prices and by thus dealing in such differences to make gain or profit by an anticipated fall in the price of the merchandise, are in contravention of sec. 231 of the Criminal Code. [Beamish v. Richardson, 23 Can. Cr. Cas. 394, 16 D.L.R. 855, 49 Can. S.C.R. 595, applied.] Richardson v. Gilbertson, 28 Can. Cr. Cas. 431, 39 D.L.R. 56.

BUCKET SHOP.

See Gaming; Broker.

STOCK BROKERS; "BUCKET SHOPS."

The provisions of sec. 231 of the Criminal Code (Can.) 1906, ch. 146, are directed toward the suppression of "bucket shops" and not against regular transactions by way of buying and selling options on a stock exchange, the true test as to the inhibition of any such transaction being whether it is real or only fictitious. [Pearson v. Carpenter, 35 Can. S.C.R. 380, applied; Forget v. Ostigny, [1895] A.C. 318, referred to.] "Bucket shops," inhibited by virtue of sec. 231 of the Criminal Code (Can.) 1906, ch. 146, are places where bets are made against the rise or fall of stocks or commodities and where the pretended transactions of purchase or sale are fictitious. [Pearson v. Carpenter, 35 Can. S.C.R. 380, 382, referred to.] In option deals by a customer on a stock exchange his broker has implied authority to act, in the execution of his express authority, according to the custom and usages of the exchange, except as to any custom or usage which is unreasonable and of which the customer had no notice. [Sutton v. Tatham, 10 A. & E. 27; Pollock v. Stables, 12 Q.B. 765; Robinson v. Mollett, L.R. 7 H.L. 802, specially referred to.] A person buying and selling options on a stock exchange which employs a clearing house association, is taken to accept the usage of putting the transactions through the clearing house with the result that the association will, in the ordinary course become the opposite

party in each contract he makes, while he will be represented by his own broker as the nominal principal. Richardson v. Beamish, 21 Can. Cr. Cas. 487, 13 D.L.R. 400, reversed in 23 Can. Cr. Cas. 394, 16 D.L.R. 855.

BURGLARY.

Breaking as an essential; Note. 7 Can. Cr. Cas. 104.

OPENING DOOR WITH INTENT TO STEAL; LIFTING LATCH; TURNING KNOB.

If a person, with intent to steal something out of a shop or store, opens a door leading into it by lifting the latch or turning the knob and then enters the store, although during business hours, for the purpose of carrying out his intention, he may be convicted of shop-breaking under sec. 461 of the Code. R. v. Smith (1907), 17 Man. R. 200.

"BREAKING AND ENTERING;" WINDOW PARTLY OPEN; FURTHER RAISING.

(1) To effect an entrance to a dwelling-house by further lifting a partly open window is not a "breaking" within sec. 407 (*b*) of the Criminal Code. (2) Where an indictment for burglary charges on the breaking and entering with intent and does not charge a breaking out of the dwelling-house, and the evidence shews that two windows had been distributed sufficiently to allow of an entrance, one of them being previously closed and the other partly open, but it does not appear by which of them the entrance was made, it is error to instruct the jury that an entrance by either is sufficient, and the misdirection is a substantial wrong to the accused entitling him to a new trial. The King v. Burns, 7 Can. Cr. Cas. 95.

POSSESSION OF STOLEN PROPERTY; PRESUMPTION.

On a charge of theft, where the circumstances were such as to warrant the jury in drawing an inference of guilt from the prisoner's possession of one of the stolen articles, the Judge's comment in his charge that, if the defendant's witness is disbelieved, the prisoner has not given a "satisfactory account" of how he came into possession of the article is not comment on the failure of the accused to give evidence prohibited by the Canada Evidence Act. The King v. Burdell, 10 Can. Cr. Cas. 365.

BURIAL.

Note on criminal liability for neglect to bury dead body. 2 Can. Cr. Cas. 257.

NEGLECT TO BURY A DEAD BODY.

The neglect to decently bury a dead human body by a person who has undertaken to do so and has removed the body with that expressed intent is an indictable offence under Cr. Code, sec. 206, although such person was, apart from such undertaking, under no legal obligation in respect of the burial. R. v. Newcomb, 2 Can. Cr. Cas. 255.

BUYING AND SELLING OF OFFICES.

The defendant agreed with R., then sheriff of the county of Norfolk, to give him £500 and an annuity of £300 a year, if he would resign; R. accordingly placed his resignation in defendant's hands. The £500 was paid, and certain lands conveyed to secure the annuity; and it was further agreed, that in the event of the resignation being returned, and R. continuing to hold office, the money should be repaid and the land reconveyed, but R. did not undertake in any way to assist in procuring the appointment for defendant. The defendant having been appointed by the Government in ignorance of this agreement, an information was filed against him, and sci. fa. brought to cancel his patent:—Held, an illegal transaction within 5 and 6 Edw. VI. and that an information might be sustained under that Act without reference to 49 Geo. III., which clearly prohibited and made it a misdemeanour. Semble, that the agreement would also have been an offence at common law. The ignorance of the Government, which was averred in the information, as to the illegal agreement, was immaterial. Reg. v. Moodie, 20 U.C.Q.B. 389.

SHERIFF.

The statute 5 and 6 Edw. VI. ch. 16, against buying and selling of offices, is in force in Ontario under 40 Geo. III. ch. 1, as part of the criminal law of England. Any act done in contravention of that statute is indictable, though not especially made so:—Quære, whether it is also introduced by 32 Geo. III. ch. 1, which adopts the law of England "in all matters of controversy relative to property and civil rights. 49 Geo. III. ch. 126, clearly extends 5 and 6 Edw. VI. to Upper Canada, and to the office of sheriff. [Fook v. Bullock, 4 U.C.Q.B. 480, approved.] Reg. v. Mercer, 17 U.C.Q.B. 602; Reg. v. Moodie, 20 U.C.Q.B. 389.

BY-LAW.

See Municipal by-law.

CANADA EVIDENCE ACT.

See Evidence.

CANADA SHIPPING ACT.

See Shipping; Seamen.

CANADA TEMPERANCE ACT.

See Intoxicating Liquors.

CARNAL KNOWLEDGE.

ILLICIT INTERCOURSE WITH FEMALE; PROSTITUTION; PROPRIETOR OF PREMISES KNOWINGLY PERMITTING GIRL UNDER EIGHTEEN TO BE ON PREMISES FOR PURPOSES OF FORNICATION.

To constitute the offence of knowingly permitting a girl under sixteen to be upon premises owned or occupied by the accused for the purpose of being unlawfully and carnally known, it is not essential that the carnal intercourse should be punishable as a distinct offence; and purposes of fornication are included. The King v. Karn, 15 Can. Cr. Cas. 301.

[Distinguished in R. v. Sam Sing, 17 Can. Cr. Cas. 363.]

GIRL UNDER FOURTEEN; FORM OF INDICTMENT.

Indictment that the prisoner, "did and upon one J., a girl under the age of fourteen years . . . feloniously did make an assault, and her, the said J., then and there feloniously did unlawfully and carnally know and abuse," etc. The evidence shewed that the girl consented to whatever the prisoner did to her, and that she was under fourteen years of age. The jury found a general verdict of guilty:—Held, that there was only one offence charged in the indictment, viz., the statutory felony of carnally knowing a girl under fourteen years of age, and that the prisoner was properly convicted:—Held, also, that the words "feloniously did make an assault" charged no offence known to the law, and should be treated as mere aggravation or surplusage. Reg. v. Chisholm (Jacob's case), 7 Man. L.R. 613.

INDUCEMENT BY HOUSEHOLDER TO GIRL UNDER EIGHTEEN TO RESORT TO HIS PREMISES FOR ILLICIT INTERCOURSE "WITH ANY MAN."

(1) On a charge against a householder of inducing or suffering a girl under eighteen to be upon his premises for the purpose of illicit carnal knowledge, it is not necessary for the prosecution to prove that the accused knew the girl to be under the age of eighteen. (2) Where such a charge is brought under Cr. Code, sec. 217 against a man the prosecution must prove that the accused induced or suffered the girl to be on the permises for the purpose of being carnally known by some man other than himself. [R. v. Karn, 15 Can. Cr. Cas. 301, not followed.] The King v. Sam Sing, 17 Can. Cr. Cas. 361.

CARNAL KNOWLEDGE OF GIRL UNDER FOURTEEN; ADDITIONAL COUNT CHARGING LATER SEDUCTION.

(1) One indictment may contain separate counts under Code, sec. 301, for carnal knowledge of a girl under fourteen (Code, sec. 301), and for seduction of the same girl when between fourteen and sixteen charged as having occurred two years later. (2) It is within the power of the trial Court to try the two counts together or in its discretion to direct a separate trial under Code, sec. 857. (3) The trial of both counts together might have been properly proceeded with, notwithstanding that the testimony of the girl in swearing to the first offence tended to shew that at the time of the second offence she was not of "previously chaste character," under Code, sec. 211. (4) A conviction on the first charge will not be set aside because of the withdrawal of the count charging the later offence at the close of the evidence on both counts, when the jury were directed that the evidence as to the count withdrawn was not to be considered on the remaining charge. (5) A child born to the girl as a result of the criminal intercourse with the accused may be exhibited to the jury at the trial, and its likeness to the accused pointed out in proof of the latter's paternity, but it is preferable that witnesses should also be called to testify to the points of likeness. (6) The discretion of the trial Judge under Code, sec. 857 in trying the different counts of an indictment separately or jointly is not subject to review by the Court of Appeal. (Per Maclaren, J.A.) (7) The fact that the second count was struck out by direction of the trial Judge after the close of the evidence, does not have a retroactive effect and make the trial illegal on the ground that that part of the evidence which had been taken upon the second count alone may have influenced the jury on the first count, although withdrawn with the striking out of the additional count. (Per Maclaren, J.A.) (8) The accused having applied to the trial Judge at the close of the evidence to strike out the second count on other grounds cannot well complain that it was subsequently struck out on a ground not urged. (Per Maclaren, J.A.) The King v. Hughes, 17 Can. Cr. Cas. 450.

IMBECILES; EVIDENCE; MARRIAGE.

Upon a charge of unlawful carnal knowledge of a woman under Cr. Code 1906, sec. 298, the fact that the woman was not the wife of the accused may be inferred from the difference in the respective surnames appearing upon the evidence at the trial. [R. v. Mullen (No. 2), 18 Can. Cr. Cas. 80, applied.] If the evidence in support of a charge of unlawful carnal knowledge of a woman without her consent shews

that the latter was in such a condition of imbecility that the jury might reasonably find that she was incapable of giving her consent to the act, a verdict of guilty will not be disturbed. [R. v. Fletcher, 8 Cox C.C. 131, applied; R. v. Fletcher, 10 Cox C.C. 248, and R. v. Barratt, 12 Cox C.C. 498, referred to.] R. v. Walebek, 21 Can. Cr. Cas. 130, 10 D.L.R. 522.

HOUSEHOLDER PERMITTING DEFILEMENT.

The effect of Cr. Code, sec. 217, in making it an offence for a householder to permit a girl under 18 to be upon the premises for the purpose of illicit intercourse with any man "whether with any particular man or generally," is to exclude from its operation the case of the girl coming to the house for the purpose of illicit intercourse with the householder himself. [R. v. Sam Sing, 17 Can. Cr. Cas. 361, 22 O.L.R. 613, followed.] R. v. Sam Jon, 24 Can. Cr. Cas. 334.

CATTLE FRAUDS.

OBLITERATION OF BRANDS; SIMILAR CRIMINAL ACTS.

Evidence of other similar criminal acts may be relevant in a charge of theft if it bears upon the question whether the taking was designed or accidental. Where such evidence is relevant to the issue, it is not necessary for its admission in evidence that it should establish conclusively that the accused had been guilty of such other criminal acts, but it will be received if it tends to shew that the accused had been so guilty. R. v. Collyns, 4 Can. Cr. Cas. 572.

[Referred to in R. v. Paul, 19 Can. Cr. Cas. 348, 5 D.L.R. 347.]

RIGHT TO TRIAL BY JURY; N.W.T. ACT, SEC. 66.

The indictable offence of "stealing cattle" (Code, sec. 331) is theft within the provisions of the North-West Territories Act respecting summary trials without a jury. Although the punishment which may be awarded on a conviction for stealing cattle is greater than that which may be awarded on a conviction for stealing certain other classes of property, a person charged with having stolen cattle the value of which does not, in the opinion of the trial Judge, exceed $200, has not the right in the N.W. Territories to be tried by jury. The Queen v. Pachal, 5 Can. Cr. Cas. 34.

EVIDENCE OF OWNERSHIP; BRAND; EARMARK.

The production of a steer's hide with the prosecutor's brand and earmarks only upon it, and the evidence of the prosecutor that he had owned and had never parted with the steer from which the hide had come, is sufficient proof of identity of the steer as the property of the prosecutor. The Queen v. Forsythe, 5 Can. Cr. Cas. 475.

REGISTERING BRANDS IN RANCHING DISTRICTS; APPROPRIATION AND REBRANDING OF STRAY BRANDED ANIMAL.

(1) Code, sec. 989, as to cattle brands, is intended specially for the protection of cattle owners in ranching districts where cattle run at large and to prevent the appropriation and rebranding of stray cattle by other ranchers. (2) Where the evidence shews that the accused stockman appropriated and rebranded with his own brand a stray three year old steer on which appeared the brand of another rancher and turned the stray steer into his own herd on his home range, there is such proof of possession of the animal as throws upon the accused the onus under Code, sec. 989, of proving on a charge of stealing the steer that the same came into his possession lawfully. The King v. Dubois, 15 Can. Cr. Cas. 485.

CERTIORARI.

Return of amended conviction. 1 Can. Cr. Cas. 219.

Power of Court to amend. 1 Can. Cr. Cas. 132.

Costs of quashing conviction. 1 Can. Cr. Cas. 46, 95.

Costs where not opposed. 1 Can. Cr. Cas. 10.

Grounds of application for, to be shewn by affidavit. 1 Can. Cr. Cas. 156.

Instead of appeal as alternative remedy, discretion as to. 1 Can. Cr. Cas. 153.

Limitation of time for application. 1 Can. Cr. Cas. 367.

Practice as to costs. 1 Can. Cr. Cas. 11.

Renewal of application for, not allowed after failure in consequence of neglect. 1 Can. Cr. Cas. 156.

Notice to magistrate of application for, is a condition precedent. 1 Can. Cr. Cas. 367, 368.

Review of findings of magistrate. 1 Can. Cr. Cas. 31, 114, 118, 126.

Six days' notice required of application for. 1 Can. Cr. Cas. 367.

Note on jurisdiction as to costs in. 5 Can. Cr. Cas. 459.

Convictions under provincial laws in Ontario not removable by, unless appeal inadequate. 5 Can. Cr. Cas. 570.

Amendment of such convictions on appeal or on certiorari. 5 Can. Cr. Cas. 570.

Six days' notice, under Ontario statute, of application for certiorari. 5 Can. Cr. Cas. 571.

Applications for, within six months. 5 Can. Cr. Cas. 571.

Recognizance on motion to quash conviction under provincial law in Ontario. 5 Can. Cr. Cas. 567.

High Court rule of 1886 respecting. 5 Can. Cr. Cas. 568.

Note on preliminary objections. 6 Can. Cr. Cas. 122.

When the appropriate remedy; Alternative of appeal. 7 Can. Cr. Cas. 106.

Second application for, after discharge of first; Note. 7 Can. Cr. Cas. 174.

Note on enforcement of conviction after certiorari. 7 Can. Cr. Cas. 51.

Effect of statutory provision taking away right of. 7 Can. Cr. Cas. 184.

Certiorari practice in British Columbia; Crown Rules 1896. 8 Can. Cr. Cas. 162.

Certiorari; Ontario Crown Rule of 1886; Recognizance. 8 Can. Cr. Cas. 131.

Certiorari; Statutory restriction to cases where an appeal would not be "an adequate remedy;" Question of jurisdiction; Ontario Summary Convictions Act as amended 1902 and 1904. 8 Can. Cr. Cas. 274.

Provincial statute law; Effect of, on certiorari practice; Quebec Code of Procedure. 9 Can. Cr. Cas. 45.

Certiorari to remove case for trial in a superior court. 26 Can. Cr. Cas. 74.

APPEAL TO WRONG SESSIONS; DISMISSAL OF APPEAL; NOTICE OF CERTIORARI.

A conviction having been made within twelve days of the next Sessions, notice of appeal was given to such Sessions, instead of to the second Sessions after the conviction, contrary to the 33 Vict. ch. 27, sec. 1, and the appeal was not heard:—Held, that such notice being inoperative, there had, in effect, been no appeal, and the right of certiorari was therefore not taken away by sec. 2. Held, also, that under the circumstances notice of the Chairman of the Sessions of defendant's intention to move for the certiorari was not required. Regina v. Caswell (1873), 33 U.C.Q.B. 303.

ALLOWANCE OF; QUASHING SAME.

Where the recognizance to prosecute a certiorari, returned after allowance of the latter by the convicting justices, together with the conviction, is substantially and clearly bad, and the conviction may possibly be upheld, the allowance of the certiorari may be quashed on the return of the rule nisi to quash the conviction, without a substantive motion for that purpose; but, otherwise, where the objection is a trivial one, or the conviction is clearly defective and must inevitably be quashed. Regina v. Cluff (1882), 46 U.C.Q.B. 565.

INDICTMENT; REMOVAL FROM SESSIONS INTO SUPERIOR COURT.

An order may be made in a proper case by a superior Court of criminal jurisdiction for a certiorari to remove into the latter Court for trial an indictment pending in an inferior Court, such as a Court of General Sessions in Ontario. Rex v. Atlas, 2 O.W.N. 800.

CERTIORARI IN PLACE OF APPEAL; CONVICTION FOR SELLING INTOXICANTS TO AN INDIAN; FAILURE TO STATE TERM OF IMPRISONMENT; VARIANCE FROM FORMAL CONVICTION.

A certiorari was granted to remove a conviction under the Indian Act (R.S.C. ch. 43) for selling intoxicants to an Indian, where an order nisi had been granted, it being clear upon the face of the proceedings that the justice acted without jurisdiction by reason of the minute of adjudication not stating any term of imprisonment, while the conviction adjudged defendant to be imprisoned for sixty days, although by the Act certiorari is taken away, and a remedy by appeal provided. (Allen, C.J., and Tuck, J., dissenting). Ex parte Hill (1891), 31 N.B.R. 84.

CONVICTION FOR DISORDERLY CONDUCT; BREACH OF BY-LAW; HARD LABOUR IN DEFAULT OF FINE; ALTERNATIVE PAYMENT OF COSTS.

The original conviction was for "acting in a disorderly manner by fighting, and breaking the peace, contrary to the by-law and statute in that behalf;" imprisonment with hard labour was imposed in default of payment of the fine, and the costs were made payable in the alternative to the magistrate or the prosecutor:—Held, bad. Held, also, following Re Bates, 40 U.C.Q.B. 284, that the conviction being for breach of a by-law, the writ of certiorari was not taken away by R.S.O. ch. 74. Regina v. Washington (1881), 46 U.C.Q.B. 221.

OBJECTION AS TO SUFFICIENCY OF NOTICE TO MAGISTRATE.

A preliminary ojection, that the magistrate had not six full days' notice of the application for the writ of certiorari taken on the return of the motion to make absolute the order nisi to quash the conviction, was overruled, on the ground that the magistrate, on the facts appearing in the case, had waived the right to take the objection. Regina v. Whitaker, 24 O.R. 437.

QUASHING OF WRIT.

Writ of certiorari quashed on the ground that it was not signed by the prothonotary. The Queen v. Ward, 21 N.S.R. 19.

DUTY TO FILE AFFIDAVITS.

It is the duty of a party obtaining a rule nisi for a certiorari from a Judge at Chambers to file in the clerk's office the affidavits on which the rule was granted. Ex parte Ryan (1885), 24 N.B.R. 528.

RETURN TO IS CONCLUSIVE.

In this case the depositions returned to the Court by the convicting magistrate under a certiorari, shewed that there was no evidence of a license produced before him, while the affidavits filed on the application to quash stated that the party had a license in fact and produced evidence of it before

the magistrate, who, moreover, himself swore that he believed a license was produced, but it was either not proved or given in evidence:—Held, that the return to the certiorari was conclusive, and that the Court could not go behind it. Per Gwynne, J., that although no new by-law had been enacted by the municipality under sec. 6, sub-sec. 6, of the above Act, the applicant was bound to have paid for the license, which he had in fact obtained, the amount due under the by-law then in force, and that the payment, after complaint, but before judgment, of the sum fixed by the latter Act did not enure to make the license valid from its date. Reg. v. Strachan (1870), 20 U.C.C.P. 182.

REVIEW OF SUMMARY CONVICTION; RETURN OF NEW UNSEALED CONVICTION.

The plaintiff was discharged upon a writ of habeas corpus, the justices having returned to the certiorari issued in aid of the habeas corpus, a paper purporting to be the conviction signed by them but not under their seal. The conviction was not quashed:—Held, that after the return to the certiorari a new conviction could not be returned, and that as the conviction returned was not sealed, it was a nullity and need not be quashed before an action was brought. Bond v. Conmee (1889), 16 Ont. App. R. 398.

REVIEW OF SUMMARY CONVICTION; SUFFICIENCY OF EVIDENCE SHEWING OFFENCE.

When a summary conviction is removed by certiorari and a motion made to quash it, it is the duty of the Court to look at the evidence taken by the magistrate, even where the conviction is valid on its face, to see if there is any evidence whatever shewing an offence, and, if there is none, to quash the conviction as made without jurisdiction, but if there is any evidence at all, it is not the province of the Court to review it as upon an appeal. [Regina v. Coulson, 24 O.R. 246, not followed.] Regina v. Coulson (1896), 27 O.R. 59.

TO REMOVE INDICTMENT AFTER JUDGMENT.

An indictment cannot be removed by certiorari from the assizes after judgment pronounced, for the purpose of applying for a new trial. The Queen v. Smith et al. (1853), 10 U.C.Q.B. 99.

ABSENCE OF A NECESSARY AFFIDAVIT.

Held (per Townshend and Meagher, JJ., Graham, E.J., dissenting), that defendant was prohibited from obtaining a writ of certiorari in the absence of the affidavit required by the Acts of 1889, ch. 17, sec. 7, that defendant did not by himself or his agent, etc., sell the liquor contrary to law. The Queen v. McDonald (1894), 26 N.S.R. 402.

AMENDING CONVICTION AFTER THE RETURN OF.

Held, that an amended conviction cannot be put in after the return of a certiorari. [See Reg. v. MacKenzie, 3 O.R. 165, also Regina v. Bennett, 3 O.R. 45.] Regina v. Elliott, 12 O.R. 524.

CANADA TEMPERANCE ACT; CONVICTION UNDER; IRREGULAR SERVICES.

Application for certiorari to remove a conviction under the Canada Temperance Act on the ground of insufficient service or for want of service of the summons. The constable went to residence of defendant in the county where the offence was committed and knocked at the door. A young woman opened a window and asked him what he wanted. He said he wanted to see defendant. She replied that defendant was not home. The constable then said he had a paper for defendant, whereupon the young woman left the window and the constable threw the paper (copy of summons) into the room through the window. This was on December 1st, 1896. The constable swore to these facts on the return of the summons on December 4th, and also that he had tried to open the outside door of defendant's house at the time of service, but could not do so, and that the young woman appeared to be over sixteen years of age. He also swore that he had been at this house on a previous occasion on other business, and this same young woman had spoken of the defendant as her mother. After taking the evidence of the constable the justices adjourned the Court until December 11th, and afterwards sent a registered letter to defendant containing a notice that the trial had been adjourned. On December 11th the Court again met and proceeded with the evidence, and a conviction was made against defendant, who did not appear. Defendant obtained a rule nisi on her own affidavit stating that she was not at the place spoken of, and did not arrive home until December 5th, and that she had no knowledge of the alleged delivery of a paper writing against her:—Held, that the evidence of service given by the constable was good prima facie evidence of service, and that defendant's affidavit was not sufficiently explicit and that there had been sufficient notice to her of the time and place of hearing, and that being so, it rested upon the defendant to shew affirmatively that she had not received the registered letter with the notice of adjournment. Rule discharged. Ex parte Quirk (1897), 33 C.L.J. 405.

INQUIRE INTO JUSTICES' JURISDICTION; NO STATUTORY OFFENCE SHEWN; QUASHING CONVICTION.

Defendant was convicted under 8 Vict. ch. 45, "for that he, Jacob Hespeler, of the village of Preston, Esq., did, on Sunday,

the 26th day of July last past, at the township of Waterloo, work at his ordinary calling, inasmuch as he and his men did make and haul in hay on said day." He appealed to the quarter Sessions where the question was tried before a jury, and the conviction affirmed. The proceedings having been removed by certiorari to this Court:—Held, (1) That the statute 13 and 14 Vict. ch. 45, extended to this case, and authorized the trial by jury, though in 8 Vict. ch. 45, there is a provision for appeal to the Sessions but not for such trial. (2) That a certiorari would lie, not to examine the finding of the jury on the facts, but to determine whether the justices had exceeded their jurisdiction. (3) That the conviction must be quashed, as not shewing any offence within the statute, for defendant was not alleged to be of nor to have worked at any particular calling. Semble, that it was also bad, for not negativing the exception in the statute, by stating that the work done was not one of necessity. Hespeler v. Shaw (1858), 16 U.C.Q.B. 104.

INTITULING PAPERS ON A MOTION TO QUASH.

On application to quash a conviction, as soon as the return to the certiorari has been filed the cause is in the Court, and the motion paper and rule nisi must be intituled in the cause. Where the rule was not so intituled, it was discharged, but, being on a technical objection, without costs; and under the circumstances an amendment was not allowed. Regina v. Mortson, 27 U.C.Q.B. 132.

INVALID CONVICTION; BURDEN OF PROOF TO SUSTAIN VALIDITY.

When a bad conviction is made, a good conviction cannot be made and returned to the writ of certiorari after the conviction has been filed in the police office, and the onus of shewing that the bad conviction was not filed before the certiorari is on the party endeavouring to sustain the conviction, the presumption being that it was filed. (Per Ritchie, J.) The Queen v. McKenzie, 23 N.S.R. 6.

LEAVE TO TAKE OUT JOINTLY OR SEVERALLY; JOINT RULE BAD.

In Michaelmas term applicant moved for rule nisi for certiorari to remove several convictions for assault against him and others, the motion being in the alternative to take out a separate rule against each conviction or a joint rule against all jointly, as he should decide. The motion being granted, he subsequently took out a joint rule against all the convictions:—Held, on motion to make the rule absolute, that a separate rule should have been taken out in each case. Rule discharged. Ex parte Landry (1900), 36 C.L.J. 169.

MOTION TO QUASH CONVICTION; RULE OF COURT REQUIRING RECOGNIZANCE WITH SUFFICIENT SURETIES; NECESSITY FOR AFFIDAVITS OF JUSTIFICATION.

(1) The Court or Judge has no jurisdiction to entertain a motion to quash a conviction moved up by certiorari, unless the defendant is shewn to have entered into a recognizance with one or more sufficient sureties to prosecute such certiorari with effect and pay such costs as may be awarded against him, etc., as provided by rule of this Court of 27th of April, 1889. (2) The Court must have an affidavit of justification before it, upon which it can judge of the sufficiency of the sureties. Regina v. Ah Gin (1892), 2 B.C.R. 207.

NO SECOND CERTIORARI AFTER PROCEDENDO AWARDED; RULE NISI.

Held, that a second writ of certiorari could not be issued after the issue of a writ of procedendo on the first writ of certiorari being set aside. Per Ritchie, J., that the proceedings on the Crown side must be by rule nisi, not by notice of motion. The rules under the Judicature Act do not refer to proceedings on the Crown side. The Queen v. Nichols, 21 N.S.R. 288.

NOTICE OF APPLICATION FOR TO BE GIVEN TO MAGISTRATE; EFFECT OF OMISSION.

Notice of application for a writ of certiorari must be given to the convicting magistrate, and the want of such notice is good cause to be shewn against a rule nisi to quash the conviction. Regina v. Peterman (1864), 23 U.C.Q.B. 516.

NOTICE OF APPLICATION FOR; IRREGULARITY.

Where on an application made after notice to the convicting justices for a rule for a certiorari the rule was refused, and on a subsequent ex parte application on the same material the rule was obtained, it was:—Held, affirming the decision of Galt, J., that the notice of the first application would not enure to the benefit of the defendant on his second application, and that the certiorari was regularly obtained for want of notice to the convicting justices; and a rule to quash the conviction was therefore discharged. Cameron, J., dissented, being of opinion that a substantive motion should be made to quash the writ of certiorari; and that the conviction being before the Court under a writ of certiorari unsuperseded, the validity of the conviction should be inquired into. Regina v. McAllan (1880), 45 U.C. Q.B. 402.

NOTICE OF MOTION; AFFIDAVIT TO DISCLOSE IDENTITY OF MAGISTRATE; DEFECTIVE AFFIDAVIT NOT WAIVED.

The affidavit of service of notice of motion for a certiorari to remove a conviction must identify the magistrates served as the convicting magistrates. But an affidavit defective in this respect was allowed to be

amended, the time for moving for the certiorari not having expired. Such an objection was held not to be waived by the attorney having accepted service for the convicting justices, and undertaken to shew cause. The notice need not be served on the private prosecutor. Re Lake (1877), 42 U.C.Q.B. 206.

NOTICE OF MOTION; PAPERS IN CUSTODY OF COUNTY COURT; AMENDMENT.

S. having been convicted before magistrates, took proceedings to appeal to the County Court Judge, and procured the papers to be sent to his clerk. Afterwards and before any proceedings by the Judge, he had the papers return to the convicting justices. Upon notice to the justices of an application for a certiorari to be directed to them, he now moved for the writ:—Held, (1) That the return of the papers to the justices was irregular and that the certiorari should go to the County Court Judge, he being the legal custodian of the papers sent to him for the purpose of the appeal. (2) That the notice for a certiorari to be directed to the convicting justices could not be amended. It was then contended that the statute 13 Geo. II. ch. 18, sec. 5, entitles the convicting justices only to the six days' notice and that the County Court Judge was not entitled to any notice of motion for the writ and that the notice to the justices might be treated as a nullity and the order now made for the writ to go directed to the County Court Judge. But, held, that although the justices only may be entitled to statutory notice, yet, where the records of the conviction have passed into the custody of another officer not entitled to notice, the justices ought to have notice of the motion for the writ proposed to be directed to such officer, and that a new motion must be made for certiorari to the County Court Judge and notice thereof given to the justices. Present application dismissed without costs. It is not necessary that the affidavits by which objections are raised should be sworn and filed before service of notice upon the magistrates. The notice must shew who the moving party is. The practice of arguing the validity of the conviction upon the application for the certiorari does not apply, except where the parties consent. The pendency of an appeal to the County Court Judge does not interfere with a certiorari; unless, at all events, the question of jurisdiction is not raised upon the appeal. R. v. Starkey, 6 Man. L.R. 588.

ORDER NISI; NEGLECT TO SERVE AFFIDAVITS AS GROUNDS FOR DISCHARGING RULE.

Where a party obtaining an order nisi for a certiorari was directed by the Judge to serve the prosecutor with copies of his affidavits and grounds, but neglected to do so; the order was discharged. Ex parte Doherty (1887), 26 N.B.R. 390.

PRACTICE; RETURN; PROCEDENDO; REVIEW OF CONVICTION ON OTHER GROUNDS FROM MOTION.

Where proceedings have been removed into this Court by certiorari, it is not necessary to take out a rule to take the return off file before applying for a procedendo; it being sufficient that leave has been granted to remove the return from the files. Where a conviction has been removed by certiorari and affirmed, the Court will not on an application for a procedendo to the convicting justice, examine into the validity of the conviction on grounds not taken on the motion to quash it. Regina v. White and Perry (1886), 25 N.B.R. 483.

QUASHING PROCEEDINGS FOR WANT OF PROSECUTION.

Rule asolute in the first instance to quash a certiorari on the ground that no steps had been taken within a year. The Queen v. Rines, 17 N.S.R. 87.

RECOGNIZANCE; SUFFICIENCY; ABSENCE OF AFFIDAVIT OF JUSTIFICATION.

By sec. 90 of R.S.C., ch. 178, and the rule of Court thereunder, no motion to quash any conviction brought before any Court by certiorari shall be entertained unless the defendant is shewn to have entered into a recognizance with one or more sufficient sureties:—Held, that the sufficiency of the surety is not shewn by the mere production of the recognizance, but there must be evidence on which the Court can say they were sufficient sureties. Where therefore, there was no affidavit of justification to the recognizance it was held not to comply with the statute. R. v. Addison, 17 O.R. 729.

RECOGNIZANCE; SUFFICIENCY OF SURETYSHIP; ABSENCE OF AFFIDAVIT OF JUSTIFICATION.

By sec. 90 of R.S.C., ch. 178, and the rule of Court thereunder, no motion to quash any conviction brought before any Court by certiorari shall be entertained unless the defendant is shewn to have entered into a recognizance with one or more sufficient sureties:—Held, that the sufficiency of the suretyship is not shewn by the mere production of the recognizance, but there must be evidence on which the Court can say they were sufficient sureties. Where, therefore, there was no affidavit of justification to the recognizance it was held not to comply with the statute. Regina v. Richardson, Regina v. Addison (1889), 17 O.R.729.

REVIEW OF CONTEMPT ORDER; JURISDICTION OF COUNTY COURT TO PUNISH FOR; REVIEW BY SUPERIOR COURT.

Every Court of record has the power to punish for contempt, but if the Court is one of inferior jurisdiction, the Superior Court may intervene and prevent any usur-

pation of jurisdiction by it. Where, therefore, a barrister, during the sittings of the County Court of Carleton, used words which might have been and were, by the learned Judge, considered to have been used to insult the Court, on being told that unless he offered some apology he would be fined, to which he replied that he had nothing to say, and he was then adjudged guilty of contempt and fined, upon motion for certiorari to remove the order:—Held, that there was no excess of jurisdiction, and that this Court could not interfere. Ex parte Lees, 24 U.C.C.P. 214.

REVIEW OF EVIDENCE INSTEAD OF FACTS ON CERTIORARI; MOTION TO QUASH AFTER CERTIORARI.

Defendant was convicted before the stipendiary magistrate for the police district of Yarmouth, of having unlawfully sold intoxicating liquor contrary to the provisions of the Canada Temperance Act, 1878. A writ of certiorari having issued, the magistrate sent up the minutes of the evidence taken before him, as part of his return instead of returning the facts:—Held (following Hawes v. Hart, 18 N.S.R. 421, that the evidence being before the Court, it might be looked at to determine the question of jurisdiction. It appeared from the minutes of evidence that defendant, who was keeper of an hotel or boarding house, had gone out and purchased or procured liquor for her boarders, with money given her for that purpose, acting merely as a messenger, and without making any profit:—Held, that this evidence was not sufficient to support the conviction. Quære, whether points which had been discussed on the application for the writ of certiorari could be brought before the Court a second time on the motion to quash the conviction. The Queen v. Macdonald, 19 N.S.R. 336.

REVIEW OF FINDING OF THE MAGISTRATE.

Defendant, a druggist in the city of Toronto sold five cents worth of peppermint lozenges at his shop on a Sunday. The purchaser did not ask for them as medicine, he had no doctor's certificate, and he was asked no questions. It was shewn that peppermint lozenges were generally kept and sold by druggists as medicine. Defendant having been convicted on this evidence under the "Act to Prevent the Profanation of the Lord's Day," C.S.U.C. ch. 104, and fined $20 and costs, the conviction was removed by certiorari:—Held, (1) That the finding of the magistrate as to whether the lozenges were or were not medicine was subject to review by this Court. (2) That there was no evidence to sustain the conviction:—for the article, sold as it was by a druggist, must be considered prima facie a medicine, though it was expressly asked for or sold as such, and the case was within the exception in the Act, "selling drugs and medicine," Wilson, J., doubting. The conviction, therefore, was quashed. The Court will not quash a conviction upon the weight or upon a conflict of evidence, but there must be reasonable evidence to support it, such as would be sufficient to go to the jury upon a trial. The extreme severety of the fine, under the circumstance of the case, remarked upon. Regina v. Howarth (1873), 33 U.C.Q.B. 537.

REVIEW OF MAGISTRATE'S JUDGMENT; VARIANCE BETWEEN INFORMATION AND CONVICTION; VALIDITY; CANADA TEMPERANCE ACT.

An order nisi for a certiorari to remove a conviction under the Canada Temperance Act was granted on the ground that the information and summons were for an offence committed between 28th November and 15th December, while the conviction was for an offence between 29th November and 1st December, and the evidence shewed the offence was committed between 1st December and 15th December:—Held, following Ex parte Daley, that the magistrate, having jurisdiction by virtue of a good information and summons, certiorari was taken away, and the Court could not look into the evidence. Order discharged. Ex parte Sarah McKinnon, 33 C.L.J. 503.

TAKEN AWAY AFTER APPEAL.

On motion for certiorari, held, that the conviction having been affirmed in appeal certiorari was taken away except for want or excess of jurisdiction, and that there was no such want or excess of jurisdiction, inasmuch as the justices and the Quarter Sessions had jurisdiction to determine whether the defendant's evidence was admissible or not, and that such determination, even if erroneous in law, could not be reviewed by certiorari. Regina v. Dunning, 14 O.R. 52.

TAKEN AWAY WHERE MAGISTRATE HAS JURISDICTION.

Where a defendant submits to examination before a magistrate it is too late afterwards to object to its propriety. In cases where a magistrate has jurisdiction certiorari is asolutely taken away, but an appeal to the Session still exists, which, however, is itself also taken away by sec. 111 of the Canada Temperance Act, 1878, where the conviction is before a stipendiary magistrate. Regina v. Ramsay, 11 O.R. 210.

UPON DISMISSAL OF APPEAL NOT ON THE MERITS; WITNESS FEES.

When notice of appeal is given for the wrong sessions, and the appeal is not heard on the merits, the right to certiorari is not taken away by sec. 84 R.S.C. ch. 178. Sec. 58 of the same Act authorizes justices of the peace to allow witness fees. Regina v. Becker, 20 O.R. 676.

WHAT IS TO BE AMENDED; POWER OF JUSTICES.

Words printed on a schedule to an Act of Parliament, and which appear to contradict the body of the Act, are to be rejected as of no effect. Semble, on the return to a certiorari the justices are entitled, and may be required, to amend their conviction on matters of form. But it is not open to them on pretences of amending a conviction, to omit any vital part of what the conviction really contained, nor to introduce any new facts which are of vital importance to support the conviction. Semble, though the Court will not look at the depositions before the justice to see whether they were justified in their conclusion as to any matter of fact found in the conviction, yet the Court may look at the depositions where it is alleged that they contained nothing whatever to justify the finding of the alleged fact, or the conclusion on a point of mixed law and fact, e.g., as to the infliction of grievous bodily harm. Thus, in the present case, the actual conviction was for "striking on the head with a stick and cutting" the complainant. Semble, it would not be permissible, under colour of amending the conviction, to omit in the return all mention of "cutting." The original conviction did not allege any consent by the accused, such consent being necessary to give the magistrate jurisdiction. Semble, it would not be permissible, under colour of amending, to state as a fact in the returned conviction that the accused had given consent. And semble, the Court would examine the depositions to see whether (as alleged by the applicant), they contained no evidence whatever of any cut being inflicted, or any cutting instrument being used, or whether the injuries proved in the evidence did in law amount to grievous bodily harm. Houghton's Case (1877), 1 B.C.R. Pt. I, 89.

WHERE RIGHT OF APPEAL EXISTS; SUMMARY CONVICTIONS; ADMISSION OF GUILT.

The Court refused to grant a certiorari to remove a conviction under the Summary Convictions Act, where the defendant had appeared and pleaded guilty, and where there was a right of appeal. Ex parte Barberie, 31 M.B.R. 368.

WRIT DIRECTED TO AND RETURNED BY THE CLERK OF THE PEACE.

On a motion to quash a conviction by a justice of the peace, which had been appealed to the County Court Judge, an objection that the writ of certiorari was improperly directed to, and returned by, the clerk of the peace and county attorney, instead of the County Court Judge or magistrate, was overruled. Regina v. Frawley, 45 U.C.Q.B. 227.

CONVICTION BY HARBOUR COMMISSIONERS.

(1) The appeal to the Quebec Court of Queen's Bench, Crown side, provided in Criminal Code, sec. 879, does not apply to a conviction by the harbour commissioners, in their capacity of the pilotage authority depriving a pilot of his license. (2) Such a conviction is subject in the Province of Quebec to proceedings by certiorari to the Supreme Court on proof of due cause for revocation. Arcand v. Montreal Harbour Commissioners, 4 Can. Cr. Cas. 491.

[Followed in Perrault v. Montreal Harbour Commissioners, 4 Can. Cr. Cas. 502.]

ACTS NONJUDICIAL.

Certiorari lies only to inferior tribunals or officers exercising judicial functions, and the act to be reviewed must be judicial in its nature. The Court has no jurisdiction to review or quash a ministerial or legislative Act. Re New Glasgow, 1 Can. Cr. Cas. 22.

AMENDMENT OF CONVICTION; POWERS OF.

To authorize the amendment of a conviction under Cr. Code, sec. 889, the Court or Judge must from the depositions be satisfied that, if trying the defendant in the first instance, the Court or Judge would have convicted upon that evidence. R. v. Herrell, 1 Can. Cr. Cas. 510.

[Referred to in R. v. Law Bow, 7 Can. Cr. Cas. 469.]

AMENDMENT; MAGISTRATE'S DISCRETION.

The Court should not amend a conviction if in doing so it has to exercise the discretion of the magistrate. Ex parte Nugent, 1 Can. Cr. Cas. 126.

[Referred to in R. v. Whiffin, 4 Can. Cr. Cas. 144; R. v. Lystad, 15 Can. Cr. Cas. 237.]

WHERE CONVICTION BAD FOR UNCERTAINTY.

A conviction bad on its face for uncertainty should be amended by the Court to which removed by certiorari, only when such Court can conclude on the evidence that an offence is thereby proved. R. v. Coulson, 1 Can. Cr. Cas. 114.

[Referred to in R. v. Murdock, 4 Can. Cr. Cas. 91; Collins v. Horning, 6 Can. Cr. Cas. 514; R. v. Couture, 15 Can. Cr. Cas. 150; applied R. v. Oberlander, 16 Can. Cr. Cas. 298.]

STATUS OF PROSECUTOR; NO LAPSE ON DEATH OF INFORMANT.

(1) Where an order nisi to quash a conviction has been issued, but before service of same upon the informant prosecutor the latter died, the proceedings do not lapse and can be properly continued by serving the magistrates. (2) The informant in a criminal matter is not a party to the record in certiorari proceedings, although his name appears and although he is under liability for costs and has given a recognizance for same. The Queen v. Fitzgerald, 1 Can. Cr. Cas. 420.

ALTERNATIVE RIGHT OF APPEAL.

Where a statute makes provision for an appeal from a summary conviction, the discretion of the Court as to granting a certiorari should be exercised by refusing the latter unless special circumstances are shewn therefor. Ex parte Ross, 1 Can. Cr. Cas. 153.

[Disapproved in Re Traves, 10 Can. Cr. Cas. 63; followed in R. v. Herrell (No. 2), 3 Can. Cr. Cas. 19.]

COPY OF PROCEEDINGS BELOW.

On motion for a certiorari it is necessary to produce a copy of the perceedings sought to be removed. Ex parte Emmerson, 1 Can. Cr. Cas. 156.

COSTS.

Costs of quashing a conviction by certiorari proceedings are not awarded except in cases of miscondiet of the informant or of the justice. R. v. Banks, 1 Can. Cr. Cas. 370.

[Referred to in R. v. Rondeau, 9 Can. Cr. Cas. 523, 5 Terr. L.R. 483; Kokaliades v. Kennedy, 18 Can. Cr. Cas. 502.]

Costs of certiorari proceedings were refused to the justices as against the defendant in a case where the application was justifiable at the time it was launched. Re Plunkett, 1 Can. Cr. Cas. 365.

[Followed in R. v. Barre, 11 Can. Cr. Cas. 1, 15 Man. L.R. 420.]

MANITOBA PRACTICE ACT.

The Queen's Bench Act (Man.), 1895, does not apply to affect the practice in certiorari proceedings, and an application to quash a conviction is to be made by rule nisi, and not by notice of motion. R. v. Beale, 1 Can. Cr. Cas. 235.

MUNICIPAL RESOLUTION.

A town council which has passed a resolution to pay informers, other than the inspector, the costs and a proportion of the fine when collected in prosecutions under the Canada Temperance Act, does not thereby exercise a judicial function, and such a resolution is therefore not reviewable by certiorari. Re New Glasgow, 1 Can. Cr. Cas. 22.

NOT AN "APPEAL."

Proceedings by way of certiorari against a summary conviction do not constitute an "appeal" under Cr. Code, sec. 897. R. v. Graham, 1 Can. Cr. Cas. 405.

NOTICE OF MOTION; STATUTORY REQUIREMENT.

A rule nisi for a certiorari made returnable six days or more after service thereof is not a sufficient compliance with the statute (Imp.), 13 Geo. II. ch. 8, sec. 5, which requires six days' previous notice of the motion for a certiorari to be given to the justices. Re Plunkett, 1 Can. Cr. Cas. 365.

PRACTICE; APPEAL.

An ex parte order made by a Judge of the High Court of Justice (Ontario) in a certiorari proceeding in a criminal matter is not subject to review or to be set aside by another Judge sitting in "Weekly Court," but is appealable to a Divisional Court of the High Court sitting en banc. Re Graham, 1 Can. Cr. Cas. 405.

PRACTICE; COPY OF PROCEEDINGS.

A rule nisi for certiorari was quashed in default of a copy of the proceedings sought to be removed being produced. Ex parte Emmerson, 1 Can. Cr. Cas. 156.

REVIEW OF FINDINGS.

Findings of fact by the magistrate are not open to review on motion to quash conviction in certiorari proceedings, if there was evidence from which he might draw the conclusion he did. Ex parte Coulson, 1 Can. Cr. Cas. 31.

[Referred to in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

RULE NISI; GROUNDS OF MOTION.

Objections on account of any omission or mistake in a conviction made by a magistrate must be set forth in the rule nisi in certiorari proceedings, or the same will not be allowed. R. v. Beale, 1 Can. Cr. Cas. 235.

STATUTORY NOTICE TO JUSTICES.

The Imperial Statute, 13 Geo. II. ch. 8, sec. 5, is in force in British Columbia as well as in Ontario, and six days' previous notice of the motion for a certiorari must be given to the justices. Re Plunkett, 1 Can. Cr. Cas. 365.

REVIEW OF FACTS WHERE NO APPEAL.

Semble, that, whether or not a conviction be good on its face, the Court may on certiorari go into the facts, where the right of appeal to the General Sessions upon both law and fact has been taken away by statute. R. v. Hughes, 2 Can Cr. Cas. 5.

SUMMARY PROCEEDINGS; DEFECT IN INFORMATION; WAIVER.

If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the defendant appears thereon and pleads to the charge, the proceedings will not be quashed on certiorari because it is afterwards shewn that the information was not in fact sworn at such time and place. Ex parte Sonier, 2 Can. Cr. Cas. 121.

[Referred by Meagher, J., dissenting in R. v. Ettinger, 3 Can. Cr. Cas. 398.]

AWARDING COSTS UPON; PRACTICE IN BRITISH COLUMBIA.

The practice in certiorari proceedings of never awarding costs either in favour of or against the Crown is to be considered as no longer in force in British Columbia. R. v.

Little, 2 Can. Cr. Cas. 240.

SUMMARY CONVICTION; VARIANCE; MISTAKE.

If by mistake an information against the same defendant on another charge for unlawfully selling intoxicating liquor is returned on a certiorari to remove the proceedings in respect of an offence of keeping liquor for sale, the magistrate's affidavit may be received to explain the apparent variance between the information and the conviction, and the conviction should not be quashed if the explanation is satisfactory. Where the variance in the date of the offence as it appears in the information returned with the conviction upon a certiorari is manifestly a clerical error, and the proceedings are otherwise regular, the conviction should not be quashed. Ex parte Kavanaugh, 2 Can. Cr. Cas. 267.

SUMMARY CONVICTION; REVIEW OF FINDINGS.

The Court will not review on certiorari the magistrate's finding upon a question of fact which he was competent to try, although an affirmative finding as to such fact is essential to the validity of the conviction. R. v. Cunerty, 2 Can. Cr. Cas. 325.

STATUTORY RESTRICTION OF CERTIORARI PROCEEDINGS.

The Liquor License Act of Nova Scotia, 1895, sec. 117, applies to prohibit the granting of a certiorari in respect of any conviction thereunder, unless the applicant makes an affidavit negativing the charge as laid in the information; and without such affidavit, the Court cannot grant the writ, although the sole questions raised are as to the validity of the License Act as regards wholesale transactions, and as to whether the conviction which shewed the exact quantity of liquor admittedly sold was not a wholesale transaction. R. v. Bigelow, 2 Can. Cr. Cas. 367.

APPEAL FROM ORDER GRANTING WRIT; PRACTICE.

Where an appeal is pending from an order granting a writ of certiorari, but the writ has, notwithstanding the appeal, been issued and the conviction has been returned thereunder, the Court will postpone the hearing of a motion to quash the conviction until after the appeal is disposed of. The same rule applies where the certiorari is in respect of a forfeiture only, and the motion to quash is in respect of a conviction upon which the forfeiture order is based, and which was returned with it. R. v. Hurlburt, 2 Can. Cr. Cas. 331.

RECOGNIZANCE; PRACTICE IN ONTARIO.

In Ontario a surety upon a recognizance filed on a motion to quash a summary conviction, must justify in the sum of $100 over and above any amount for which he may be surety as well as over and above his debts. A rule of Court passed before the enactment of the Code under the section of the Summary Convictions Act (Can.) now incorporated in the Criminal Code as sec. 892, as to recognizances on motions to quash convictions, remains in force as a rule under the Code without being repassed. R. v. Robinet, 2 Can. Cr. Cas. 382.

RECOGNIZANCE; SUFFICIENCY OF JUSTIFICATION BY SURETIES.

An affidavit of justification upon a recognizance given pursuant to rule of Court passed under sec. 892 of the Criminal Code, need not state that the surety is worth the amount of the penalty over and above other sums for which he is surety. A rule made under sec. 892 of the Criminal Code requiring sufficient sureties for a specific amount is complied with if the sureties justify as being possessed of property of that value, and swear that they are worth the amount over and above all their just debts and liabilities, and over and above all exemptions allowed by law. R. v. Ashcroft, 2 Can. Cr. Cas. 385.

APPEAL PROCEEDINGS AS AFFECTING RIGHT TO CERTIORARI.

The mere filing of a recognizance by the defendant for an appeal from a summary conviction does not deprive him of his right to a writ of certiorari to have the conviction quashed for want of jurisdiction. R. v. Ashcroft, 2 Can. Cr. Cas. 385.

FAILURE TO SHEW TERRITORIAL JURISDICTION.

A summary conviction which does not shew on its face that the alleged offence was committed within the territorial jurisdiction of a magistrate should not be quashed, if the warrant which was issued to compel the attendance of the accused to answer the charge was returned with the certiorari and shews that the accused was charged with an offence within the magistrate's territorial jurisdiction. Semble, the "depositions," upon perusal of which the Court may be satisfied that an offence has been committed over which the justice has jurisdiction and may under Cr. Code, sec. 889 decline to quash a conviction for insufficiency, etc., will include the caption to the deposition; and if such caption states that the "charge" was read over to the accused, the Court may refer to the statement of the charge contained in the "warrant to apprehend," in order to ascertain whether or not the evidence taken related to an alleged offence committed within the district for which the magistrate acted. R. v. McGregor, 2 Can. Cr. Cas. 410.

[Followed in R. v. Can. Pac. R. Co., 14

Can. Cr. Cas. 2; distinguished in R. v. Reedy, 14 Can. Cr. Cas. 262.]

AFTER JUDGMENT ON STATED CASE.

A conviction returned by justices in compliance with the statutory requirement to the office of a Superior Court is regularly before the Court and can be dealt with on a motion to quash, without the necessity of a writ of certiorari. (Per Scott and Rouleau, JJ.) The conviction was not regularly before the Court, and a writ of certiorari to bring it there was necessary before a motion to quash the conviction could be properly entertained. (Per Richardson and Wetmore, JJ.) The grounds taken on the motion to quash the conviction being the same as those taken and disposed of by a single Judge on a stated case, the matter was res judicata. (Per Curiam.) R. v. Monaghan, 2 Can. Cr. Cas. 488.

[Referred to in R. v. Ames, 10 Can. Cr. Cas. 56; R. v. Gehrke, 11 Can. Cr. Cas. 110; discussed in R. v. Earley (No. 1), 10 Can. Cr. Cas. 283.]

APPEAL; DISCRETION TO REFUSE CERTIORARI.

Where there is a right of appeal from a summary conviction, and it appears upon an application for a certiorari to bring up the convicton to be quashed that the ground alleged therefor is more properly the subject of an appeal, the discretion of the Court should be exercised by refusing the certiorari. R. v. Herrell (No. 2), 3 Can. Cr. Cas. 15.

[Referred to in Johnston v. O'Reilly, 12 Can. Cr. Cas. 220; specially referred to in R. v. Gallagher, 18 Can. Cr. Cas. 351.]

RETURN OF AN AMENDED CONVICTION.

A summary conviction which illegally imposes imprisonment with hard labour in default of payment of the fine, may be amended at any time before it is acted upon, by the return of an amended conviction omitting the words "with hard labour" but in other respects conforming to the adjudication. Such an amended conviction may be returned in answer to certiorari process although the first conviction has been transmitted by the magistrate, pursuant to a statutory requirement, to the Court to which an appeal might be taken therefrom. R. v. McAuley, 3 Can. Cr. Cas. 110.

[Referred to in R. v. Kirwin, 20 Can. Cr. Cas. 181.]

ENFORCEMENT OF CONVICTION AFTER CERTIORARI GRANTED.

If the writ of certiorari issued to remove a summary conviction into the High Court of Justice was served only upon the clerk of the peace with whom the conviction was filed, and not upon the convicting magistrate, and the magistrate having no knowledge that certiorari had been directed, thereafter enforced the conviction, he is not guilty of contempt of Court in so doing. R. v. Woodyatt, 3 Can. Cr. Cas. 275.

LIQUOR LICENCE; AFFIDAVIT NEGATIVING GUILT.

The Liquor License Act of Nova Scotia, 1895, sec. 17, applies to prohibit the granting of a certiorari in respect of any conviction thereunder unless the applicant makes an affidavit negativing the charge as laid in the information; and without such affidavit the Court cannot grant the writ, although the sole questions raised are as to the validity of the License Act as regards wholesale transactions, and as to whether the conviction which shewed the exact quantity of liquor admittedly sold was not a wholesale transaction. R. v. Bigelow, 4 Can. Cr. Cas. 337.

[Followed in R. v. McLeod, 6 Can. Cr. Cas. 28.]

N. B. LIQUOR LICENSE ACT (1896), SEC. 104.

The Liquor License Act of New Brunswick, by providing that a summary conviction for selling liquor without a license shall be "final and conclusive," takes away the right of certiorari, except as regards the jurisdiction of the magistrate. Ex parte Hebert, 4 Can. Cr. Cas. 153.

[Explained in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

POWER TO AMEND SUMMARY CONVICTION RETURNED.

If on the return to a certiorari the Court is satisfied upon a perusal of the depositions that an offence of the nature described in the summary conviction has been committed, the Court may hear and determine the charge upon the merits as disclosed by the depositions, and may vary, confirm, reverse or modify the decision of the justice. Where the original conviction directed payment of a fine and the levy of same by distress and in default of sufficient distress adjudged imprisonment, the Court exercising the power of amendment conferred by Code, secs. 883 and 889, may substitute in lieu of the distress, etc., an award of imprisonment forthwith in case of non-payment of the fine. The Court has power to so amend a summary conviction returned on certiorari whether the certiorari is one preliminary to a motion to quash the conviction or is in aid of a writ of habeas corpus. R. v. Murdock, 4 Can. Cr. Cas. 82.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 38; Collette v. R., 16 Can. Cr. Cas. 281, 290, 19 Que. K.B. 134; R. v. Lee, 4 Can. Cr. Cas. 420; approved in R. v. McKenzie, 12 Can. Cr. Cas. 441, 41 N.S.R. 184.]

BY HARBOUR COMMISSIONERS.

A writ of certiorari may issue from a conviction of a pilot by the Montreal harbour commissioners for the violation of a by-law. Perrault v. Montreal Harbour Commissioners, 4 Can. Cr. Cas. 501.

CERTIORARI TAKEN AWAY BY STATUTE; DEFECT IN PROCEDURE DEPRIVING ACCUSED OF FAIR TRIAL.

A statute which declares that convictions thereunder shall not be removed by certiorari into any superior Court is not a bar to the issue of a certiorari upon the ground of improper conduct of the magistrate, by which the accused was deprived of a fair trial. The powers of amendment conferred by Code, sec. 889, in respect of convictions removed by certiorari do not apply where there is an inherent defect in the procedure which has deprived the accused of a fair trial, ex. gr., a view of the locus in quo taken by the magistrate when in the absence of the parties. Re Sing Kee, 5 Can. Cr. Cas. 86.

WHEN THE APPROPRIATE REMEDY; EFFECT OF STATUTE TAKING AWAY RIGHT OF CERTIORARI; DOUBLE REMEDY OF CERTIORARI AND APPEAL.

Certiorari and not appeal is the appropriate remedy to raise the question of want of jurisdiction, ex. gr., whether proper service has been made and jurisdiction over the person acquired, or whether the justice was disqualified through interest. A statutory provision taking away the right to a certiorari does not deprive the superior Court of its power to issue the writ to quash a proceeding on the ground of want of jurisdiction. Where there is a defect in the jurisdiction of justices of inferior Courts, the common law right of certiorari should not be refused merely because a new trial might be had by means of an appeal. Even when an appeal is pending, a certiorari for want of jurisdiction should not be refused unless the question of jurisdiction is being raised on the appeal. A writ of certiorari may be claimed by the Crown as a matter of right on application of the Attorney General without the production of any affidavit. Except where applied for on behalf of the Crown, a certiorari is not a writ "of course," and the Court must be satisfied that there is sufficient ground for issuing it. No more latitude is given the Court for the exercise of its discretion in granting or refusing a certiorari than in respect of other applications which are in the discretion of the Court. Re Ruggles, 5 Can. Cr. Cas. 163.

[Referred to in R. v. Wells, 15 Can. Cr. Cas. 219.]

DISCHARGE OF HABEAS CORPUS; SUBSEQUENT MOTION TO QUASH CONVICTION.

A motion to quash a summary conviction cannot be entertained by Superior Court without a writ of certiorari for that purpose and a return to such writ. Where on a habeas corpus application the magistrate is directed by an order to return the proceedings relating to the imprisonment and thereupon returns under such order the information, depositions and conviction, such conviction is not by reason thereof brought under the jurisdiction of the Superior Court for the purpose of a motion to quash the same. The mere fact of judicial proceedings before inferior tribunals being on the files of a Superior Court certified or verified for use as evidence by the same officer who would make the return to a writ of certiorari to bring them up, does not bring the matter or cause into the Superior Court. The King v. MacDonald (No. 2), 5 Can. Cr. Cas. 279.

[Inapplicable in R. v. Smith, 16 Can. Cr. Cas. 428; distinguished in R. v. Broadfoot, 17 Can. Cr. Cas. 76.]

STATUTORY RESTRICTION OF CERTIORARI; 2 EDW. VII. (ONT.), CH. 12, SEC. 14; APPLICATION OF.

The Ontario statute 2 Edw. VII. (1902), ch. 12, sec. 14, which declares that no conviction under the Ontario Summary Convictions Act, shall be removed by certiorari except upon the ground that an appeal would not afford an adequate remedy, does not prevent the granting of the writ where the magistrate has no jurisdiction over the matter adjudicated. The King v. St. Pierre, 5 Can. Cr. Cas. 365.

[Discussed in R. v. Cook, 14 Can. Cr. Cas. 498.]

NO RETURN OF INFORMATION TO JUSTICE AFTER CONVICTION QUASHED.

Where a summary conviction has been removed by certiorari, together with the information and proceedings thereon, and the conviction is thereupon quashed, the information becomes part of the record in the Court above and cannot be returned to the magistrate for the purpose of a second summons thereon, although the ground for quashing the conviction was that the defendant had not been served, and had not authorized an appearance of her. An order for the return of any of the proceedings to the convicting justice is only authorized under Cr. Code, sec. 895, in cases where formerly a procedendo would have issued upon the conviction being affirmed, and not where the conviction is quashed. Prohibition will be granted against a justice to prevent his proceeding under a second summons after the quashing of a conviction for want of service of the first summons or of appearance thereunder. Semble, per Killam, J., the justices in proceeding with the second summons were guilty of contempt of Court, notwithstanding that the information had been returned to them under a Judge's order. The Queen v. Zickrick, 5 Can. Cr. Cas. 380.

COSTS AGAINST PROSECUTOR AND MAGISTRATE ON QUASHING CONVICTION; JURISDICTION; DISTINCTION BETWEEN OFFENCES UNDER DOMINION AND PROVINCIAL LAWS.

The High Court of Justice in Ontario has

no jurisdiction in certiorari proceedings respecting a criminal charge under Dominion laws, to award costs against the prosecutor or the magistrate on quashing the conviction. There is no jurisdiction to award costs against an unsuccessful applicant in certiorari proceedings respecting a purely criminal charge either because of the recognizance or of an inherent power of the Court. Semble, in certiorari proceedings in respect of quasi-criminal prosecutions under Ontario statutes the provisions of the Ontario Judicature Act as to costs are applicable since the passing of the Law Courts Act (Ont.), 1896. The King v. Bennett, 5 Can. Cr. Cas. 456.

[Followed in R. v. Jones, 18 Can. Cr. Cas. 417.]

MONEYS RECEIVED BY MAGISTRATE UNDER THE CONVICTION; RECOVERY AFTER CONVICTION QUASHED.

A justice of the peace, whose decision is attacked under a writ of certiorari, is an officer subject to coercive imprisonment, in the Province of Quebec, for failure to deposit in Court, when ordered, all moneys received by him under the conviction. Mercier v. Plamondon, 6 Can. Cr. Cas. 223.

[Referred to in R. v. Hung Gee (No. 2), 21 Can. Cr. Cas. 411, 13 D.L.R. 6.]

ADJUDICATION ON FACTS INVOLVING THE MERITS; COLLATERAL FACTS.

Where a summary conviction is not on its face defective, and the justice had general jurisdiction over the subject matter, the adjudication involved in the merits of the case, on the facts as distinguished from collateral facts upon which the justice's jurisdiction depends, is not reviewable on certiorari. The King v. Beagan (No. 1), 6 Can. Cr. Cas. 54.

POWER OF SUPERIOR COURT IN PROVINCE OF QUEBEC.

The Superior Court in the Province of Quebec has certiorari jurisdiction over a conviction made by a justice of the peace in a criminal matter. The King v. Mercier, 6 Can. Cr. Cas. 44.

[Referred to in R. v. Poirier, 31 Que. S.C. 68; Re Janneau, 12 Can. Cr. Cas. 360; Mercier v. Plamondon, 6 Can. Cr. Cas. 223.]

OMISSION TO STATE TIME AND PLACE OF OFFENCE; REFERENCE TO DEPOSITIONS ON CERTIORARI.

Where a perusal of the depositions returned on certiorari satisfies the Court that an offence was committed as stated in the conviction and of the date and place of same which had not been stated in the conviction, the irregularity in not stating such date and place is cured by Code, sec. 889, unless an excessive punishment has been imposed by the magistrate. The King v. Lewis, 6 Can. Cr. Cas. 499.

OMISSION TO CHARGE SCIENTER; INVALIDITY NOT CURABLE ON CERTIORARI; CRIM. CODE, SEC. 889.

The omission of the word "knowingly" from both the information and the conviction in a prosecution under the Alien Labour Statutes, is a matter of substance and not a mere matter of form, and the defect is not curable upon certiorari as an "irregularity, informality or insufficiency" under Code, sec. 889. The King v. Hayes, 6 Can. Cr. Cas. 357.

[Referred to in Dufresne v. R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501; R. v. Hogarth, 18 Can. Cr. Cas. 276; R. v. McGuire, 13 Can. Cr. Cas. 325; R. v. Graf, 15 Can. Cr. Cas. 200; distinguished in R. v. Barre, 11 Can. Cr. Cas. 1, 3, 15 Man. L.R. 421.]

PRELIMINARY OBJECTIONS TO CERTIORARI; TIME FOR.

Preliminary objections to a writ of certiorari removing a conviction must be raised promptly, and objections to matters of form in the certiorari proceedings will not be entertained on the motion to quash the conviction when three months have elapsed since the return without a substantive motion being made to quash the writ. The Queen v. Davidson, 6 Can. Cr. Cas. 117.

DEPOSIT OF CASH IN LIEU OF RECOGNIZANCE.

Where a deposit of cash is made, under sec. 892 of the Code, or under N.W.T. Rule 13 of 1900, in lieu of a recognizance in certiorari proceedings to quash a summary conviction, it is not necessary that the applicant should file at the same time a written document setting forth the condition upon which the deposit is made. The Queen v. Davidson, 6 Can. Cr. Cas. 117.

[Referred to in R. v. Earley (No. 3), 14 Can. Cr. Cas. 12.]

GRANT OF, BEFORE TERMINATION OF PROCEEDINGS BELOW; SUBSEQUENT SENTENCE.

Where proceedings pending before an inferior Court are removed by certiorari into a superior Court after a verdict or finding against the accused, and before the date to which the case was adjourned for sentence, a warrant of commitment issued by the inferior Court in enforcement of the judgment and sentence pronounced by it on the latter date is invalid. The King v. Foster, 7 Can. Cr. Cas. 46.

PRELIMINARY OBJECTION; NO RECOGNIZANCE FILED.

A second application for a writ of certiorari will not be entertained by the Court although the dismissal of the first was upon a preliminary objection that no recognizance had been filed. The King v. Geiser (No. 2), 7 Can. Cr. Cas. 172.

NOTICE OF MOTION; RECOGNIZANCE; NOVA SCOTIA PRACTICE.

(1) In Nova Scotia it is not necessary

that a recognizance given in certiorari proceedings should state that the bail has resided for a month at the place of residence given. (2) In Nova Scotia the notice of motion for a writ of certiorari to remove a conviction is properly intituled in the Supreme Court, Crown side, and may be addressed to the magistrate at the end thereof instead of at the beginning. The King v. Burke (No. 1), 7 Can. Cr. Cas. 538.

CERTIORARI AFTER UNSUCCESSFUL APPEAL FROM SUMMARY CONVICTION UNDER ONTARIO STATUTE; JURISDICTION ONLY REVIEWABLE.

After an appeal has been taken from a summary conviction under the Ontario Summary Convictions Act, a certiorari can only be granted in respect of the want of jurisdiction or excess of jurisdiction of the convicting magistrate. The King v. Horning, 8 Can. Cr. Cas. 268.

SUMMARY CONVICTION; MEMORANDUM OF, WITHOUT FORMAL RECORD; JURISDICTION TO QUASH.

A summary conviction evidenced only by a memorandum of conviction returned to a certiorari may be quashed, although no formal record of conviction had been drawn up by the magistrate. The King v. Mancion, 8 Can. Cr. Cas. 218.

RECOGNIZANCE; IRREGULARITY; MOTION TO QUASH RECOGNIZANCE.

(1) A recognizance given under the Ontario Crown Rule of November, 1886, to prosecute certiorari proceedings, is invalid if the principal cognizor enters into the recognizance before a justice of another country than that in which the conviction was made. (2) If a motion to quash an irregular recognizance in a certiorari proceeding is not brought on until the return of the motion to quash the conviction, the Court may concurrently quash both the conviction and the recognizance if both are found to be defective. The King v. Johnson, 8 Can. Cr. Cas. 123.

RULE NISI TO QUASH CONVICTION; MOTION FOR; JURISDICTION OF SINGLE JUDGE.

The British Columbia Supreme Court sitting en banc as the Full Court will not hear a motion for a rule nisi to quash a conviction, as the motion might have been made to a single Judge under the British Columbia Supreme Court Act, sec. 5. The King v. Tanghe, 8 Can. Cr. Cas. 160.

[Followed in R. v. Ramahat (No. 2), 16 Can. Cr. Cas. 196.]

SUMMARY TRIAL UNDER PART LV. OF CODE; EFFECT OF CONVICTION; WHETHER CERTIORARI LIES.

(1) The Supreme Court of the Province of Quebec has no jurisdiction to quash by way of certiorari decisions rendered by magistrates sitting for the summary trial of indictable offences in virtue of Part 55 of the Criminal Code. (2) The review of such decisions, in so far as they are reviewable, belongs exclusively to the Court of King's Bench in the Province of Quebec. (3) The Federal Parliament has the exclusive right to declare before what Court existing in each province and exercising criminal jurisdiction proceedings in criminal cases shall be carried on, including proceedings by certiorari after conviction. (4) Provincial statutes in force at the time of Confederation in 1867 regarding certiorari in criminal matters, remain in force except in so far as they have been repealed by or are inconsistent with Dominion legislation. The King v. Marquis, 8 Can. Cr. Cas. 346.

[Disapproved in R. v. Leschinski, 17 Can. Cr. Cas. 202; referred to in R. v. Janneau, 12 Can. Cr. Cas. 360; R. v. Poirier, 31 Que. S.C. 360.]

CERTIORARI; WAIVER OF RIGHT OF APPEAL.

The taking of a writ of certiorari is a waiver on the part of the petitioner of his right of appeal. Denault v. Robida, 8 Can. Cr. Cas. 501.

JURISDICTION; SUPERIOR COURT (QUE.); CERTIORARI; IMPRISONMENT IN DEFAULT OF FINE; ILLEGAL CONDITION OF PAYMENT OF COSTS BEFORE DISCHARGE FROM IMPRISONMENT.

(1) The Superior Court of the Province of Quebec has jurisdiction to review by certiorari any decision rendered by a justice of the peace in a criminal matter. (2) A recorder has no right in condemning the accused to pay a fine and costs for vagrancy and to imprisonment in case of nonpayment, to impose as a condition of the discharge of the accused at the expiry of the fixed term of imprisonment, the payment of such costs and of the expenses of conveyance to gaol, and such decision will be quashed on certiorari. (3) Semble, a conviction containing an adjudication so far in excess of that which might lawfully have been imposed will not be amended upon certiorari. Leonard v. Pelletier, 9 Can. Cr. Cas. 19.

[Referred to in R. v. Janneau, 12 Can. Cr. Cas. 361; Collette v. R., 16 Can. Cr. Cas. 289.]

RECORDER'S COURT; APPEAL; CERTIORARI.

A writ of certiorari will not be granted to review the judgment of the Recorder's Court in the Province of Quebec where the law permits an appeal from such judgment. O'Shaughnessy v. Montreal, 9 Can. Cr. Cas. 44.

LAPSE OF APPEAL BECAUSE RETURN WITHHELD BY MAGISTRATE; DISCRETION TO GRANT CERTIORARI IN EXCEPTIONAL CASES.

(1) Where an appeal was taken from a summary conviction but lapsed because of

the failure of the magistrate to return the conviction, a superior Court may afterwards issue a certiorari and quash the conviction notwithstanding the abortive appeal and Code, sec. 887, upon the ground that the magistrate had deprived the accused of a reasonable opportunity of making their defence and had acted collusively with the prosecutor. (2) In exceptional cases the Court will grant a certiorari although another mode of reviewing the conviction is provided by statute, and this jurisdiction will be exercised where a gross perversion of justice has occurred through the misconduct of the magistrate. Ex parte Cowan, 9 Can. Cr. Cas. 454.

[Distinguished in Harwood v. Williamson, 14 Can. Cr. Cas. 78; referred to in R. v. Gallagher, 18 Can. Cr. Cas. 350.]

RETURN OF CONVICTION TO APPELLATE COURT; USE OF DEPOSITIONS ON MOTION TO QUASH; WHEN WRIT OF CERTIORARI UNNECESSARY.

(1) Where a justice making return of a summary conviction to the Court to which an appeal is given forwards therewith papers purporting to be depositions upon which the conviction is founded, such Court, if one having certiorari jurisdiction, may, upon a motion to quash the conviction take cognizance of such depositions without a writ of certiorari being issued and return made thereto. (2) Apart from Code, sec. 888, it is the duty of the justice to return the information and depositions with the conviction. The King v. Rondeau, 9 Can. Cr. Cas. 523.

ABORTIVE APPEAL FROM SUMMARY CONVICTION; DEFAULT OF MAGISTRATE IN MAKING RETURN; CERTIORARI AFTER APPEAL QUASHED.

A certiorari may be granted to remove a summary conviction for want of jurisdiction over the offence, although an appeal from the conviction had been taken if such appeal was quashed for irregularity due to the default of the magistrate in returning the deposit. The King v. Alford, 10 Can. Cr. Cas. 61.

WARRANT OF COMMITMENT; OBJECTION APART FROM THE CONVICTION ITSELF; PART PAYMENT OF FINE AND COSTS; COMMITMENT ISSUED FOR UNPAID PORTION; CERTIORARI WITHOUT HABEAS CORPUS.

Certiorari does not lie to bring up a warrant of commitment to be quashed upon grounds not affecting the conviction under which the warrant issued, nor will the Court quash the warrant in certiorari proceedings in which the conviction is also brought up, if the conviction itself is valid. The proper procedure for reviewing, upon grounds not affecting the conviction, the validity of a warrant of commitment under which the accused is in custody, is by way of habeas corpus. Ex parte Bertin, 10 Can. Cr. Cas. 65.

INVALID MUNICIPAL BY-LAW; RIGHT OF APPEAL OR TO APPLY TO QUASH THE BY-LAW; CERTIORARI AN APPROPRIATE REMEDY; DISCRETION.

It is not a ground for refusing a certiorari to quash a summary conviction under a municipal by-law, that the applicant might have appealed from the conviction or might have moved to quash the by-law. Ex parte Ross (1895), 1 Can. Cr. Cas. 153, disapproved. Re Traves, 10 Can. Cr. Cas. 63.

JURISDICTION OF SINGLE JUDGE IN N.W.T.; QUASHING CONVICTION WITHOUT CERTIORARI.

(1) A single Judge in the North-West Territories has jurisdiction under 54 and 55 Vict. (Can.) ch. 22, to entertain a motion to quash a summary conviction. (2) Such jurisdiction is not dependent upon the issue of a writ of certiorari, and may be exercised without such writ in respect of a conviction returned to the clerk of the Court under the provisions of a statute. The King v. Ames, 10 Can. Cr. Cas. 52.

QUEBEC LICENSE LAW, 1900; CERTIORARI; PRELIMINARY DEPOSIT; REIMBURSEMENT.

(1) The deposit of $50 which is a condition of a certiorari under the Quebec License Law (1900) is a deposit in security and not in sequestration. (2) The application for certiorari could not take away from the accused person his option of serving the term of imprisonment to which he had been condemned in the place of such payment. (3) Although the writ of certiorari suspended the execution of the sentence, the effect of quashing the writ is merely to render the person convicted liable to the term of imprisonment; and if he makes that option he has a right to the reimbursement of the deposit representing the fine and costs. Wing v. Sicotte, 10 Can. Cr. Cas. 171.

ORDER NISI FOR CERTIORARI; STATING GROUNDS; B.C. PRACTICE.

A rule nisi for a writ of certiorari under British Columbia practice need not set out the grounds of the application in further detail than is required under the English Crown Office Rules. The King v. McGregor, 10 Can. Cr. Cas. 313.

LOCALITY OF OFFENCE; SUMMARY CONVICTION; SPECIFYING ONLY THE COUNTY OR DISTRICT FOR WHICH THE MAGISTRATE HAS JURISDICTION; AMENDING A CONVICTION IN CERTIORARI PROCEEDINGS.

(1) A summary conviction is not necessarily bad because the particular part of the county in which the offence was committed is not specified, provided the offence

is stated to have been committed in the county and the convicting magistrate had jurisdiction throughout the whole county. (2) A summary conviction purporting to be under the Ontario Liquor License Law for unlawfully allowing liquor to be sold (which is not in terms an offence under the statute) may be amended, if the evidence warrants it, so as to make it a conviction for selling without a license. (3) Such an amendment is permissible under sec. 889 of the Criminal Code made applicable to prosecutions under Ontario laws by provisional enactment. The King v. Meikleham, 10 Can. Cr. Cas. 382.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 38; R. v. McGuire, 13 Can. Cr. Cas. 326, followed in R. v. McKenzie, 12 Can. Cr. Cas. 445.]

HABEAS CORPUS; JURISDICTION; ANCILLARY WRIT OF CERTIORARI.

The remedy by habeas corpus not being open to one who is imprisoned under the sentence of a competent Court having general jurisdiction of the case, he cannot, on the return of a warrant shewing such sentence, demand an ancillary writ of certiorari for the production of the record in the case in which the sentence was pronounced. Ex parte Goldsberry, 10 Can. Cr. Cas. 392.

SUMMARY CONVICTION; TRANSMISSION TO COURT HAVING APPELLATE JURISDICTION; SAME COURT HAVING CERTIORARI JURISDICTION; WRIT OF CERTIORARI NECESSARY BEFORE MOTION TO QUASH CONVICTION.

(1) A writ of certiorari and a return thereto by the convicting justice are necessary preliminaries to an application to quash a summary conviction, notwithstanding the fact that the original conviction is on file in the Court having jurisdiction in certiorari matters. (2) Where the same Court has jurisdiction both in appeal and upon certiorari and a summary conviction has been transmitted by the magistrate and filed in such Court under Code, sec. 888, the writ of certiorari cannot be dispensed with for the purposes of a motion to quash the conviction. The King v. Gehrke, 11 Can. Cr. Cas. 109.

SUMMARY CONVICTION; CERTIORARI NOTWITHSTANDING A PENDING APPEAL.

Certiorari will lie in respect of a magistrate's jurisdiction upon a summary conviction, notwithstanding sec. 1122 of the Revised Criminal Code and the service of a notice of appeal. Johnston v. O'Reilly, 12 Can. Cr. Cas. 218.

SUMMARY CONVICTION; EXCESSIVE TERM OF IMPRISONMENT IMPOSED; POWER OF COURT TO AMEND.

(1) Where upon the return to a writ of certiorari the Court, upon perusal of the depositions, has no doubt as to the commission of the offence for which the defendant has been tried and convicted, but the conviction is defective in awarding a longer term of imprisonment than the statute permits, the Court has power to amend the conviction by reducing the term to the statutory limit. (2) The merits of the defence as disclosed by the depositions may be enquired into upon the motion to amend, but the reference in Revised Code, sec. 1124, dealing with certiorari matters to the procedure on appeals from summary convictions does not imply that there shall be a trial de novo for the purpose of fixing an appropriate punishment. The King v. McKenzie, 12 Can. Cr. Cas. 435.

[Applied in R. v. Morris, 16 Can. Cr. Cas. 3, referred to in R. v. Oberlander, 16 Can. Cr. Cas. 250.]

CERTIORARI NOTWITHSTANDING ENTRY OF APPEAL.

Where a justice of the peace proceeded with a charge of destroying a line fence although it appeared that the defendant pulled down the fence where it crossed a road long used by the public and that the title to the land was therefore in question and the magistrate's jurisdiction ousted, the right to certiorari is not taken away by an appeal to the County Court being entered under Rev. Cr. Code, sec. 749, for the County Court had no jurisdiction to rehear a case in which there was no jurisdiction below. Ex parte Roy, 12 Can. Cr. Cas. 533.

[Referred to in Pahkala v. Hannuksela, 20 Can. Cr. Cas. 255.]

HABEAS CORPUS; CERTIORARI IN AID; DEPOSITIONS CONTAINING NO EVIDENCE OF MATERIAL FACT.

Where the depositions returned with a certiorari in aid of habeas corpus disclose no evidence whatever as to a material fact essential to the offence, the case will not be remitted to the justices to take evidence on the point omitted. The King v. Brisbois, 13 Can. Cr. Cas. 96.

[Followed in R. v. Simmons, 14 Can. Cr. Cas. 6, referred to in R. v. Warlow, 14 Can. Cr. Cas. 118; R. v. Leach, 14 Can. Cr. Cas. 387; R. v. Treasdale, 16 Can. Cr. Cas. 62; R. v. Broadfoot, 17 Can. Cr. Cas. 76; distinguished in Dubuc v. Maclaren, 37 Que. S.C. 67; R. v. Dubuc, 15 Can. Cr. Cas. 360.]

RECOGNIZANCE ON CERTIORARI.

(1) Nova Scotia Crown Rule No. 28 is a general order of Court as to security for costs on certiorari under Cr. Code, sec. 1126, and a recognizance given thereunder may be enforced by attachment under Code sec. 1096. (2) Sec. 1126 of the Code applies as well to a recognizance required to be given on the application for the writ of certiorari, as to a recognizance given after return made to the writ, if, upon

the former, the Court may order that the conviction be quashed on the return of the writ without further order. The King v. Townsend (No. 5), 13 Can. Cr. Cas. 209.

SECURITY FOR COSTS.

Security for costs cannot be ordered against the petitioner for a writ of certiorari in a criminal case in the absence of a general rule of Court passed under Code, sec. 1126. Tierney v. Choquet, 13 Can. Cr. Cas. 238.

SUMMARY CONVICTION; NO POWER ON CERTIORARI TO APPORTION DISCRETIONARY PENALTY.

When a summary conviction is in form for two separate offences, and shews that the penalty adjudged is for both although within the legal limit for one, but one of the offences is defectively described, the conviction must be quashed on certiorari; it cannot be amended by striking out the offence defectively described, as the Court has no power to make a fresh adjudication by apportioning the penalty which was discretionary with the magistrate. The King v. Code, 13 Can. Cr. Cas. 372.

[Referred to in R. v. Harris, 13 Can. Cr. Cas. 398; R. v. Mah Sam, 19 Can. Cr. Cas. 5; R. v. Turnbull, 15 Can. Cr. Cas. 5.

APPLICATION FOR WRIT; PARTIES; DIRECTION TO SERVE INFORMANT.

An application by the accused for a certiorari to remove a summary conviction may be made without making the informant a party thereto or serving him with notice of the application, if an immediate order to quash without the issue of the writ is not asked, and if the Court has not specially directed service on the informant. Ex parte Harris, 14 Can. Cr. Cas. 109.

LIQUOR LAWS; MAGISTRATE'S ORDER FOR DESTRUCTION QUASHED ON CERTIORARI.

Where a magistrate makes an order for forfeiture and destruction of liquors without evidence that such liquors were illegally kept for sale, the order should be quashed upon certiorari. The King v. Ing Kon, 14 Can. Cr. Cas. 197.

[Referred to in Ing Kon v. Archibald, 14 Can. Cr. Cas. 203.]

CERTIFICATE OF PRIOR CONVICTION; RETURN WITH CONVICTION AND EVIDENCE UPON CERTIORARI.

The return to a certiorari of a certificate of a previous conviction under the Liquor License Act (Ont.) made by the same justices who heard the charge of a second offence does not, by itself, prove that the prior conviction was enquired into before the adjudication upon the subsequent offence in contravention of R.S.O. 1897, ch. 245, sec. 101, where the accused on being asked after conviction for the subsequent offence, admitted the fact of the prior conviction and the record of proceedings does not shew that the certificate was used as evidence. The King v. Wellman, 14 Can. Cr. Cas. 335.

WARRANT NOT JUDICIAL, BUT MINISTERIAL ONLY; CERTIORARI NOT GRANTED.

In Ontario a coroner is bound by statute to summon such witnesses as the Crown officer directs, and a coroner's warrant to apprehend a witness who had defaulted in attendance upon a summons being a ministerial and not a judicial act, certiorari will not be granted in respect of such warrant. Re Anderson and Kinrade, 14 Can. Cr. Cas. 448.

NEW PROCEDURE WHERE CONVICTION UNDER ONTARIO PROVINCIAL STATUTE; MOTION TO QUASH WITHOUT WRIT OF CERTIORARI.

The simpler procedure of a direct motion to quash a conviction provided by Ontario statute, 8 Edw. VII. ch. 34, for the former certiorari practice in respect of offences against Ontario statutes, applies only to cases in which a writ of certiorari might otherwise have been ordered, and not to cases in which by prior legislation the right to certiorari had been taken away. (Compare Ont. Crown Rules 1279-1288.) The King v. Cook, 14 Can. Cr. Cas. 495.

[Followed in R. v. Renaud, 15 Can. Cr. Cas. 249.]

CERTIORARI ON ATTORNEY-GENERAL'S APPLICATION.

The Attorney-General has an absolute right to demand the removal of summary conviction proceedings into a Superior Court by certiorari. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

RETURN TO CERTIORARI; AFFIDAVIT TO CONTRADICT AS TO EVIDENCE CERTIFIED.

(1) Where the return to a certiorari certifies that a certified copy of a by-law was put in at the trial and is accompanied by an uncertified copy, a summary conviction under the by-law will not be quashed for defect of proof thereof if no objection was taken before the magistrate. (2) Affidavits will not be heard on certiorari to contradict the magistrate's return as to what evidence was given before him. (Per Barker, C.J.) Ex parte Steeves, 15 Can. Cr. Cas. 160.

SUMMARY CONVICTION; TAKING CONCURRENT PROCEEDINGS IN APPEAL AND IN CERTIORARI; CERTIORARI BARRED ON PROCEEDING WITH APPEAL.

(1) Where the defendant after summary conviction gave notice of appeal therefrom and then applied for and took out an order for certiorari, the certiorari proceedings

will be dismissed if it appears that after their institution the applicant took another step in his appeal by serving reasons of appeal. (2) When justices holding summary proceedings adjourn the same to consider the evidence, both justices should attend on the delivery of judgment and a conviction signed by both during the adjournment and read by one of them in the other's absence on the day to which adjournment had been made is irregular. (Per Gregory, J.) Ex parte McCorquindale, 15 Can. Cr. Cas. 187.

[Referred to in Pahkala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 255, 8 D.L.R. 34.]

SUMMARY CONVICTION; STATUTORY BAR OF CERTIORARI PROCEEDINGS WHERE ADEQUATE REMEDY BY APPEAL.

Where the person accused for an offence punishable on summary conviction under the Ontario Liquor License Act goes to the justice before the summons is returnable, acknowledges the offence and deposits with the justice the amount of the fine and costs, which are formally imposed afterwards on the return of the summons, an objection taken to the formal conviction that the imprisonment directed in default of payment of the fine (but which by reason of such advance payment could not become operative) was in excess of the statutory limit, is one for which an appeal would afford an adequate remedy and certiorari process is therefore taken away under the Ontario Summary Convictions Act. The King v. Renaud, 15 Can. Cr. Cas. 246.

SUMMARY CONVICTION; IRREGULARITY IN INFORMATION FOR SEARCH WARRANT.

The invalidity of the information for a search warrant issued under the Canada Temperance Act cannot be raised on certiorari in respect of a conviction under a separate information against the same person for illegally keeping liquor for sale. Ex parte Wilson, 15 Can. Cr. Cas. 264.

[Referred to in Ex parte Horsman, 15 Can. Cr. Cas. 281.]

JURISDICTION OF MAGISTRATE; FINDING THAT LIQUOR INTOXICATING; EVIDENCE TO SUPPORT CONVICTION OPPOSED TO PREPONDERANCE OF TESTIMONY.

A summary conviction will not be quashed on certiorari if there was any evidence to support it, although the preponderance of evidence may have been against the magistrate's finding of fact. Ex parte Horsman, 15 Can. Cr. Cas. 280.

CERTIORARI WHERE NO APPEAL; NO ENQUIRY INTO WEIGHT OF EVIDENCE.

Where the right of appeal from a summary conviction has been taken away by statute, the Court will not on certiorari consider the weight of evidence or revise the decision of the magistrate as to guilt unless there was a complete absence of evidence as to some essential element of the offence. The King v. Dubuc, 15 Can. Cr. Cas. 353.

STATUTE TAKING AWAY CERTIORARI; WRIT NOTWITHSTANDING WHERE MANIFEST DEFECT OF JURISDICTION; MAGISTRATE'S JURISDICTION OVER OFFENCE AND PERSON.

Where the right of certiorari has been taken away by statute, ex. gr., in cases under the Canada Temperance Act, and the magistrate had jurisdiction over the offence and the person accused, neither the insufficiency of the evidence nor the exclusion of evidence are grounds for granting the writ as such matters do not go to the jurisdiction. Ex parte Morison, 16 Can. Cr. Cas. 28.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 497.]

SUMMARY PROCEEDINGS; ORDER OF ACQUITTAL; STATUTE BARRING APPEAL; REFUSAL TO REOPEN CASE BY CERTIORARI AND MANDAMUS.

(1) Where a magistrate has decided a case ostensibly upon the merits in favour of the accused and the statute under which the prosecution is brought allows no appeal, a certiorari will not be granted to quash the order of acquittal, with a view to reopening the case, on the ground of the wrongful refusal of the magistrate to compel a witness to answer a material question. (2) Except where it is otherwise provided by statute, a person who has been regularly tried and acquitted by a competent tribunal having full cognizance of his case, is not liable to be again tried for the same offence, and this rule applies to an acquittal under a section of a Provincial liquor law (the Prohibition Act, P.E.I., 1900), under which fine and imprisonment may be imposed. The King v. Reddin, 16 Can. Cr. Cas. 163.

REFUSAL WHERE AN ALTERNATIVE RIGHT OF APPEAL NOT EXERCISED.

Where there is a right of appeal from the magistrate to a County Court under a liquor license law, a superior Court should refuse certiorari on grounds not going to the jurisdiction of the magistrate unless there are exceptional circumstances to be considered. Ex parte Damboise, 16 Can. Cr. Cas. 292.

FRESH APPLICATION TO ANOTHER JUDGE AFTER CORRECTION OF IRREGULARITY.

Where an application for a certiorari to remove a summary conviction was made on the ground that there had been no effective service of the magistrate's summons but the motion was dismissed on the technical objection that the affidavits to the recognizance filed on the certiorari application were insufficient, a fresh application for a

certiorari upon the same ground as the first cannot be made to another Judge after remedying the technical defect, unless leave has been reserved so to do on the first application. The King v. McKay, 17 Can. Cr. Cas. 1.

SUMMARY CONVICTION; REFUSAL OF MAGISTRATE TO ADJOURN.

The granting or refusing of an adjournment by the magistrate is in his discretion and unless improper conduct on his part is shewn, the refusal to adjourn will not be reviewed on certiorari. Ex parte Monahan, 17 Can. Cr. Cas. 53.

ORDER OF RESTITUTION AND COMPENSATION; NO JURISDICTION TO DEPRIVE PURCHASER OF BOTH THE GOODS AND THEIR PRICE; QUASHING ORDER IN PART.

Certiorari proceedings may be taken to bring into a superior Court of criminal jurisdiction an order for compensation or restitution made on a speedy trial by a County Court Judge which in its terms exceeds the jurisdiction of a speedy trial Court. Ex parte Selig, 17 Can. Cr. Cas. 70.

LACK OF PROOF NOT A GROUND FOR CERTIORARI.

Whether the offence for which a summary conviction has been made by a magistrate was or was not proved, is a question of fact which is not open upon an application on certiorari to quash the conviction. Ex parte O'Regan (No. 2), 17 Can. Cr. Cas. 160.

DISCRETION; CONCURRENT RIGHT OF APPEAL; INSUFFICIENCY OF EVIDENCE.

(1) A writ of certiorari will not be granted for the purpose of quashing a summary conviction from which the applicant has a right of appeal, on both the law and the facts. (2) The insufficiency of the evidence is not a good ground for granting a writ of certiorari. The King v. Gallagher, 18 Can. Cr. Cas. 347.

SUMMARY CONVICTION; OBJECTION NOT RAISED BEFORE MAGISTRATE; CERTIORARI TO QUASH THE CONVICTION.

(1) Where summary proceedings before a magistrate were adjourned by consent to be taken up on the adjournment of the County Court then in session, at which counsel for both the prosecution and the defence were then engaged in other cases, and the case is afterwards proceeded with without objection, a conviction will not be quashed upon certiorari on the ground that such adjournment lasted for more than eight days contrary to Code, sec. 722. (2) If with knowledge of a defect of jurisdiction, the party entitled to object attends and takes no objection, he is not entitled to a writ of certiorari to raise it. Ex parte Giberson (No. 3), 18 Can. Cr. Cas. 355.

INTRODUCTION OF CIVIL CERTIORARI PRACTICE FOR CRIMINAL CERTIORARI PROCEEDINGS.

(1) Under British Columbia Crown Rule (Criminal) No. 1, passed in pursuance of Code, sec. 576, the practice and procedure in relation to certiorari in British Columbia for criminal matters was made the same as that followed in certiorari for civil matters, but this brings into effect as criminal procedure the civil practice as it existed on the date of that Crown rule and does not include subsequent amendments of the civil practice in certiorari proceedings. (2) The practice of granting costs to the Crown of opposing an unsuccessful certiorari application in conformity with Crown Rule (Criminal) No. 1, has not been abrogated by the passing of the British Columbia Crown Costs Act, 1910, by the British Columbia Legislature, by which the Crown is not to pay or receive costs except under the provisions of a statute expressly authorizing it. The King v. Jones, 18 Can. Cr. Cas. 414.

CIRCUIT COURT (QUE.); JURISDICTION.

A Circuit Court in the Province of Quebec has no jurisdiction to issue a writ of certiorari in respect of a charge of assault heard before justices of the peace. Dion v. Champagne, 18 Can. Cr. Cas. 489.

REVIEW OF JUDICIAL FINDINGS.

The Court on certiorari will not exercise its judgment upon the credit or weight due to the facts from which the magistrate's conclusion was drawn, if such facts would be sufficient to be left to a jury on a trial. The King v. Kolotyla, 19 Can. Cr. Cas. 25.

RECOGNIZANCE.

An application for a writ of certiorari should not be dismissed under B.C. Crown Office Rule 36 on a preliminary objection that no recognizance had been filed. Semble, Crown Office Rule 36 is complied with if the recognizance on a certiorari is filed on taking out the order or writ in case the Judge grants the certiorari. The King v. Ferguson, 19 Can. Cr. Cas. 31.

AMENDMENT OF CONVICTION; RIGHT OF COURT TO MAKE CONVICTION CONFORM TO CODE.

Assuming that a police magistrate, who imposed a penalty in excess of what was authorized by the Criminal Code, 1906, had no power, after service upon him of a notice of motion to set aside the conviction, which called upon him to make a return of the conviction, information, etc., to amend the conviction by substituting a penalty provided by the Code, the Court, to which the conviction was removed by certiorari, may amend the conviction so as to conform to the Code, under the authority given by sec. 1124 thereof providing that no conviction made by any justice should be held invalid for any irregularity, etc., therein, if the Court or Judge before which or whom the question is raised is satisfied that an offence of the nature described in the con-

viction has been committed, over which such justice has jurisdiction, and giving the Judge or Court where so satisfied, even if the punishment imposed is in excess of that which might lawfully have been imposed, like powers in all respects to deal with the case, as are given by sec. 754 of the Code providing that, in every case of appeal from a summary conviction, the Court to which such appeal is made, shall, notwithstanding, among other things, that the punishment imposed may be in excess of that which might lawfully have been imposed, hear and determine the charge on which such conviction was made upon the merits and, among other things, exercise any power which the justice whose decision is appealed from, might have exercised. The King v. Marcinko, 19 Can. Cr. Cas. 388, 4 D.L.R. 687.

EXCESSIVE PENALTY; REDUCING ON CERTIORARI; AMENDMENT OF CONVICTION.

(1) A conviction upon summary trial before a police magistrate for keeping a disorderly house may be amended in certiorari proceedings, if the Court is satisfied as to the proof, by reducing the illegal fine of $100 and costs to the limit provided by Cr. Code, sec. 781 of $100 including costs; the amount of the costs in such case remaining in the amended conviction but the $100 penalty being reduced by the amount of the costs so that the total shall not exceed $100. [R. v. Shing, 17 Can. Cr. Cas. 463, disapproved.] (2) The word "justice" is to be construed in sec. 1124 of the Criminal Code, 1906, in a different manner from the words "justice of the peace" which were used in the corresponding section of the former Code (Cr. Code, 1892, sec. 889) by reason of the statutory definition given to the word "justice" by the interpretation clause, Cr. Code, 1906, sec. 4 (18) whereby police magistrates and stipendiary magistrates are included in its meaning, and also by reason of the transposition of former sec. 889 in the 1906 consolidation from the summary convictions part to the part of the 1906 Code entitled "Extraordinary Remedies," with the result that the present section 1124 as to amendments on certiorari applies not only to "summary convictions" but to convictions on "summary trials" held under Part XVI. of the Code. The King v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.

CONVICTION WITH SUPPORTING EVIDENCE; WEIGHT OF EVIDENCE NOT CONSIDERED.

Where there was some evidence before the magistrate to support his findings of fact, such findings will not be reviewed in certiorari proceedings. The King v. Campbell, 20 Can. Cr. Cas. 490, 8 D.L.R. 321.

RAISING SAME QUESTION AT TRIAL; BAIL.

The court may exercise its discretion by refusing a certiorari when sought to remove into a superior court an information and proceedings thereon before a magistrate under which the defendant was held to bail with sureties to appear at the County Court for trial upon a quasi-criminal charge under a provincial statute, if the same grounds upon which the claim of irregularity or nullity in the magistrate's proceedings is founded would be open to the defendant on the hearing in the County Court, while a rule for a certiorari, if granted, would not be returnable until a later date and might prejudice the enforcement or renewal of the recognizance of bail. Ex parte Seriesky, 21 Can. Cr. Cas. 140, 10 D.L.R. 612.

RIGHT TO; CONVICTION UNDER LIQUOR ACT.

The right to review a conviction for a criminal offence on certiorari can be taken away only by an express statutory declaration to that effect. [Ex parte Hebert (1898), 4 Can. Cr. Cas. 153, 34 N.B.R. 455, explained.] The jurisdiction to review on certiorari a summary conviction for an offence under the Liquor License Act, N.B. Con. Stat. 1903, ch. 22, is not in effect taken away by the declaration of sec. 104 (1) of the Act that a conviction thereunder shall be "final and conclusive." On certiorari the court will not examine the evidence in a summary proceeding for a violation of the Liquor License Act, N.B. Con. 1903, ch. 22, pertaining to the very issue which the inferior court had to enquire into, notwithstanding an erroneous conclusion may have been reached, except in so far as to ascertain whether the depositions shew any evidence warranting a conviction. [Ex parte Coulson, 1 Can. Cr. Cas. 31, 33 N.B.R. 341; Re Melina Trepanier (1885), 12 Can. S.C.R. 111; The King v. McArthur (1906), 14 Can. Cr. Cas. 343, referred to.] On certiorari a summary conviction for violating the Liquor License Act, N.B. Con. Stat. 1903, ch. 22, will be sustained, notwithstanding the contradictory nature of the evidence, where there is testimony from which the magistrate might have found the accused guilty; since the former saw and heard the witnesses and, as a judge of the evidence, was in a position to accept such portion as he might think credible. [The King v. Conrod (1902), 5 Can. Cr. Cas. 414, 35 N.S.R. 79, referred to.] R. v. Allingham; Ex parte Keefe, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.

REVIEW OF CONVICTION; QUASHING; RETURN OF FINE AND COSTS.

Where a conviction is quashed on certiorari, the amount of the fine and costs paid in the lower court by the applicant will be ordered restored him. [Mercier v. Plamondon, 6 Can. Cr. Cas. 223; Re Enderlin State Bank, 4 N. D. k. 319, 26 L.R.A. 592, and Haebler v. Myers, 132 N.Y. 363, 15 L.R.A. 588, specially referred to.] R. v.

Hung Gee (No. 2), 21 Can. Cr. Cas. 411, 13 D.L.R. 6. See also 21 Can. Cr. Cas. 404, 13 D.L.R. 44.

DISCRETION TO ALLOW; JURISDICTION; TEMPERANCE ACT.

The discretion of a judge in granting a rule to review a conviction on certiorari will not be interfered with, although two terms of court elapsed before the application was made, where the application is based on jurisdictional grounds. [Ex parte Long, 27 N.B.R. 495; Ex parte Moore, 23 N.B.R. 229, specially referred to.] Where certiorari has been taken away by a statute as regards summary convictions for offences thereunder, the rule in New Brunswick is that the court will not look at the depositions to ascertain whether the evidence adduced establishes the offence, if the convicting magistrate had jurisdiction over the subject-matter and, by virtue of the information, jurisdiction also over the accused and the particular offence charged, ex. gr., infraction of the Canada Temperance Act. [Ex parte Daley, 27 N.B.R. 129, and R. v. Hornbrook; Ex parte Morrison, 39 N.B.R. 298, considered; but see R. v. Coulson, 27 O.R. 59; R. v. Hughes, 29 O.R. 179, 2 Can. Cr. Cas. 5; R. v. St. Clair, 27 A.R. (Ont.) 308, 3 Can. Cr. Cas. 551.] Whether liquor sold in violation of the Canada Temperance Act was intended for the individual use of the purchaser is to be determined by the magistrate and is not open to review on certiorari. [R. v. Peck; Ex parte Beal, 40 N.B.R. 320, referred to.] R. v. Holyoke; Ex parte McIntyre, 21 Can. Cr. Cas. 422, 13 D.L.R. 225.

IN AID OF HABEAS CORPUS; SUMMARY CONVICTION.

The writ of certiorari in aid of habeas corpus is taken away by sec. 19 of 2 Geo. V. (Ont.) ch. 17, R.S.O. 1914, ch. 90, where adequate relief is afforded by appeal, in respect of a summary conviction under an Ontario statute, and imprisonment thereunder. Appeal and not certiorari is the appropriate procedure affording an adequate remedy for reviewing a summary conviction on the merits, where the question involved is one of fact only and not of jurisdiction. R. v. Keenan, 21 Can. Cr. Cas. 467, 13 D.L.R. 125.

[Referred to in R. v. Chappus, 28 Can. Cr. Cas. 157.]

IN AID OF HABEAS CORPUS.

A second motion for a certiorari in aid of a habeas corpus, being purely ancillary, may be made before another judge after the dismissal of one application on the same facts, in like manner as a motion for a writ of habeas corpus may be renewed before another judge. [As to the province of Ontario, there is a statutory restriction of renewed applications for habeas corpus, with a right of appeal in substitution; see article in 1 Can Cr. Cas. 213.] R. v. Weiss and Williams (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 632. See also 21 Can. Cr. Cas. 438, 13 D.L.R. 166.

[Referred to in R. v. Young Kee, 28 Can. Cr. Cas. 236.]

REPRESENTATION OF ATTORNEY-GENERAL; COSTS.

Where the Attorney-General is represented on a certiorari application brought by the person convicted in a criminal matter, it is to be presumed that the Attorney-General's department is supporting the proceedings on behalf of the magistrate or other Government officer; and the magistrate or officer so represented will, in a proper case, on the setting aside of the conviction, be ordered to pay costs irrespective of any misconduct being shewn as was formerly necessary, there being jurisdiction in this respect in Alberta under Crown rule N.W.T. 39, and Cr. Code (1906) sec. 576. [Thomas v. Prichard, [1903] 1 K. B. 209, 72 L.J.K.B. 23, 20 Cox C.C. 376, applied; R. v. Hung Gee, 21 Can. Cr. Cas. 404, 13 D.L.R. 44, considered.] R. v. Knowles and Wilson, 22 Can. Cr. Cas. 66, 13 D.L.R. 773. See also 21 Can. Cr. Cas. 321, 12 D.L.R. 639.

ADMISSIBILITY OF AFFIDAVIT OF MAGISTRATE; FIAT OF ATTORNEY-GENERAL.

On an application for a writ of certiorari to set aside a conviction for a violation of the Lord's Day Act, R.S.C. 1906, ch. 153, on the ground that it had not been shewn that a fiat had been obtained under the Act, an affidavit of the convicting magistrate in answer is admissible to shew that, before information was laid, he had received the fiat of the Attorney-General to the prosecution being instituted as the statute requires, and that it was in his possession during the trial. (Per Harvey, C.J., and Stuart, J.) R. v. Thompson, 22 Can. Cr. Cas. 78, 14 D.L.R. 175.

INTOXICATING LIQUOR CASE; CROSS-EXAMINATION; DEPOSITION.

On a charge of unlawful sale of liquor it is for the magistrate to decide whether he will believe the evidence in chief, to the effect that the witness bought a bottle of whisky from the accused, or the evidence brought out on cross-examination of the same witness that he had given accused the money to buy the whisky for him and that the accused had done so; and the fact that the magistrate gave credence to the former and not to the latter statement is not a ground for quashing a conviction on certiorari. R. v. McElroy, 22 Can. Cr. Cas. 123, 14 D.L.R. 520.

CONTROVERTING RETURN; SUMMARY CONVICTION; EVIDENCE OF PRIOR CASE.

A magistrate's return in certiorari proceedings is conclusive only as to matters which are required to be included and does not prevent the controverting of the magis-

trate's statement therein that it had been agreed that the evidence in another case previously tried should be considered as applicable, where the record of the depositions and proceedings contained no reference to such consent or agreement. [R. v. Strachan, 20 U.C.C.P. 182, referred to.] R. v. Davey, 22 Can. Cr. Cas. 185, 14 D.L.R. 727. See also 22 Can. Cr. Cas. 221, 15 D.L.R. 612.

[Applied in R. v. Chappus, 28 Can. Cr. Cas. 157.]

SUBSTITUTING PROCEDURE BY NOTICE OF MOTION FOR PROCEDURE BY WRIT.

The effect of sec. 576 of the Criminal Code, 1906, is not to authorize the provincial courts to create a new practice as to certiorari nor to change the practice altogether; it is limited to a "regulation" of the practice and it is to doubted whether there is power thereunder to substitute a procedure by notice of motion to quash a conviction for the procedure by writ of certiorari (Ont. Crown Rules, 1908, rule 1279). R. v. Titchmarsh, 22 Can. Cr. Cas. 419, 19 D.L.R. 366.

JURISDICTION; SUFFICIENCY OF EVIDENCE; LIQUOR LAW.

Where a magistrate has jurisdiction to enter upon the inquiry as to an offence under a liquor law, he is not ousted from that jurisdiction by any want or insufficiency of the evidence to support the charge, at least where there was relevant evidence and it was not palpably inadequate, and a certiorari application must be dismissed if the right to certiorari has been taken away by statute as to offences of that class. [Ex parte Daley, 27 N.B.R. 129, considered.] The rule in civil cases as to supervision of the findings of a jury on the ground that they are against the weight of evidence do not apply to a certiorari application for review of the findings of a magistrate in respect of an offence as to which the right of certiorari of conviction thereunder has been taken away by statute; certiorari can only be granted in such cases in the event of the magistrate acting without jurisdiction. [Solomon v. Bitton, 8 Q.B.D. 176, and Phillips v. Martin, 15 A.C. 193, distinguished.] R. v. Davis; Ex parte Miranda, 23 Can. Cr. Cas. 33, 19 D.L.R. 475.

NOTICE OF MOTION; ALBERTA PRACTICE.

A motion for a writ of certiorari in aid is properly instituted by serving a notice of motion under the Alberta Crown Practice Rules at least where the accused is in custody under a magistrate's conviction. R. v. Swett, 23 Can. Cr. Cas. 272, 19 D.L.R. 694.

RETURN OF AMENDED CONVICTION; DEPOSITIONS.

If the magistrate returns to a certiorari an amended conviction by which the substance of that first drawn is changed, the Court may decline to accept the amended conviction in the absence of the depositions. [R. v. Barker, 1 East 188, referred to.] R. v. Watchman, 23 Can. Cr. Cas. 362, 20 D.L.R. 201.

SUMMARY CONVICTION; DEPOSITIONS; FILING SUBSTITUTED CONVICTION.

On a motion for a writ of certiorari, where the practice is to hear the merits on the motion for the writ, and if granted to include an order quashing the conviction on the return being made, the Court will not permit the filing of a substituted conviction made up by the justice after notice of the certiorari application to remedy the defect of the first formal conviction in not stating any place at which the offence was committed, where the depositions themselves did not shew where the offence was committed, and consequently did not shew territorial jurisdiction of the magistrate. [Compare R. v. Oberlander, 16 Can. Cr. Cas. 244, 15 B.C.R. 134; R. v. Pickard, 21 Can. Cr. Cas. 250, 11 D.L.R. 423.] R. v. Aikens, 23 Can. Cr. Cas. 467, 21 D.L.R. 633.

OTHER REMEDY; APPEAL; ILLEGITIMATE CHILDREN'S ACT.

A provincial law which makes provision for appeals in summary proceedings under it and which further declares that the "proceedings on such appeals" shall in other respects be "governed" by the same rules as appeals from summary convictions or orders made by justices of the peace under the Criminal Code, does not make applicable to such appeals the provision of Cr. Code, sec. 1122 forbidding a certiorari to remove a conviction when an appeal has been taken; Code, sec. 1122 deals rather with the consequences of an appeal than with the proceedings thereon, and semble, even if it applied, would not prevent the granting of a certiorari on the question of jurisdiction. [Johnston v. O'Reilly, 12 Can. Cr. Cas. 218, 16 Man. L.R. 405; R. v. St. Pierre, 5 Can. Cr. Cas. 365; R. v. Horning, 8 Can. Cr. Cas. 268; R. v. Ashcroft, 2 Can. Cr. Cas. 385, referred to.] Davis v. Feinstein, 24 Can. Cr. Cas. 160, 24 D.L.R. 798.

NEW GROUNDS; AMENDMENT; DISCRETION.

Leave to add new ground to an order nisi to quash in certiorari proceedings is discretionary with the Court and should be refused at the hearing if the applicant has had ample time to formulate then and give notice to the opposite party and has failed to do so. Ex parte Murchie; R. v. Gloucester, 24 Can. Cr. Cas. 228.

JURISDICTION; EVIDENCE OF OFFENCE.

Where certiorari is taken away by statute and is consequently restricted to the matter of jurisdiction, the erroneous finding by the magistrate of one of the constituents of the offence itself as distinguished from some collateral fact upon which his jurisdiction was contingent, does not go to the magistrate's jurisdiction so as to sup-

port a certiorari. [R. v. Walsh, 29 N.S.R. 531, followed; Colonial Bank v. Willan, L.R. 5 P.C. 417, applied.] R. v. Hoare, 24 Can. Cr. Cas. 279. See 25 Can. Cr. Cas. 87.

REMEDY BY APPEAL; FAILURE TO APPEAL IN TIME.

Where the Justice's jurisdiction was not in question nor was any exceptional reason set up, such as gross perversion of justice, the Court will exercise its discretion by refusing to quash a summary conviction removed on certiorari, if the accused might have appealed from the conviction had he given notice of appeal in due time under Cr. Code, sec. 750. [R. v. Delgarde, Ex parte Cowan (1904), 9 Can. Cr. Cas. 454, 36 N.B.R. 503; Ex parte Ross (1895), 1 Can. Cr. Cas. 153; Reg. v. Herrell (No. 2) (1899), 3 Can. Cr. Cas. 15, referred to.] Ex parte Doucet; R. v. O'Brien, 24 Can. Cr. Cas. 347.

[Followed in R. v. O'Brien, 29 Can. Cr. Cas. 141, 41 D.L.R. 97; applied in Ex p. Kane, 26 Can. Cr. Cas. 156, 27 D.L.R. 494.]

WHERE TAKEN AWAY BY STATUTE; PRIOR CONVICTIONS; TEMPERANCE ACT.

The question whether the defendant, found guilty of a third offence against the Canada Temperance Act, had been previously convicted or not, or how often or when is a matter entirely within the jurisdiction of the magistrate, and, certiorari being taken away by that statute, the magistrate's finding as to prior convictions is conclusive. (Per Grimmer, J.) [R. v. Brown, 16 Ont. R. 48; Ex parte Batson, 10 Can. Cr. Cas. 240, referred to.] Ex parte Gogan; R. v. Steeves, 24 Can. Cr. Cas. 371.

LIMITATIONS OF REVIEW; STATUTORY SHIFTING OF ONUS; LIQUOR ACT.

The Court on certiorari will not consider the weight of conflicting evidence but where there is no legal evidence at all to support the finding the conviction cannot be upheld; and a summary conviction for illegally keeping liquor for sale where there were no facts from which an inference of guilt could be drawn and where the testimony for the accused was corroborated and uncontradicted that he purchased the liquor then in transit as the agent for friends of his, and was to be reimbursed only the amount expended will be set aside notwithstanding a statutory provision such as that contained in the Sales of Liquor Act (Sask.), sec. 128, that the burden of proving the right to keep liquor shall be on the person accused of improperly or unlawfully keeping for sale. [Re Trepanier, 12 Can. S.C.R. 111; R. v. McArthur, 14 Can. Cr. Cas. 343; R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9; R. v. McElroy, 22 Can. Cr. Cas. 123, 14 D.L.R. 520, referred to.] R. v. McPherson (No. 2), 25 Can. Cr. Cas. 62, 26 D.L.R. 503, reversing 25 Can. Cr. Cas. 60.

[Dissented from in R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606.]

JURISDICTION; SUMMARY CONVICTION APPEAL; NOTICE OF MOTION.

Notwithstanding sec. 1122 of the Criminal Code, certiorari will lie to review the jurisdiction of a District Court Judge to hear an appeal under Cr. Code, sec 749, from a summary conviction. Certiorari can be maintained on any ground of a total want of jurisdiction even where there is a statutory direction that proceedings of a certain tribunal shall not be removed by certiorari; express words taking away the certiorari are inapplicable where there is a want or excess of jurisdiction but would apply to a mere irregularity in the exercise of jurisdiction. Where a notice of motion for a certiorari is entitled in the Supreme Court of Saskatchewan, the omission to add the designation of the appropriate judicial district of that province will not invalidate the notice. R. v. Georget (No. 2); Fauchauck v. Gerget, 25 Can. Cr. Cas. 76, reversing 23 Can. Cr. Cas. 341, 19 D.L.R. 404.

EXISTENCE OF OTHER REMEDY; DISCRETION.

The Court has a discretion to refuse a writ of certiorari, even for an alleged lack of jurisdiction in the magistrate to try the case, if there was an alternative remedy by review and no special circumstances are shown as to why that remedy was not pursued. Ex parte St. Onge, 25 Can. Cr. Cas. 169.

RECOGNIZANCE; B. C. PRACTICE.

Where the summons for certiorari gives notice that on the hearing of the motion for the writ the applicant will ask for the quashing of the conviction without the actual issue of the writ and it appears on the motion that the magistrate acted absolutely without jurisdiction, the Court may quash the conviction under B. C. Crown Office Rule No. 37, and the applicant need not in such case file a recognizance such as would be necessary under Rule 36, if the writ were to be issued. R. v. Dhama Singh, 25 Can. Cr. Cas. 250.

ASSAULT; JURISDICTION.

Where an information is laid for an assault occasioning actual bodily harm to the complainant (Cr. Code, sec. 295), and on the return of process issued thereon, two justices illegally proceed to try the charge instead of holding a preliminary enquiry (Cr. Code, sec. 668), the complainant who has by such illegality been deprived of the right to have her complaint dealt with according to law, is a "person aggrieved" by an illegal conviction, made by the justice for common assault and is entitled to apply for a certiorari to quash such conviction. [R. v. Groom, [1901] 2 K.B. 162, applied.] R. v. Law, 25 Can. Cr. Cas. 251.

ERRONEOUS FINDING BY MAGISTRATE; JURISDICTION.

An objection of defect of jurisdiction is not available on certiorari if it rests solely on the ground that the magistrate has er-

roneously found a fact which was essential to the validity of his order, but which he was competent to try. [Colonial Bank v. Willan, L.R., 5 P.C. 417, applied; R. v. Walsh, 29 N.S.R. 521, referred to.] R. v. Pudwell, 26 Can. Cr. Cas. 47.

[Followed in R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606.]

EVIDENCE OF OFFENCE; CONVICTION VALID ON ITS FACE.

The absence of any evidence of the offence is not a sufficient ground for quashing a summary conviction on certiorari, nor does it raise any question of jurisdiction of the magistrate; and a Court hearing a certiorari application in respect of a summary conviction valid on its face should not look at the depositions in furtherance of an enquiry as to whether there is any evidence of the offence. [Reg. v. Bolton (1841), 1 Q.B. 66, and Colonial Ban v. Willan (1874), L.R. 5 P.C. 417, applied; R. v. Hoare, 24 Can. Cr. Cas. 279, referred to; R. v. Coulson, 27 Ont. R. 59, and R. v. McPherson, 25 Can. Cr. Cas. 62, 26 D.L.R. 503, dissented from; R. v. C.P.R. (1907), 7 Terr. L.R. 443, and R. v. Pudwell, 26 Can. Cr. Cas. 47, followed.] R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606.

[Not followed in R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556.]

REMEDY BY APPEAL; SUMMARY CONVICTION; JUDGMENT.

Where the magistrate's jurisdiction is attacked, certiorari will not be refused merely because an appeal might have been taken from the summary conviction in question, unless some express statutory prohibition so directs. It is a ground for certiorari that a judgment of summary conviction was pronounced in the absence of the accused at a date later than that at which the evidence was concluded but without formal announcement to the parties of the time when judgment would be delivered. [Plante v. Cliche, 17 Can. Cr. Cas. 43, 38 Que. S.C. 542, Cairns v. Choquet, 3 Que. P.R. 25, and Thérien v. McEachren, 10 Que. S.C. 199, 4 R. de J. 87, referred to; and see Annotation on "Adjournment for judgment in summary proceedings" at end of this case.] Ex parte Pelchat, 26 Can. Cr. Cas. 75.

REMEDY BY APPEAL.

Where there is a right of appeal from a summary conviction, certiorari will not be granted as an alternative unless there are exceptional circumstances. [Ex parte Damboise, 16 Can. Cr. Cas. 292 39 N.B.R. 265, and Ex parte Doucet, 24 Can. Cr. Cas. 347, 43 N.B.R. 361, applied.] Ex parte Kane, 26 Can. Cr. Cas. 156, 27 D.L.R. 494.

PLEA OF GUILTY TO INVALID INFORMATION; REMEDY BY APPEAL; NOTICE OF ACTION; REVENUE ACT.

Where a complaint in a summary matter was invalid as disclosing no offence known to the law and as not shewing on its face the authorization to prosecute which was an essential under the particular statute invoked, certiorari lies at the instance of the accused to quash the conviction made upon his plea of guilty to such defective complaint and this although he might have taken an appeal to another tribunal; but his failure to raise his objections before the magistrate disentitles him to costs of the certiorari proceedings. [Kokolindes v. Kennedy, 18 Can. Cr. Cas. 495, referred to.] Certiorari proceedings to quash a summary conviction made on the complaint of an excise officer do not constitute a "suit entered against him" so as to require a month's notice of action under the Inland Revenue Act, R.S.C. 1906, ch. 51, sec. 94, although he is made a respondent to the motion to quash. Ex parte Richard, 26 Can. Cr. Cas. 166, 30 D.L.R. 364.

SUMMARY TRIAL; FAILURE TO TAKE DOWN EVIDENCE.

Where the magistrate making a conviction on summary trial refuses to reserve a case for the consideration of the Court of Appeal as to the sufficiency of the evidence, the remedy of certiorari is still applicable to quash the conviction on the ground that the magistrate did not have the evidence reduced to writing. [R. v. Harris (1911) 18 Can. Cr. Cas. 392, followed.] R. v. Perron, 26 Can. Cr. Cas. 442.

STATUTORY RESTRICTION OF REMEDY; INSUFFICIENCY OF EVIDENCE.

Where certiorari is taken away by statute, as under the Canada Temperance Act, the Court will not take cognizance of any supposed miscarriage in the enquiry before the justice from the insufficiency or irregularity of the evidence. [Ex parte Morrison (1909), 16 Can. Cr. Cas. 28, 39 N.B.R. 298, followed.] Ex parte Doyle; R. v. Lawlor, 27 Can. Cr. Cas. 60, 31 D.L.R. 90.

POWER TO LOOK AT DEPOSITIONS.

The general power of supervision of inferior Courts by certiorari process includes the right to look at the depositions taken before the convicting magistrate on a summary trial under Part XVI. of the Criminal Code and authenticated so as to become in effect a part of the record, to ascertain whether there is any evidence to support the conviction; and if there is none to order the conviction to be quashed. [R. v. Carter (1916), 26 Can. Cr. Cas. 51, 28 D.L.R. 606, 9 A.L.R. 481, and R. v. Walsh, 29 N.S.R. 521, not followed; King v. Mahony, [1910] 2 Irish R. 695, Reg. v. Bolton, 1 Q.B. 66, and Colonial Bank v. Willan, L.R. 5 P.C. 417, distinguished.] R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556.

[Approved in Lacasse v. Fortier, 30 Can. Cr. Cas. 87; applied in R. v. Barb, 28 Can. Cr. Cas. 93, 35 D.L.R. 102; discussed in R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289.]

NOTICE OF MOTION; STATING GROUNDS.

Although the Nova Scotia Crown Rules do not require an applicant for a writ of certiorari to set forth in his notice of motion the grounds on which he applies, yet, if he states specific grounds and the application is dismissed, he will not be permitted on an appeal from such dismissal to rely upon a new ground not theretofore raised. (Per Longley, J.) R. v. A. N. Smith, 27 Can. Cr. Cas. 340, 28 D.L.R. 795.

JURISDICTION; FINDING OF FACT.

The Court will not review on certiorari the magistrate's finding upon a question of fact which he was competent to try. [R. v. Cunerty, 2 Can. Cr. Cas. 325, 26 Ont. R. 51, applied.] R. v. Reinhardt Salvador Brewing Co. 27 Can. Cr. Cas. 445.

WEIGHT OF EVIDENCE.

Where certiorari is not taken away by statute, a superior Court, exercising powers of supervision and revision is ordinarily confined, when dealing with the question whether there is evidence to justify a summary conviction, to the evidence for the prosecution; but where the evidence for the prosecution justifies a conviction only on the ground of natural inference or statutory legal presumption and the evidence for the defence does not contradict the facts from which the inference or presumption arises, but proves the existence of other facts which shew that the inference, otherwise rightly drawn, ought not to be drawn when the whole facts are known, the Court is bound to consider also such defence evidence in determining whether there was evidence to justify the conviction. R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

[Applied in R. v. Barb, 28 Can. Cr. Cas. 93, 35 D.L.R. 102; discussed in R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289; R. v. Morin, 28 Can. Cr. Cas. 414.]

ALBERTA LIQUOR ACT.

Section 41 of the Alberta Liquor Act has not the effect of taking away certiorari except in the two cases of charges against or respecting a "vendor" or a druggist (subsection 2) and not then unless an appeal would not afford an adequate remedy (subsection 8). R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

[Applied in R. v. Barb, 28 Can. Cr. Cas. 93, 35 D.L.R. 102.]

STATUTE TAKING AWAY REMEDY; MAGISTRATE'S FINDING OF FACT ON WHICH JURISDICTION DEPENDS; TEMPERANCE ACT.

Although certiorari is taken away by statute in respect of offences against the Nova Scotia Temperance Act, 1910, it is open to the Court to review on certiorari the jurisdiction of the magistrate; but where the jurisdiction to make an order for the destruction of liquors seized depends upon the person arrested and brought before him being in fact the "occupant" of the premises where the liquor was found, the Court will not interfere if there was some evidence, whether direct or circumstantial, upon which the magistrate could have found him so to be. [R. v. Walsh, 29 N.S.R. 531, and R. v. Hoare, 24 Can. Cr. Cas. 279, 49 N.S.R. 119, referred to.] R. v. Collier, 28 Can. Cr. Cas. 87, 35 D.L.R. 131.

STATUTORY RESTRICTION; CANADA TEMPERANCE ACT.

Where certiorari is taken away by statute (ex. gr. under the Canada Temperance Act, R.S.C. 1906, ch. 152) and the magistrate has proceeded regularly with the enquiry and heard witnesses in support of the charge, the Court will not look at the depositions on a certiorari application for the purpose of seeing whether there was evidence before the magistrate which would warrant the conviction, that ground not being strictly one of jurisdiction so as to be available notwithstanding the statute taking away the remedy of certiorari. [R. v. Wallace, 4 Ont. R. 127, followed; R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606, referred to; R. v. Coulson, 24 Ont. R. 246, 1 Can. Cr. Cas. 114, and R. v. Coulson, 27 Ont. R. 59, and R. v. Borin, 29 O.L.R. 584, 22 Can. Cr. Cas. 248, 15 D.L.R. 737, distinguished.] R. v. Berry, 28 Can. Cr. Cas. 129. See 28 Can. Cr. Cas. 341.

WHERE NO ADEQUATE REMEDY BY APPEAL; RETURN; AFFIDAVITS.

Where the Court before which a certiorari motion is brought in respect of a conviction for an offence subject to the Ontario Summary Convictions Act, R.S.O. 1914, ch. 90, cannot find that an appeal which was available would not have afforded "an adequate remedy" (sec. 10) had such appeal been prosecuted, the motion to quash the conviction will be refused although the appeal had been quashed for failure to perfect the requisite security. [R. v. Keenan (1913) 21 Can. Cr. Cas. 467, 13 D.L.R. 125, 28 O.L.R. 441, referred to.] The Court will not admit affidavits in support of a certiorari motion under Ontario law to quash a summary conviction for petty trespass upon enclosed land for the purpose of shewing that the lands were not in fact enclosed or to controvert otherwise the findings of the magistrate upon questions which it was competent for him to try. R. v. Davey (1913), 22 Can. Cr. Cas. 185, 14 D.L.R. 727, and R. v. Strachan (1869), 20 U.C.C.P. 182, applied.] R. v. Chappus (No. 1), 28 Can. Cr. Cas. 157, affirmed in 28 Can. Cr. Cas. 411.

LIMITATIONS OF REVIEW; ONTARIO TEMPERANCE ACT; SPECIAL FINDINGS OF MAGISTRATE.

The limitation of the right of certiorari under sec. 10 of the Ontario Summary Con-

victions Act, R.S.O. 1914, ch. 90, is excluded as regards convictions under the Ontario Temperance Act, 1916, by sec. 92 (1) of the latter Act, and there being no prohibition of certiorari, the court may examine the evidence to ascertain whether the magistrate had jurisdiction. The magistrate's opinion on the facts must be presumed to be such as will support the conviction unless his express findings are otherwise; these may be certified to the Court along with the summary conviction and proceedings or may be brought up on a stated case under Part XV. of the Criminal Code and sec. 4 of the Ontario Convictions Act. [R. v. Borin, 22 Can. Cr. Cas. 248, 15 D.L.R. 737, 29 O.L.R. 584, applied; R. v. Berry, 38 O.L.R. 177, and R. v. Cantin, 39 O.L.R. 20, referred to.] R. v. Thompson, 28 Can. Cr. Cas. 271.

To review inferior appellate tribunal.

Certiorari will not be granted in respect of a County Judge's order setting aside a magistrate's decision unless a want or excess of jurisdiction be shewn or some gross miscarriage of justice. R. v. McLatchy, 28 Can. Cr. Cas. 277.

Limitations of review; Magistrate's jurisdiction to enter upon inquiry.

Where certiorari is taken away by statute, the court may still review a summary conviction for want of jurisdiction of the magistrate, but such ground can be supported only if it were made to appear that the magistrate's commission did not justify him in exercising jurisdiction in the locus or that he was not in fact proceeding on an alleged violation of the Act under which the charge was brought. A conviction under the Canada Temperance Act, by sec. 148 of which certiorari is taken away, will not be quashed for an alleged mistake in the conclusions arrived at by the magistrate if he had jurisdiction to enter upon the inquiry. [Colonial Bank v. Willan, L.R. 5 P.C. 417, applied.] R. v. Cantin; R. v. Weber, 28 Can. Cr. Cas. 341. See also 38 O.L.R. 177.

[Applied in R. v. Warne Drug Co., 29 Can. Cr. Cas. 384.]

Summary trial; City magistrate; Theft.

Certiorari proceedings do not lie for the review of a conviction made on summary trial by the police magistrate of a city of over 25,000 population, proceeding without the consent of the accused upon a charge of theft of less than $10; the offence in such case being triable under Code, sec. 777, sec. 1013 applies to restrict appeals to the Court of Appeal (Code, secs. 2 (7) and 1013) to those provided for in secs. 1013-1021. [R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D. L. R. 441, cited.] R. v. Sinclair, 28 Can. Cr. Cas. 350, 32 D.L.R. 796, quashing appeal from 27 Can. Cr. Cas. 327, 31 D.L.R. 265.

Power to look at depositions; Evidence to support conviction; Temperance Act.

In view of the express provision of the Manitoba Temperance Act, 6 Geo. V. Man., ch. 112, preserving the right to certiorari although denying any right of appeal from a summary conviction under it, and the references contained in it (secs. 100 and 101) to the sufficiency of the evidence to support the case and the disposal of a certiorari application upon the merits, the Court hearing a certiorari application is bound to look at the evidence taken before the magistrate in conformity with secs. 682 and 683 of the Criminal Code to see whether there is evidence or not to prove the offence. [R. v. Brady, 13 Ont. R. 356; R. v. Borin, 22 Can. Cr. Cas. 248, 15 D.L.R. 737, 29 O.L.R. 584; R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662; R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556, discussed.] R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289.

Limitation by statute; Adequate remedy by appeal.

Where the law provides an appeal which practically enables the accused to have a retrial of the case in which he was summarily convicted, such appeal affords an adequate remedy for raising the question that there was no evidence to shew that the alleged offence had been committed, and if the particular offence is subject to a statute which takes away the right of certiorari where there is another adequate remedy, a certiorari will be allowed only for want or excess of jurisdiction. If the justice had the right to enter upon the inquiry and the summary conviction is good on its face, the Court, in view of the statutory restriction, cannot look either at the depositions or at affidavits to ascertain whether or not the justice came to a proper conclusion. [R. v. Bolton, 1 Q.B. 66, and Rex v. Morn Hill Camp, [1917] 1 K. B. 176, applied.] R. v. Chappus (No. 2) 28 Can. Cr. Cas. 411, affirming 28 Can. Cr. Cas. 157, 38 O.L.R. 576.

[Applied in R. v. Warne Drug Co., 29 Can. Cr. Cas. 384.]

Weight of evidence; Liquor offence.

The court hearing a certiorari motion may quash a summary conviction which a magistrate has entered arbitrarily in reliance upon the shifting of the onus of proof by statute upon the defendant without giving judicial consideration to the question of the credibility to the defendant's evidence contra, but if the statutory onus is that the accused shall prove that he did not keep liquor for sale when a quantity of liquor was found in his possession the magistrate may take into consideration the circumstances under which it was found and under which it was obtained in deciding that he will not accept

the defendant's denial on oath that it was kept for purpose of sale. [Rex v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662, 10 A.L.R. 349, commented upon.] R. v. Morin, 28 Can. Cr. Cas. 414, 38 D.L.R. 617.

REVIEW OF CONVICTION UNDER MUNICIPAL BY-LAW; LETHBRIDGE CHARTER, SEC. 7, TITLE 24.

On a certiorari application in respect of a summary conviction under a municipal by-law, the Court may look at the depositions and proceedings before the magistrate to see if the by-law has been proved, and, if not, may quash the conviction. [Re v. Banks, 1 Can. Cr. Cas. 370, 2 Terr. L.R. 81, followed.] City of Lethbridge v. Hanson, 29 Can. Cr. Cas. 43.

OTHER REMEDY; APPEAL.

If there is a right of appeal from a summary conviction but it has not been taken advantage of, certiorari will not be granted unless there are exceptional circumstances. [Ex parte Doucet, 24 Can. Cr. Cas. 347, 43 N.B.R. 361, and Ex parte Young, 32 N.B.R. 178, followed.] R. v. O'Brien; Ex parte Theriault, 29 Can. Cr. Cas. 141, 41 D.L.R. 97.

SUMMARY CONVICTIONS; CR. CODE 1124.

A summary conviction is to be considered as "removed by certiorari" for the purpose of Code, s. 1124, and its curative provisions as regards convictions otherwise irregular but founded on evidence satisfactory disclosing an offence of the nature described in the conviction, although the conviction itself had not in fact been brought up under a writ of certiorari is on a motion to quash the conviction under a method of procedure authorized by Rules of Court passed under Code, s. 576. It is sufficient in such case that the conviction and papers pertaining to it were certified and returned to the superior Court on notice, instead of by a return to a writ of certiorari, and that for the purposes of an appeal from an order refusing to quash, the Appellate Court has before it the conviction and papers so returned by the magistrate and certified to the Appellate Division by the proper officer of the division in which the order appealed from was made. (Per MEREDITH, C.J.C.P.) [R. v. Titchmarsh (1914), 32 O.L.R. 569, applied; Ont. Practice Rule 1287, considered.] R. v. Jackson, 29 Can. Cr. Cas. 352.

EVIDENCE TO CONTRADICT MAGISTRATE'S RECORD OF PLEA; JURISDICTION.

Evidence by affidavit is admissible on a certiorari motion to quash a summary conviction to prove that the accused did not plead guilty as set forth in the magistrate's record of proceedings; and in like manner affidavits are admissible contra to support the claim that the plea was correctly recorded by the magistrate. If it be found that the magistrate's record of the proceedings was wrong in that respect, the conviction made in his belief that the defendant pleaded guilty must be set aside on certiorari because of lack of jurisdiction to convict without evidence or a plea of guilty. [R. v. Richmond (1917), 29 Can. Cr. Cas. 89, 39 D.L.R. 117, referred to.] R. v. Barlow, 29 Can. Cr. Cas. 381.

SUMMARY CONVICTION UNDER ONTARIO LAWS; LIMITATION OF CERTIORARI.

The fact that the appeal provided under the Ontario Temperance Act is to the county judge while the appeal referred to in the Ontario Summary Convictions Act, R.S.O. 1914, ch. 90, is to a Division Court unless imprisonment is awarded, does not prevent the application of s. 10 of the latter Act to convictions under the Ontario Temperance Act. There is consequently no right to certiorari to review a conviction under that Act unless an appeal to the county judge would not afford an "adequate remedy" (R.S.O. 1914, c. 90, s. 10, sub-sec. 3.) [R. v. Cantin (1917), 28 Can. Cr. Cas. 341, 39 O.L.R. 20, and R. v. Chappus (1917), 28 Can. Cr. Cas. 411, applied; see also R. v. Keenan (1913), 21 Can. Cr. Cas. 467, 13 D.L.R. 125, 28 O.L.R. 441.] R. v. Warne Drug Co. 29 Can. Cr. Cas. 384.

JURISDICTION; MAGISTRATE'S CONVICTION; N.S. CROWN PRACTICE RULES.

In cases to which Nova Scotia Crown Rule 32 does not apply, a motion to quash a magistrate's conviction as upon certiorari cannot be made without the conviction being brought into the superior court, even where the issue of a writ of certiorari is waived by the prosecutor. Unless the convictions are brought into Court there is no jurisdiction to deal with them, and in cases to which Crown Rule 32 (N.S.) applies the order to quash is effective only upon a return being made. R. v. Rusko, 29 Can. Cr. Cas. 433.

POWER TO LOOK AT DEPOSITIONS.

Cr. Code, sec. 1124, which gives power to the court on certiorari to peruse the depositions in order to ascertain if an offence of the nature described in the conviction attacked has been committed, conclusively shews that the depositions in a summary conviction matter form a part of the record and that the court on certiorari may read the depositions with the view of ascertaining if there is evidence to support the conviction and, if there is none, the conviction may be quashed. [R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556, 10 A.L.R. 139, approved; and see R. v. Barb (1917), 28 Can. Cr. Cas. 93, 35 D.L.R. 102.] Lacasse v. Fortier, 30 Can. Cr. Cas. 87.

INSUFFICIENCY OF EVIDENCE; WAR MEASURES ACT.

A summary conviction will be quashed on the merits if no reasonable inference of the facts essential to the offence could be

drawn from the evidence. So a conviction of the paid official of a labour organization for not being regularly engaged in some useful occupation as required by an order-in-council under the War Measures Act, Can., will be quashed if the magistrate had no evidence upon which to base a finding that the occupation was not useful. R. v. Ruttka, 30 Can. Cr. Cas. 172, 42 D.L.R. 276.

MAGISTRATES; NOTE OF APPLICATIONS AND ORDERS; TO BE FURNISHED ON REQUEST OF EITHER PARTY.

Magistrates should be specially careful either to make a note themselves or to see that a note is made of every application, and of every ruling made during the course of a case before them, so that no party may possibly be deprived of any advantage he may be entitled to, and having taken, or caused to be taken, such notes, to return them along with the depositions in answer to a notice by way of *certiorari* or to furnish them on request to either party to the proceedings, who is prepared to pay the proper fees. R. v. Dominion Drug Stores Limited; R. v. C.N.R. Co., 30 Can. Cr. Cas. 318, 44 D.L.R. 382, affirmed in 31 Can. Cr. Cas. 86.

SUMMARY CONVICTION; STATED CASE.

The dismissal of a stated case by a justice for lack of compliance with preliminary requirements and not upon the merits does not bar a motion to quash the summary conviction by *certiorari* process. R. v. Gainor, 30 Can. Cr. Cas. 357.

AFFIDAVITS ON QUESTION OF COSTS.

Affidavits will be received as to the conducts of the parties as bearing upon the question of costs in certiorari proceedings to quash a summary conviction, although the matter set up may not be relevant to the case presented for quashing the conviction. R. v. Hackam, 30 Can. Cr. Cas. 414.

STATUTORY RESTRICTION; "ADEQUATE REMEDY."

Where certiorari is taken away only in the event of an appeal affording an "adequate remedy" it may, notwithstanding, be maintained if the prosecution was conducted in such a way as misled the accused in regard to what he had to answer, and so avoided a motion by the defence before the taking of testimony began for a postponement of the trial. R. v. Dominion Drug Stores, Ltd., 31 Can. Cr. Cas. 86, affirming 30 Can. Cr. Cas. 318, 44 D.L.R. 382.

CHAMPERTY.

MAINTENANCE; INDICTABLE OFFENCE.

Maintenance is an indictable offence in this province; and in an action to recover damages for maintenance, the plaintiff is not entitled to obtain from the defendants upon examination for discovery such answers as would tend to subject them to criminal proceedings. In such an action no discovery of the matters charged could be had which would not involve the defendant in matters leading up to the offence; and therefore the examination should not be allowed to take place at all. Hopkins v. Smith et al. (1901), 1 O.L.R. 659.

CHAMPERTY A CRIMINAL OFFENCE; MAINTENANCE; LITIGIOUS RIGHTS.

(1) Champerty is a criminal offence, and a champertous contract will not be enforced by the Courts. (2) The English champerty laws became law in the Province of Quebec as a part of the English criminal law introduced or continued in that province under the Quebec Act, 1774 (Imp.). Meloche v. Deguire, 8 Can. Cr. Cas. 89.

[Discussed in Thomson v. Wishart, 16 Can. Cr. Cas. 446, 19 Man. L. R. 340.]

MAINTENANCE; ENGLISH LAW AS TO CRIMINALITY NOT INTRODUCED INTO MANITOBA.

(1) The introduction of the criminal law of England as of the year 1870 into the Province of Manitoba under Code, sec. 12 being in terms limited to such English law "in so far as it is applicable," cannot be held to have introduced the now obsolete crimes of maintenance and champerty, which were not theretofore applicable to local conditions in Manitoba. (2) Sec. 65 of the Law Society Act, R.S.M. 192, ch. 95, permitting a solicitor to contract with his client for a share of the proceeds of litigation as his fee, is therefore not ultra vires as being in conflict with the criminal law of champerty and maintenance. [Meloche v. Deguire, 8 Can. Cr. Cas. 89, 34 Can. S.C.R. 24, discussed.] Thomson v. Wishart, 16 Can. Cr. Cas. 446.

CHARACTER.

Note on admissibility of evidence of prisoner's character. 5 Can. Cr. Cas. 503.

CROSS-EXAMINATION; WITNESS TO PROVE GOOD CHARACTER.

Where the question of motive is an important element in the case, and the motive charged depends on the alleged improper relations of the accused with a certain female, evidence is admissible to prove such relations, although it tends to shew that he is of bad character, and notwithstanding the general rule which prevents the prosecution from adducing evidence of the general bad character of the accused as a circumstance in proof of the charge. Where evidence is adduced on behalf of the accused as to his general good character, the witnesses may be cross-examined by the prosecution as to the grounds of their belief and as to the particular facts

on the question of character of which they have knowledge. R. v. Barsalou (No. 2), 4 Can. Cr. Cas. 347.

CROSS-EXAMINATION OF PRISONER AS TO PREVIOUS CONVICTIONS FOR INDICTABLE OFFENCES; CHARACTER EVIDENCE.

An accused person examined as a witness on his own behalf, may be cross-examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character had been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. The King v. D'Aoust, 5 Can. Cr. Cas. 407.

[Referred to in R. v. Reid, 14 Can. Cr. Cas. 233.]

CHARACTER EVIDENCE; WHEN EVIDENCE OF PRISONER'S BAD CHARACTER ADMISSIBLE.

The prosecution is not entitled to give evidence of the prisoner's bad character, unless or until the prisoner adduces evidence to prove his good character, either by examining his own witnesses on that point or by questioning the Crown witnesses thereon as a part of their cross-examination. A new trial will be ordered where such evidence is wrongly admitted against the prisoner, although no objection was raised to it by the prisoner's counsel. The King v. Long, 5 Can. Cr. Cas. 493.

[Relied on in R. v. Low, 15 Can. Cr. Cas. 395, 19 Man. L.R. 274, referred to in R. v. Thompson, 21 Can. Cr. Cas. 98, 10 D.L.R. 475.]

CHARGE.

See Indictment; Information.

CHEATING.

See False pretences.

CHEESE FACTORIES.

FRAUDS AGAINST CHEESE FACTORIES; COSTS OF APPEAL.

(1) All the provisions of Cr. Code, secs. 876-880, are to be taken as embodied in the Act as to frauds against cheese factories, except as varied by or inconsistent with the latter Act, and confer the power to award costs on an appeal taken under sec. 9 thereof. (2) The costs which may be allowed on the appeal are in the discretion of the Judge apart from the tariffs of costs applicable to other proceedings as to which he has jurisdiction; and when such an appeal is taken to a County Court Judge, his allowance of costs according to the County Court tariff should not be interfered with. R. v. McIntosh, 2 Can. Cr. Cas. 114.

[Considered in R. v. Tucker, 10 Can. Cr. Cas. 221.]

CHILD.

Wilful neglect of child by father after divorce decree giving custody to mother. 5 Can. Cr. Cas. 246.

Criminal responsibility to provide necessaries to. 5 Can. Cr. Cas. 372.

Note on neglect to supply medical aid. 5 Can. Cr. Cas. 378.

Neglect of, by failure to supply medical aid. 7 Can. Cr. Cas. 261.

Excessive punishment by school teacher. 8 Can. Cr. Cas. 178.

Evidence of, not under oath; Corroboration in certain cases. 9 Can. Cr. Cas. 38, 42.

Child-stealing; Whether a parent can in any case be liable. 9 Can. Cr. Cas. 164.

Under fourteen years; Presumption. 11 Can. Cr. Cas. 331.

CONCEALING THE BIRTH OF.

In an indictment for concealing the birth of a child, it appeared that the prisoner, who lived alone, had placed the dead body of the child behind a trunk in the room she occupied, between the trunk and the wall. On being charged with having had a child, she denied it, saying she was suffering from cramps, and it was only after the doctor who was called in had informed her that he knew she had been delivered of a child, and on being pressed by one of the women present, that she pointed out where the body was, and the woman went and got it. Until so pointed out the body could not be seen by any one in the room: —Held, that the evidence, was sufficient to go to a jury, and the County Court Judge, before whom the prisoner was tried by her consent without a jury, having found her guilty, the Court refused to interfere. Regina v. Piché (1879), 30 U.C.C.P. 409.

CRUELTY TO CHILD.

Upon a charge of causing grievous bodily harm to a child under defendant's care with intent to bring about the child's death, evidence of acts of cruelty by defendants to another child also in defendants' care are irrelevant to the case and inadmissible. R. v. Lapierre, 1 Can. Cr. Cas. 413.

[Considered in R. v. Union Colliery Co., 3 Can. Cr. Cas. 534, 7 B.C.R. 259.]

DUTY TO PROVIDE NECESSARIES TO; MASTER AND SERVANT.

A person who engages the services of a child under sixteen years, placed out with him by his legal guardian under a contract for the child's services for a fixed period,

whereby the party with whom he is placed engages to furnish the child with board, lodging, clothing, and necessaries, is not as to such child a "guardian or head of a family" so as to become criminally responsible as such under Cr. Code, sec. 210, for omitting to provide "necessaries" to such child while a member of his household. The relationship in such case is that of master and servant, and comes within the provisions of Cr. Code, sec. 211, under which the master is criminally responsible only in respect of a failure to provide "necessary food, clothing, or lodging." Sec. 211 of the Code does not impose a criminal responsibility upon the master to provide the servant with medical attendance or medicine, and, semble, per Rouleau, J., medical aid is not within the term "necessaries" under Cr. Code, sec. 210. The Court should not, without expert evidence upon the effect of the loss of a child's toes resulting from exposure to cold, and their consequent amputation, infer that the child's health had thereby been or was likely to be "permanently injured" (Cr. Code, sec. 211), or that his life has thereby been endangered. R. v. Coventry, 3 Can. Cr. Cas. 541.

CARNALLY KNOWING GIRL UNDER FOURTEEN. (1) The offence of carnal knowledge of a girl under fourteen years includes the offence of indecent assault, and a trial for the greater offence is a trial also for the lesser offence included therein, and the accused may, although found not guilty of the greater offence, be convicted for such lesser offence, if proved, under the same charge or indictment. (2) a police magistrate trying an accused with his consent summarily, upon the charge of carnal knowledge, has the same power to convict of the lesser offence as the Court of General Sessions would have upon a trial under an indictment. (3) An acquittal by the police magistrate on such summary trial is a bar to a charge upon a fresh information for indecent assault in respect of the same occurrence. R. v. Cameron, 4 Can. Cr. Cas. 385.

[Referred to in R. v. Hannay, 11 Can. Cr. Cas. 25.]

MOTHER REMOVING AND SECRETING CHILD AFTER DIVORCE DECREE AWARDING ITS CUSTODY TO FATHER; INTENT TO DEPRIVE PARENT OF POSSESSION TO WHICH HE IS ENTITLED. (1) Where a divorce decree of a Court of competent jurisdiction in the United States has awarded the custody of a child to the father as against the mother, and the mother thereafter removes and conceals the child for the purpose of evading the decree, a prima facie case for extradition is thereby made out against the mother upon a charge of child-stealing. (2) Semble, the offence of child-stealing under the Criminal Code, sec. 284, may be complete against the child's mother, although the father, to whom the child's custody has been awarded, has never had any actual separate possession of the child. Re Lorenz, 9 Can. Cr. Cas. 158.

NEGLECTED CHILDREN; PROVINCIAL LEGISLATION; CONVICTION OF PARENT. (1) A warrant of commitment of a child to a public orphanage under the powers conferred by the Nova Scotia provincial statute as to neglected children, R.S.N.S., ch. 116, is sufficiently definite as to time if it specifies that the child is to be kept until he is sixteen years of age without stating the year and day when the term of detention expires. (2) Where the conviction of the child's mother is a prerequisite to the jurisdiction of a magistrate to order the child's detention in an orphanage, an existing conviction in fact will suffice for that purpose, even if it be objectionable on the ground of duplicity. Ex parte Yates, 9 Can. Cr. Cas. 359.

DETENTION IN REFORMATORY SCHOOLS ON FATHER'S ORDER; SCHOOL AUTHORIZED FOR IMPRISONMENT OF YOUTHFUL OFFENDERS. (1) A father, having under the law of the Province of Quebec the care of his minor children, may, with the consent of the management of the school, place his child in a reformatory school authorized for the commitment under Cr. Code, sec. 956, of youthful offenders; and the detention of the child for purposes of discipline and subject to release by the father at any time, will not be interfered with by habeas corpus issued on behalf of the child by his mother. (2) A writ of habeas corpus to test the legality of a child's detention is not irregular because issued on the petition of the child himself who is under disability to bring action in respect of civil rights. Re A. B., 9 Can. Cr. Cas. 390.

CARNAL KNOWLEDGE; ATTEMPT; GIRL'S EVIDENCE NOT UNDER OATH; CORROBORATION. (1) Where the accused has been committed to gaol for trial upon a charge otherwise within the jurisdiction of the County Court Judge's Criminal Court under Part LIV. of the Criminal Code, the jurisdiction of that Court in regard to the charge laid is not ousted by the fact that a more serious offence which that Court cannot try is disclosed by the depositions upon which the charge was founded. (2) Upon the trial of a charge of attempted carnal knowledge of a girl under fourteen who is too young to understand the nature of an oath, a conviction for that offence is not warranted unless her evidence not under oath is corroborated by some other material evidence implicating the accused (Cr. Code. 685), but the accused may be convicted of common assault upon the

charge so laid if there be corroboration merely by some other material evidence (Can. Evidence Act, sec. 25). The King v. De Wolfe, 9 Can. Cr. Cas. 38.

CRIMINAL LIABILITY OF PARENT FOR FAILURE TO PROVIDE NECESSARIES FOR CHILDREN.

A father is not criminally liable under sec. 242 of the Cr. Code for failing to provide necessaries for a child ten years of age, who was taken by its mother, in anger, from the father's house on a bitterly cold night, and who was, with its mother, frozen to death, where the father, who had provided a home according to his station of life, had reason to believe that the mother and child had gone to a neighbour's, but, instead, they were lost on the way, since the father did not have reason to anticipate that the mother would expose the child to such danger. [Rex v. Wilkes, 12 O.L.R. 264, 11 Can. Cr. Cas. 226, specially referred to.] R. v. Sidney, 20 Can. Cr. Cas. 376, 5 D.L.R. 256.

CUSTODY; JUVENILE COURT; DETENTION PENDING HEARING.

On the arrest of a juvenile under 14 years of age in respect of whose support a delinquency charge against the parent is pending before a Juvenile Court, the judge of the Juvenile Court may make an interim order for the detention of the child in a detention home pending the hearing of the charge. Re Stenhouse, 21 Can. Cr. Cas. 182, 10 D.L.R. 560.

CONTRIBUTING TO DELINQUENCY OF JUVENILE.

No legal offence is disclosed in an information charging a woman with knowingly and wilfully "keeping company with" a man and thereby depriving him from keeping his children under proper parental control and contributing to their being or becoming juvenile delinquents; sec. 29 of the Juvenile Delinquents Act 1908, 7 & 8 Edw. VII. Can., ch. 40, does not support such a charge. R. v. Curry, 24 Can. Cr. Cas. 340.

RIGHT TO CUSTODY; UNLAWFUL DETENTION.

Where husband and wife have separated and the wife and young child had become domiciled with the accused without objection on the part of the husband, a demand by the latter on the wife's death for the custody of the child, so as to change its domicile, should not be prosecuted by means of a criminal charge under Cr. Code, sec. 316, for unlawful detention until the question of the rightful custody under the changed conditions had first been submitted to and decided by the competent civil Court. [R. v. Hamilton, 17 Can. Cr. Cas. 410, distinguished.] Cummings v. The King, 26 Can. Cr. Cas. 304.

JUVENILE DELINQUENTS ACT; PLEA OF "GUILTY."

The Juvenile Delinquents Act, 1908, Can., does not permit of a conviction upon a plea of guilty made by a juvenile charged thereunder. R. v. Wigman, 30 Can. Cr. Cas. 362.

CHINESE IMMIGRATION ACT.

See Immigration.

CHRISTIAN SCIENCE.

See Conspiracy.

CIVIL ACTION.

IN ASSAULT CASES; See Assault.

Prosecution for assault; Bar of civil action; Note. 11 Can. Cr. Cas. 79.

Quashing summary convictions; Orders of protection; Cr. Code, sec. 891; Note. 11 Can. Cr. Cas. 18.

Note on criminal law as affecting civil rights; Crim. Code, sec. 534. 6 Can. Cr. Cas. 320.

ACTION BROUGHT BY DIFFERENT ATTORNEY.

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 U.C.O.S. 486.

ARREST ON UNENDORSED WARRANT; DETENTION UNDER ILLEGAL WARRANT.

A warrant for the arrest of the plaintiff, who had made default in paying a fine on conviction for an infraction of the liquor license law, was sent from an outlying county to a city. Before it was endorsed by a magistrate in the city the plaintiff was arrested there by two of the defendants, the chief constable and a detective, and confined. Some hours after the arrest the warrant was properly endorsed and the detention of the plaintiff was continued until payment of the fine:—Held, that the only damages recoverable by the plaintiff was for the trespass, up to the time of the backing of the warrant. Held, also, that the plaintiff being illegally in custody under a criminal charge, the subsequent detention on a similar charge, under a proper warrant was lawful. Distinction between subsequent civil and criminal proceedings in such cases pointed out. Southwick v. Hare et al. (1893), 24 O.R. 528.

FALSE ARREST UPON CORONER'S WARRANT; STATUTORY PROSECUTION OF OFFICER; JUDICIAL ACTS.

Plaintiff sued defendant in trespass, stating that acting as coroner he assaulted plaintiff, etc. The second count stated that defendant was acting as coroner, etc., and that, a jury being duly sworn he held an inquisition on the body of one N. F., then lying dead, setting forth the finding of

the jury, which shewed that deceased had died from the effects of laudanum administered according to a prescription by plaintiff, and through culpable negligence on his part in not having given sufficiently explicit directions and charging that defendant maliciously and without reasonable cause issued his warrant for plaintiff's arrest and committal for wilful murder, on which plaintiff was arrested, etc. At the trial, on its being objected that defendant, as coroner, was Judge of a Court of Record, and that no action would, therefore, lie against him for anything done in his judicial capacity, plaintiff proposed to shew that he had acted maliciously and was therefore not protected, but without suggesting in what particular he had so acted. It was not disputed, however, that defendant had acted within his jurisdiction and super visum corporis, or that he had issued his warrant on the finding of the jury. On this plaintiff was nonsuited:—Held, that as defendant was acting judicially, trespass would not lie against him, and that though the nonsuit did not appear so erroneous as to warrant its being set aside, still that if plaintiff desired to present facts to the jury not suggested to them at the trial, the Court would allow him to do so on payment of costs. Garner v. Coleman, 19 U.C.C.P. 106.

ISSUING WARRANT FOR ARREST WITHOUT JURISDICTION; BONA FIDE BELIEF IN LEGAL AUTHORITY; NOTICE TO MAGISTRATE OF ACTION FOR FALSE ARREST.

The older cases as to notice to a justice has been modified by more recent decisions, and the test now is whether or not the magistrate bona fide believes in the existence of facts, which, if they existed, would give him jurisdiction. Admitting that the magistrate in the present case was acting bona fide, and believed he had jurisdiction, no circumstances were brought to his notice which if true would give him jurisdiction, and his belief on the subject was without ground on which it could be based, and was unreasonable. (Per Henry, J., Graham, E.J., concurring.) The justice having acted with some colour of reason, and with a bona fide belief that he was acting in pursuance of his legal authority, he was entitled to protection, although he may have proceeded illegally or in excess of his jurisdiction. Mott v. Mylne (1898), 35 C.L.J. 81, 31 N.S. R. 372.

MALICIOUS ARREST; UNLAWFUL DESTRUCTION OF LIQUOR; PROTECTION OF MAGISTRATE; NOTICE OF ACTION.

The order for the destruction of the liquors was not produced, but the person who destroyed the liquors stated, without objection, that he had received a written order to destroy the liquors, signed by both justices, and that he had returned the order to them. This order had not been quashed:—Held, that the defendants were entitled to say that the existence of such an order was proved, but that the order for the destruction and adjudication of forfeiture were two different things, and that in order to obtain protection, the order or adjudication of forfeiture should have been proved, and that it was not necessary to quash a mere order for destruction. The order spoken of in R.S.O. (1877), ch. 73, sec. 4, is an order in the nature of a conviction; i.e., an original adjudication by the magistrate upon some matter brought before him by charge, complaint, conviction or otherwise, and not an order for the purpose of carrying out or enforcing such adjudication. The notice of action stated that one month after the service of the notice an action would be brought for malicious arrest, etc., and for the malicious, etc., destruction of goods, and for damages for loss of time and injury to business, and for the recovery of costs and expenses, etc., "same having been committed by you against me in the month of May last at said village of Michipicoten River, and at the town of Port Arthur." The notice was served on the defendant B. personally, and was served on the agent of the defendant C. at the head office of the defendant C. at Michipicoten River, and a copy was also left for the defendant C. at his place of residence at Port Arthur and another copy was served on his solicitors. The defendant C. admitted that he had seen a copy of the notice, but it was not shewn at what time or place he had seen it:—Held, that the notice and service were sufficient. The omission to give notice of action must be pleaded or the section which required it referred to in the plea of "not guilty by statute." Bond v. Conmee (1889), 16 Ont. App. R. 398.

NOTICE OF ACTION; ACT DONE IN PURSUANCE OF CRIMINAL CODE; BONA FIDE BELIEF.

In an action for false imprisonment the defendant, acting as a peace officer under the Criminal Code, is entitled to notice of action under sec. 976, if he honestly believed the plaintiff had committed a felony. The bona fides of the defendant's belief is a question of fact, and must be submitted to the jury, if any facts exist which could give rise to an honest belief. The reasonableness of the belief is not material. White v. Hamm, 36 N.B.R. 237.

NOTICE OF ACTION; DECLARATION.

It is no ground of objection to a notice of action against a magistrate, that the plaintiff declared by a different attorney from the one by whom notice was given and process issued. McKenzie v. Mewburn, 6 U.C.O.S. 486.

SEDUCTION; EVIDENCE OF RAPE; INSTRUCTION TO FIND FOR DEFENDENT.

Held, following Walsh v. Nattrass, 19 U.C.C.P. 453, that where, in an action of

seduction, the evidence of the witness shows that a rape was committed upon her, it is the duty of the Judge, in the interests of public justice, to stop the case, and not leave it to the jury, with a direction to find for defendant, if in their opinion it was a rape; and this, even where the Judge himself is not clear that a rape had been committed. But, Held, that defendant cannot set aside the verdict for misdirection in this respect, as this will only be done in the interest of public justice. Williams v. Robinson, 20 U.C.C.P. 255.

ASSAULT AND BATTERY; SUSPENSION OF ACTIONS IN CASES OF FELONY.

To an action for assault and battery defendant pleaded that before action brought the plaintiff laid an information before a magistrate, charging defendant with feloniously, etc., wounding the plaintiff with intent to do him grievous bodily harm, thereby charging the defendant with felony; that defendant was brought before the magistrate, and committed for trial, which had not yet taken place; that the subject of both the civil and criminal prosecution was the same, and that plaintiff's civil right of action was suspended until the criminal charge was disposed of:—Held, on demurrer, plea good, and an order was accordingly made staying the civil action in the meantime. Taylor v. McCullough (1885), 8 O.R. 309.

TAKING GOODS UNDER SEARCH WARRANT; PLEA; REPLICATION; SUFFICIENCY.

In an action for taking goods under a search warrant, the defendants pleaded that the goods were feloniously stolen by one G, or some person or persons unknown to defendant, to which plaintiff replied that the said goods were not feloniously stolen by the said G, as alleged":—Held, bad, because while professing to answer the whole plea, it did not do so. Hamilton et al. v. Calder, 23 N.B.R. 373.

FALSE IMPRISONMENT; COSTS AGAINST MAGISTRATES.

Where, in the investigation of a charge under the Petty Trespass Act, 4 Wm. IV. ch. 4, before magistrates, the plaintiff was guilty of contempt, for which the magistrates committed him, but without warrant, and the plaintiff brought an action against them for false imprisonment, and recovered:—Held, that the action did not arise in consequence of anything done by the magistrates under the Petty Trespass Act, and that therefore it was not necessary for a Judge, under the 21st sec. of that Act, to certify his approval of the verdict, to entitle the plaintiff to costs. Armour v. Boswell, 6 U.C.Q.B. O.S. 450.

JOINT ACTION FOR TRESPASS AND CASE CONVICTION OF ONE DEFENDENT IN TRESPASS AND THE OTHER IN CASE.

(1) A general verdict on a declaration containing one count in trespass and another in case, is not bad in law. But in this case the Court, being of the opinion that there was only one joint cause of action against the defendants, that is, the arrest, restricted the verdict to that count:—Held, also, that a joint tort was sufficiently established against the defendants by evidence that one procured the warrant to be issued and the other issued it; that both knew that no charge had been made against plaintiff; that the warrant was given by the one to the other for the arrest of plaintiff, who was accordingly arrested upon it, and that illegally. Semble, that if it had appeared that the defendant who issued the warrant was liable in case only, and malice of some special kind, personal to himself, in which his codefendant was not and could not be a partaker, had been proved, a joint action would not be against both. (2) That one defendant might have been convicted in trespass, and the other in case. Friel v. Ferguson (1865), 15 U.C.C.P. 584.

JUSTIFICATION OF MAGISTRATE.

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:—Held, therefore, per Curiam, that a magistrate's conviction "for wilfully damaging, spoiling and taking and carrying away, six bushels of apples of the said Rogers, whereby the defendant committed an injury to the said goods and chattels of the said Rogers," did not support a warrant, which recited, "that whereas judgment was given against Jonathan Eastman of, etc., in a suit Rogers v. Eastman, for a misdemeanour, in taking apples by force and violence off and from the premises of the said Rogers, etc., these are therefore to authorize, etc.," and also that neither the conviction nor the warrant contained a statement of an offence for which such a conviction could take place. Eastman v. Reid (1850), 6 U.C.Q.B. 611.

MAGISTRATE'S WARRANT FOR ARREST AFTER DISCHARGE BY HABEAS CORPUS; STATUTORY PROTECTION OF MAGISTRATE; COSTS.

The plaintiff being in custody on a warrant issued by the defendant L. on a conviction had before under the Vagrant Act, applied to be discharged under the Habeas Corpus Act, and plaintiff electing to remain in custody at London to attending before the Judge in Toronto, and on the 4th of February an order was made on that application for her discharge, which order was duly received by the gaoler on the 6th Meanwhile a fresh warrant had been issued by L. on the 4th and delivered to the gaoler, who, by direction of the County Crown At-

torney, detained her for two hours after receipt of the order for her discharge, when another warrant was prepared, and she was again arrested. In an action brought for such arrest and imprisonment for two hours, the jury found the plaintiff was entitled to a verdict, but that she had not sustained any damage which the learned judge before whom the case was tried treated as a verdict for the defendants, but refused the justice his costs (11 O.R. 285). On appeal to this Court, the dismissal of the action was affirmed; but:—Held, reversing the judgment of the Court below, that sec. 19 of R.S.O. ch. 73, has not been repealed by any of the provisions of the Ontario Judicature Act; and therefore the dismissal of the action should be with costs to the magistrate, as between solicitor and client. The provisions of R.S.O. ch. 73, sec. 4, protect a magistrate from an action for anything done under a conviction so long as the conviction remains in force; not where the conviction does not justify what has been done under it. Arscott v. Lilley (1887-88), 14 O.A.R. 283.

NOTICE OF ACTION TO MAGISTRATE; SUFFICIENCY OF NOTICE.

The magistrate having acted in direct contravention of the statute, in issuing a warrant without the proper information, or even an oral charge against the plaintiff, and there being no evidence of bona fides on his part, the Court held that he was not entitled to notice. Semple, a notice to a magistrate is bad if it omit the time and place of alleged trespass. Friel v. Ferguson (1865), 15 U.C.C.P. 584.

NOTICE TO MAGISTRATE; WHEN NECESSARY; SUFFICIENCY OF DESCRIPTION OF PLAINTIFF'S ABODE; PROOF OF QUASHED CONVICTION.

Where a magistrate acts clearly in excess of or without jurisdiction, he is nevertheless entitled to notice of action, 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. A notice describing the plaintiff's place of abode as "of the township of Garrafraxa, in the county of Wellington W., labourer," without giving the lot and concession, held sufficient. To prove the quashing of a conviction on appeal to the Quarter Sessions, it is sufficient to prove an order of that Court directing that the conviction shall be quashed, the conviction itself being in evidence, and the connection between it and the order shewn. It is not necessary to make up a formal record, for the statute Consol. Stat. U.C. ch. 114, enables the Court of Q.S. to dispose of the conviction by order. Neil v. McMillan, 25 U.C.Q.B. 485.

PROTECTION OF GAOLER.

When the justices have a general jurisdiction over the subject-matter, upon which they have issued a warrant of commitment to a gaoler, though their proceedings are erroneous, the gaoler is not liable to an action; secus, if proceedings be wholly void. Fergusson v. Adams et al., 5 U.C.Q.B. 194.

PROTECTION OF MAGISTRATE.

A conviction not set aside protects a magistrate against an action of trespass. Gates v. Devenish (1849), 6 U.C.Q.B. 260.

TRESPASS; POLICE MAGISTRATE; JURISDICTION; WARRANT TO COMPEL ATTENDANCE OF WITNESS; RIGHT OF POLICE TO SEARCH WITNESS ARRESTED; VERDICT OF JURY.

Where a police magistrate acting within his jurisdiction under R.S.C. ch. 174, sec. 62, issues his warrant for the arrest of a witness who has not appeared in obedience to a subpoena, he is not, in the absence of malice, liable in damages, even though he may have erred as to the sufficiency of the evidence to justify the arrest. Judgment of the Common Pleas Division, 24 O.R. 576, affirmed. In an action for false imprisonment judgment cannot be entered upon answers to questions submitted to the jury, and a finding in answer to a question, of a certain amount of damages, is not equivalent to the general verdict which must be given by them. The right of police to search or handcuff a person arrested on a warrant to compel attendance as a witness and the duty of the constable on making the arrest, considered. Judgment of the Common Pleas Division, 24 O.R. 576, reversed. (Maclennan, J.A., dissenting.) Gordon v. Denison, 22 O.A.R. 315.

PROTECTION OF MAGISTRATE.

Held, that as the convicting justices had jurisdiction over the subject-matter of the complaint, and the conviction was good on its face, it was a justification for them until set aside, for anything done under it (King, J., dubitante). Byrne v. Arnold et al., 24 N.B.R. 161.

NOTICE TO MAGISTRATE; ABSENCE OF MALICE.

Held, that the magistrate having, in the honest belief that he was acting in the execution of his duty as such, issued the warrant of commitment after payment of the costs adjudged was, though acting without jurisdiction, entitled to notice of action, and that, no notice having been given, the action failed. Judgment of the Common Pleas Division, 17 O.R. 706, affirmed on other grounds. Sinden v. Brown (1890), 17 O.A.R. 173.

UNLAWFUL ARREST AND IMPRISONMENT; IMPRISONMENT WITHOUT A WARRANT.

The Criminal Code, ch. 25, enacts that if any offence for which the offender may be arrested without warrant has been committed, anyone, who, on reasonable and

probable grounds, believes that any person if guilty of that offence, is justified in arresting him without warrant:—Held, that the words "may be" in sec. 25 refer to those provisions of the Code which authorize arrest without warrant, and include the offence of unlawfully wounding, under sec. 242, that being one of the "following sections" referred to in sec. 552, which provides for arrest without warrant in certain cases. Defendant, a police officer, in and for the town of Windsor, in the county of Hants, arrested plaintiff at Halifax, in the county of Halifax, on the charge of having unlawfully assaulted, beaten, wounded, and illtreated P., a police officer, while in the discharge of his duty, occasioning actual bodily harm. Defendant, at the time, held a warrant for plaintiff's arrest, but it had not been indorsed for service out of the jurisdiction. Apart from the warrant defendant had actual knowledge of the commission of the offence for which the arrest was made. In an action by plaintiff claiming damages for unlawful arrest and imprisonment:—Held, setting aside the verdict for plaintiff with costs, and ordering a new trial, that it was competent for defendant to contend that the arrest was made independent of the warrant, and to justify such arrest by shewing that, at the time the arrest was made, he was aware that plaintiff had committed the offence of unlawfully wounding. Held, also, that the question whether the arrest was, in fact, made under the warrant, or for the offence apart from the warrant, was one that should have been submitted to the jury, and that the trial Judge acted improperly in excluding it from their consideration. Held, also, that there was no distinction in principle between the position of the defendant in this case, and the position of a constable, who holds two warrants, one of which is defective. Held, also, that the trial Judge erred in leaving it open to the jury to understand that they were at liberty to give vindictive damages in the absence of evidence of malice, oppression, or misconduct on defendant's part. Held, also, that the trial Judge erred in rejecting evidence offered to shew that plaintiff had wounded P. in the assault for the commission of which the warrant was issued. Jordan v. McDonald (1889), 31 N.S.R. 129.

WILFUL OVERCHARGE OF COSTS; LIABILITY OF MAGISTRATE.

A magistrate acting under 32 and 33 Vict. ch. 20, sec. 37, D., convicted four persons for creating a disturbance thereunder, 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:—Held, that under the circumstances, the overcharge must be deemed to have been wilfully made, so as to render the defendant liable to the penalty imposed in such cases by the R.S.O. Ch. 7, sec. 4. Parsons qui tam v. Crabbe, 31 U.C.C.P. 151.

CIVIL REMEDY FOR CRIMINAL ACT; SUSPENSION OF, UNTIL AFTER CRIMINAL PROSECUTION; CONSTITUTIONALITY.

(1) Section 534 of the Criminal Code, which provides that no civil remedy for any act or omission shall be suspended or affected by reason of the same amounting to a criminal offence, is not "criminal law" legislation but legislation with civil rights and is ultra vires of the Federal Parliament. (2) Semble, the establishment of the English criminal law by Quebec Act (14 Geo. III. (Imp.), ch. 83) in the Provinces of Ontario and Quebec having been effected by a legislative body having absolute jurisdiction over both civil and criminal law, it must be taken as having introduced in the Province of Quebec the English law with respect to the suspension of civil remedies for criminal wrongs. Paquet v. Lavoie, 6 Can. Cr. Cas. 314.

MUNICIPAL LAW; USING ABUSIVE LANGUAGE; JUSTICE'S ILLEGAL ORDER; CONDITION OF QUASHING; BAR OF CIVIL ACTION.

(1) A justice of the peace having made an illegal order on a prosecution under an Ontario law, whereby he directed that the accused should pay certain costs and in default should be imprisoned, the Court may as a condition of quashing such order provide that no action should be brought against the justice or officer. (1 Edw. VII. (Ont.), ch. 13, sec. 1.) (2) The condition imposed as a term of quashing a justice's order under Code, sec. 891, is one which the applicant may accept or reject on the delivery of judgment, and, if it be rejected, the Court may dismiss the application with costs although it finds that the justice exceeded his jurisdiction. The King v. Morningstar, 11 Can. Cr. Cas. 15.

LIABILITY FOR PROCURING THE IMPRISONMENT; SOLICITOR FOR PRIVATE PROSECUTOR OBTAINING AND ISSUING WARRANT.

The solicitor for the private prosecutor in a prosecution under the Indian Act (Can.) for unlawfully selling liquor to an Indian does not incur personal liability for an imprisonment under defective or irregular process issued by him on the prosecutor's behalf if he does not personally direct, superintend or assist in the execution of the process. Johnston v. Robertson, 13 Can. Cr. Cas. 542.

CIVIL ACTION AGAINST POLICE OFFICER; PROTECTION OF OFFICER CARRYING OUT MAGISTRATE'S DIRECTION IN GOOD FAITH.

(1) On the conviction being brought up in certiorari proceedings and amended by striking out the direction for destruction of the liquors on the grounds that the liquors were medicinal preparations excepted by

the Liquor License Act and that the magistrate was not warranted in his finding to the contrary, the police officer is protected from civil liability for the value of the liquors destroyed in good faith in pursuance of the magistrate's direction and before the institution of certiorari proceedings, if the officer was not guilty of malice and had reasonable and probable cause for believing both that the liquors were liable to forfeiture and that it was his official duty to carry out the magistrate's order. (2) Malice and want of reasonable and probable cause having been charged against the officer but not proved, the officer had a statutory right to his costs of defense under R.S.O. (1897), ch. 88, sec. 22, and the same were not in the discretion of the trial Judge. Ing Kon v. Archibald, 14 Can. Cr. Cas. 201.

ACTION AGAINST JUSTICES; ORDER MUST FIRST BE QUASHED.

An order under which liquors seized under such warrant were destroyed, and following a conviction consequent on such search, must be quashed before an action can be brought or maintained against the justices who made such warrant and order. [Townsend v. Cox, 12 Can. Cr. Cas. 509, discussed.] Townsend v. Beckwith, 14 Can. Cr. Cas. 353.

ASSAULT WITH INTENT; PRELIMINARY ENQUIRY BEFORE A JUSTICE; CIVIL ACTION BY PERSON ASSAULTED; APPEARANCE AS WITNESS ONLY.

A civil action for damages for assault is not barred under Code, sec. 734, by payment of the fine, if the complaint in the criminal proceedings was laid by a peace officer in his official capacity and not by the party assaulted, and if the latter took no part in the proceedings other than to give testiomny. Goodwin v. Hoffman, 15 Can. Cr. Cas. 270.

WHEN FEES ARE EXCESSIVE.

The defendant detained under a warrant of commitment on nonpayment of fine and costs will not be discharged for the inclusion of so large a sum as $25 for costs of conveying to gaol, but will be left to his civil remedy if the fees are excessive. The King v. Berrigan, 17 Can. Cr. Cas. 329.

CIVIL ACTION BY ACCUSED FOR MALICIOUS PROSECUTION AND CONSPIRACY.

A police scheme to place a prostitute in a house for the purpose of convicting the proprietor of keeping a house of illfame will not dispense with the necessity of proving want of reasonable or probable cause, nor exclude the defence that a conviction was obtained and has not been set aside, in a civil action for damages brought against the conspirators by the convicted party, although an unwarranted entry was made by some of the conspirators into the plaintiff's house in furtherance of the scheme. City of Montreal v. Lacroix, 16 Can. Cr. Cas. 395.

JUSTICE OF THE PEACE; EXEMPTION FROM LIABILITY; ORDER FOR PROTECTION.

Where a magistrate, a King's Counsel, with whom three informations were lodged charging a person with separate sales to different persons of liquor without a license, heard, at the same time, evidence tending to prove the three offences, if he fails to explain his conduct, upon one of the convictions being quashed, an order of protection will be granted him only upon payment by him of the costs. The King v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210.

EVIDENCE; SUFFICIENCY; RAPE; DAMAGES.

(1) The rules of evidence applicable to a criminal prosecution requiring corroboration of the testimony of the complaining witness as to the fact of rape and requiring disclosure by her of the alleged act, do not apply to a civil action for damages for assaulting and ravishing the plaintiff without her consent. (2) Where, in an action to recover damages for assaulting and ravishing plaintiff without her consent, the plaintiff's counsel, without objection, was allowed to urge upon the jury large damages on account of the expense plaintiff would be put to for the bringing up of a then unborn infant, while as a matter of fact the infant when born lived only a day, a new trial will not be granted, since the jury must have had in mind the possible contingency of an early death. (3) A new trial will not be granted where the trial jury awarded $5,000 damages to the plaintiff in an action for damages for assaulting and ravishing plaintiff without her consent, on the ground of excessive damages, where by reason of the outrage plaintiff became pregnant. Dunn v. Gibson, 20 Can. Cr. Cas. 195, 8 D.L.R. 297.

ARREST WITUOUT WARRANT; BAWDYHOUSE; CIVIL ACTION; NEW TRIAL.

In a civil action against a constable for trespass and false arrest upon a charge of keeping a bawdyhouse on which plaintiff had been acquitted, an amendment of defendant's pleadings should have been allowed at the trial so as to permit him to set up the possible defence of justification in arresting the plaintiff without warrant because of the constable's belief on reasonable and probable grounds that the accused was guilty of some offence for which an arrest without warrant is permissible; the exclusion of evidence on his behalf to prove such grounds and belief is a ground for granting a new trial. [See Annotation on "Arrest without warrant" at end of this case.] Altman v. Majury, 27 Can. Cr. Cas. 398, 31 D.L.R. 759.

CO-DEFENDANTS.

ORDER OF DEFENCE.

Where several persons are jointly indicted the order in which each of them shall enter upon his defence is generally subject to the discretion of the trial Judge. Where there is a difference in degree of criminality with respect to the charge made against several persons jointly indicted, they should be called upon for their defence the greater before the less according to the seriousness of the charge against each as disclosed both by the indictment and the evidence for the prosecution, ex. gr., the principal before the accessory, and the thief before the receiver. Where there appears no such difference in degree of criminality in respect of several persons jointly indicted, the order of defence is the order in which their names appear in the indictment. The evidence adduced by the witnesses called on behalf of any defendant is effective as regards the others, whether beneficially or adversely, and counsel for the other defendants may therefore cross-examine such witnesses before their cross-examination by counsel for the prosecution. R. v. Barsalou (No. 3), 4 Can. Cr. Cas. 446.

COLLUSION.

Setting aside collusive criminal proceedings; Note. 11 Can. Cr. Cas. 220.

COMMENT.

COMMENT ON FAILURE TO TESTIFY; CANADA EVIDENCE ACT.

See Canada Evidence Act.

COMMENT ON FAILURE TO CALL WITNESS.

Where defendant's counsel during the trial states that he intends to call a witness to prove certain facts but does not call any witness on that point, the Crown counsel may properly comment on such failure in his address to the jury. The King v. Brindamour, 11 Can. Cr. Cas. 315.

COMMISSION.

To take evidence, see Evidence.

COMMITMENT.

As an alternative procedure to distress. 1 Can. Cr. Cas. 91.

Form of warrant of, in County Judge's Criminal Court. 1 Can. Cr. Cas. 540.

Illegal to make commitment for trial on Sunday. 1 Can. Cr. Cas. 134.

Defective commitment reciting an invalid conviction. 2 Can. Cr. Cas. 302.

Note on invalid commitments. 5 Can. Cr. Cas. 66.

Temporary release of prisoner; Rearrest. 5 Can. Cr. Cas. 531.

Note on essentials of a warrant of commitment. 6 Can. Cr. Cas. 3.

Commitment in default of distress; Cr. Code, secs. 872, 875. 9 Can. Cr. Cas. 562.

VARIANCE BETWEEN THE CONVICTION AND COMMITMENT; INFORMATION.

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 bawdyhouse on Queen street, in the said city," 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:—Held, no objection that the commitment charged that the prisoner "was the keeper of," etc., and the conviction "that she did keep," both differing from the statute, which designates the offence as "keeping any disorderly house," etc.; for all these expressions convey the same idea. Nor that the conviction was not sustained by the information, the latter being that defendant was the keeper of a disorderly house, and the former for keeping a common disorderly bawdyhouse; for the commitment would not be void because of a variance between the original information and the conviction made after hearing evidence. Nor that the offence of keeping a common disorderly bawdyhouse was not sufficiently certain for the legal meaning of the last two words is clear, and if keeping a disorderly house be no offence, the addition of that would only be surplusage. Reg. v. Munro, 24 U.C.Q.B. 44.

MUST SHEW JURISDICTION.

A warrant of commitment which recites a conviction, must shew upon the face of the recited conviction that the offence was one over which the committing magistrate had jurisdiction. Where, therefore, the conviction was for obtaining $12 by false pretences, and by statute the convicting magistrate could only convict and pass sentence in case the prisoner pleaded guilty, and the conviction did not shew that the prisoner had so pleaded:—Held, that the conviction ought to be quashed. Reg. v. Collins, 5 Man. L.R. 136.

RIGHT OF MAGISTRATE TO EXECUTE WARRANT UPON AFFIRMANCE OF CONVICTION.

On the conviction of the prisoner therein she was committed to custody under a warrant issued by the convicting magistrate. She gave bail, and was discharged from custody under 33 Vict. ch. 27, sec. 1. On the appeal 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 war-

rant 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. II., which was signed by the Judge issuing it:—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 semble, 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:—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. Regina v. Arscott (1885), 9 O.R. 541.

[See Arscott v. Lilley, 11 O.R. 153, 14 O.R. 283; Regina v. Dunning (1885), 14 O.R. 52.]

WARRANT OF; INSUFFICIENCY.

Under sec. 58 of the Malicious Injuries to Property Act, R.S.C., ch. 168, the offence must be "unlawfully and maliciously" committed, and the damage must exceed twenty dollars. In this case the warrant of commitment charged the offence as having been wilfully and maliciously committed, omitting the word "unlawfully:"—Held, that this was fatal to the commitment and it was directed to the quashed:—Held, also, that the commitment should have alleged that the damage exceeded twenty dollars. Regina v. Fife, 17 O.R. 710.

WARRANT OF COMMITMENT OR DISTRESS UPON AFFIRMANCE OF CONVICTION; REGULARITY OF APPEAL.

Where a conviction is affirmed on appeal to the Sessions the warrant of distress or commitment may be issued by the convicting justice:—Held, also, that the plaintiff could not object to the appeal as irregular, on the ground that, having been begun by both defendants, it was continued by only one. (Per Osler, J.A.) If there was anything in the objection, it should have been taken by way of substantive motion to strike out the appeal for irregularity. (11 O.R. 153). Arscott v. Lilley (1887-88), 14 O.A.R. 283.

LEGALITY OF COMMITMENT; ABSENCE OF COPY OF SENTENCE.

A statute provided that "The warden shall receive into the penitentiary every convict legally certified to him as sentenced to imprisonment therein, and shall there detain him:"—Held, that the absence of a certificate or copy of the sentence did not make the detention of a prisoner properly convicted and sentenced illegal. (Per Bain, J.) Semble, even if no such copy of the sentence had originally been delivered to the warden (and were any such necessary) his possession of it at any time previous to his return to a habeas corpus would be sufficient. Regina v. Peterson, 6 Man. L.R. 311.

REFUSAL BY BAILIFF OF PENALTY AND COSTS. DELAY IN ISSUING WARRANT; DATING OF WARRANT.

When a distress warrant has been issued and returned, the truth of the return cannot be tried upon affidavits. It was alleged, but denied, that the bailiff had refused to receive the penalty and costs:—Held, however, that his duty was to execute the warrant of commitment, and that he had no authority to receive such payment. The warrant of commitment, which was not issued until after the return of the distress warrant, was dated the 14th June, and the distress warrant was not returned before the 17th June. Held, that the warrant of commitment need not be dated at all if not issued too soon. Regina v. Sanderson, 12 O.R. 178.

WARRANT GOOD ON ITS FACE; JUSTIFICATION OF CONSTABLE.

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; and where the warrant was based on a conviction for an unlawful assault, it is 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. Reg. v. O'Leary, 16 N.B.R. 264.

[See Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

WARRANT OF; SUBSTITUTION OF REGULAR WARRANT AFTER THE SERVICE OF HABEAS CORPUS.

Prisoner had been committed under a warrant, which was defective. Subsequent to the service on the jailor of a writ of habeas corpus, he received another warrant which was regular:—Held, that the second warrant of commitment was valid, and sufficient to detain the prisoner in custody. Regina v. House, 2 Man. R. 5, 58.

WARRANT OF, VALID ON ITS FACE; PROTECTION OF CONSTABLE.

A warrant of commitment issued by two justices of the peace, for nonpayment of a fine and costs imposed on J. D., who had been convicted of an offence under the Indian Act, directed the constables of the county of B. to take and deliver J. D. to the keeper of the common jail of the county, to be kept there for two months, unless the fine and costs imposed, including the costs of conveying to the jail, should be sooner paid:—Held, that the justices having had jurisdiction over the offence, and the warrant being valid on its face, it afforded a complete protection to the constable executing it, and that the defendant was properly convicted of assaulting the constable while attempting to execute the warrant, notwithstanding that the awarding of the punishment may have been erroneous, in directing imprisonment for nonpayment of the fine and costs, including costs of conveying to jail, as not by the said Act. Regina v. King (1889), 18 O.R. 556.

WARRANT OF; VARIANCE BETWEEN THE WARRANT AND CONVICTION.

In determining, upon a motion to discharge a prisoner, whether a warrant of commitment is defective, the Court cannot, in view of the Summary Trials Act, R.S.C. ch. 176, go behind the conviction; and the proper course where there is a conviction sufficient in law, and a variance between the conviction and warrant of commitment, is to enlarge the motion so as to enable the magistrate to file a fresh warrant in conformity with the conviction. And where the conviction alleged that the offence was committed in January, 1887, and the commitment January, 1888, the motion was enlarged accordingly. Regina v. Levin (1888), 12 P.R. (Ont.) 642.

DISTRESS; ALTERNATIVE REMEDY

Under the B. C. Municipal Clauses Act, 1896, sec. 81, it is not necessary to issue the distress authorized thereby before issuing a commitment, but the latter course may be taken as an alternative procedure. R. v. Petersky, 1 Can. Cr. Cas. 91.

UNAUTHORIZED CONDITIONS OF DISCHARGE.

A warrant of commitment illegal by reason of the same including unauthorized terms of discharge, is bad not only as regards the part in which such unauthorized conditions are mentioned, but in whole, and must be quashed. Ex parte Lon Kai Long, 1 Can. Cr. Cas. 120.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289.]

WARRANT OF; IRREGULARITY.

The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes an incarceration, with respect to the conditions upon which a prisoner can obtain his discharge before the expiration of the term to which he has been condemned. Ibid., 1 Can. Cr. Cas. 120.

If the return on habeas corpus is of a warrant of commitment by the County Judge's Criminal Court for theft, which, however, does not specify such facts as would shew on its face that the theft was of such a nature as to give jurisdiction to the County Judge's Criminal Court to impose the imprisonment stated, still the prisoner cannot be discharged upon habeas corpus. R. v. Burke, 1 Can. Cr. Cas. 539.

[Referred to in Ex parte Goldsberry, 10 Can. Cr. Cas. 392, 397, 27 Que. S.C. 434.]

DESCRIPTION OF OFFENCE.

A justice's warrant of commitment for trial must describe an offence for which a commitment for trial can be legally made. Ex parte Welsh, 2 Can. Cr. Cas. 35.

WRONG DESCRIPTION OF MAGISTRATE'S OFFICIAL DESIGNATION.

A warrant of commitment signed by magistrates as "justices of the peace in and for the county of Labelle," no justices being appointed with such designation and no such title existing at law, is illegal, and, when no application is made for its amendment, should be quashed, and the prisoner discharged upon habeas corpus. Justices for a judicial district assuming to act as justices in and for a county named, although such county is included within the district, will not be presumed to have acted as justices for the district in which the county is situate. Ex parte Welsh, 2 Can. Cr. Cas. 35.

IN DEFAULT OF GIVING SECURITY TO KEEP THE PEACE.

A warrant of commitment by a justice under Cr. Code, 959 (4), for default in finding sureties to keep the peace, must shew on its face that the complainant feared bodily injury because of the defendant's threat, and that the complaint was not made nor sureties required by the complainant from any malice or ill-will, but merely for the preservation of his person from injury. (Code Form WWW.) R. v. John McDonald, 2 Can. Cr. Cas. 64.

INQUIRY COMMENCED BY ONE AND COMPLETED BY TWO JUSTICES.

Where evidence on a preliminary inquiry is commenced before one justice of the peace and finished before two justices, a committal by the two is irregular unless both have heard all the evidence. Re Nunn, 2 Can. Cr. Cas. 429.

STATING COSTS OF CONVEYING TO GAOL; INLAND REVENUE ACT.

Where a conviction is made under the Inland Revenue Act (Can.), and a money penalty is imposed and in default imprisonment for a fixed term unless the penalty

and the costs and charges of conveying the accused to gaol are sooner paid, it is necessary that the amount of the latter costs and charges should be stated in the warrant of commitment (Inland Revenue Act, sec. 113); and where not so stated the prisoner is entitled to be discharged on habeas corpus. R. v. Corbett, 2 Can. Cr. Cas. 499.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289; R. v. Mitchell, 19 Can. Cr. Cas. 120.]

COMMITMENT UNDER WRONG NAME; IDENTITY OF ACCUSED.

A person who is charged under a wrong name, and who pleads without objection to same, is not entitled after conviction to be released under a writ of habeas corpus on the ground that she is not the person against whom the commitment was issued. Ex parte Corrigan, 2 Can. Cr. Cas. 591.

[Followed in R. v. Mullen (No. 2), 18 Can. Cr. Cas. 8.]

FINDING SURETIES TO KEEP THE PEACE; DEFAULT.

When a justice of the peace makes an order under Cr. Code, sec. 959, requiring a person to give security to keep the peace, he must fix the amount of the recognizance to be given. A justice's order that the accused give security to keep the peace for one year, but not fixing any amount nor a term of imprisonment in default, will not support a commitment thereunder. A warrant of commitment under Cr. Code, sec. 959 and Form YYY. can only be issued after the defendant's refusal or neglect to furnish the required security, proved and recorded subsequently to the order requiring the security, and it must recite such refusal or neglect. Re John Doe, 3 Can. Cr. Cas. 370.

TO WHOM FINE TO BE PAID.

A commitment stating that the prisoner shall be detained until the fine shall be paid to the keeper of the gaol, is regular, although the conviction says that the fine is to be paid to the clerk of the Recorder's Court. R. v. Bougie, 3 Can. Cr. Cas. 487.

[Referred to in R. v. Poirier, 31 Que. S.C. 68; R. v. Janneau, 12 Can. Cr. Cas. 361; relied in R. v. Weir, 8 Que. P.R. 400.]

STATING LOCALITY OF OFFENCE.

The Courts will take judicial notice of the local divisions, such as counties, municipalities, and polling sections into which their country is divided, for purposes of political government. Ex parte Macdonald, 3 Can. Cr. Cas. 10.

DELAY OF EXECUTION AT DEFENDANT'S REQUEST: MONEY DEPOSIT WITH CONSTABLE.

Where a warrant of commitment under a summary conviction which adjudges imprisonment is delivered to a constable, and the defendant then being at large deposits money with the constable as security for his appearance when required and procures the constable to delay execution of the commitment for a time, the defendant cannot object to a subsequent arrest, accompanied by a return of his deposit, on the ground that it was illegal as being a second arrest under the same warrant. Semble, an unreasonable delay in issuing a warrant of commitment may be a ground for discharge on habeas corpus if the delay works an injustice to the defendant. Ex parte Doherty, 5 Can. Cr. Cas. 94.

COMMITMENT ON RETURN OF WARRANT OF DISTRESS; CONTROVERTING JUSTICE'S CERTIFICATE OF INSUFFICIENT DISTRESS.

On an habeas corpus application under Consol. Stat. N.B., ch. 41, sec. 4, it may be shewn that a constable's return to the warrant of distress, that there was not sufficient property to satisfy it, is false, and that therefore the commitment based thereon, under which the party is imprisoned, was improperly issued. Ex parte Fitzpatrick, 5 Can. Cr. Cas. 191.

SUMMARY TRIAL; USING RECORD OF CONVICTION IN LIEU OF WARRANT OF COMMITMENT; LEAVE TO PUT IN FORMAL COMMITMENT.

Where there has been a valid conviction on a summary trial by a magistrate, and the accused has been imprisoned thereunder without a formal warrant of commitment, in lieu of which the original record of conviction was delivered to the gaoler, the Court may on habeas corpus allow a formal commitment to be lodged, and direct the detention of the prisoner in the meantime under sec. 752. The King v. Morgan (No. 2), 5 Can. Cr. Cas. 272.

[Followed in R. v. Gray, 15 Can. Cr. Cas. 193, 19 O.L.R. 238; discussed R. v. Tryd, 18 Can. Cr. Cas. 110; specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 113.]

STATUTORY COMMITMENT; WARRANT FOR DETENTION; VARIANCE.

A bastardy statute (R.S.N.S. 51) specially authorizing a commitment until an order of filiation is made or refused, is not complied with if the warrant of commitment directs detention until the prisoner is "discharged in due course of law," and the variance is a good ground for discharge under habeas corpus. Ex parte O'Donnell, 7 Can. Cr. Cas. 367.

FINE AND IMPRISONMENT AUTHORIZED; DISCRETION OF MAGISTRATE.

(1) Section 932 of the Code applies as well to proceedings under Part LVII., "Summary Convictions," as to proceedings by indictment. (2) Where both fine and imprisonment are provided as the authorized punishment for a statutory offence upon summary conviction, the magistrate

may in his discretion impose either a fine alone or an imprisonment alone or both, unless the particular statute specially provides otherwise. Ex parte Kent, 7 Can. Cr. Cas. 447.

VARIANCE FROM THE MINUTE OF ADJUDICATION.

Where the sentence imposed upon a summary trial by consent before a city stipendiary magistrate for common assault was, in the first instance, three months' imprisonment without mention of hard labour, and the minute of adjudication did not include hard labour, a formal conviction, including hard labour, and a commitment thereon in similar terms are invalid, and the accused will be discharged on habeas corpus. Ex parte Carmichael, 8 Can. Cr. Cas. 19.

[Distinguished in R. v. Gatton, 17 Can. Cr. Cas. 324.]

GAOLS AND DISTRICTS IN THE NORTH-WEST TERRITORIES.

A committal to gaol in the North-West Territories may be legally made to any gaol in the Territories under the statute of Canada, 54-55 Vict. ch. 22 (1891), and need not be to the nearest gaol. The King v. Nugent, 9 Can. Cr. Cas. 1.

CERTIFIED COPY OF SENTENCE; STATING PLACE OF OFFENCE; IMPRISONMENT; COMPUTATION FROM DATE OF SENTENCE.

(1) A warrant of commitment of a convict to a penitentiary after a trial under the Speedy Trials clauses is sufficient without further specification of the place of the offence than the marginal reference to the county in which the trial took place. (2) It is unnecessary in a sentence of imprisonment to a penitentiary, or in the warrant issued in pursuance thereof, to state a date from which the imprisonment is to run, as under the Penitentiaries Act the term of imprisonment counts from the date of sentence unless otherwise ordered. The King v. Smitheman (No. 1), 9 Can. Cr. Cas. 10. Affirmed in Smitheman v. The King, 9 Can. Cr. Cas. 17.

[Referred to in Collett v. R., 16 Can. Cr. Cas. 281, 19 Que. K.B. 133.]

COMMITMENT OF CHILD UNTIL SIXTEEN; DATE OF EXPIRY NOT ESSENTIAL; DUPLICITY IN CONVICTION.

(1) A warrant of commitment of a child to a public orphanage under the powers conferred by the Nova Scotia provincial statute as to neglected children, R.S.N.S., ch. 116, is sufficiently definite as to time if it specifies that the child is to be kept until he is sixteen years of age without stating the year and day when the term of detention expires. (2) Where the conviction of the child's mother is a prerequisite to the jurisdiction of a magistrate to order the child's detention in an orphanage, an existing conviction in fact will suffice for that purpose even if it be objectionable on the ground of duplicity. Ex parte Yates, 9 Can. Cr. Cas. 359.

WRONG FORM OF WARRANT USED AFTER TRIAL AND CONVICTION; WARRANT OF COMMITMENT NOT ALLEGING A CONVICTION.

(1) A prisoner detained under a warrant which is in form one of committal for trial but which charges an offence punishable only on summary conviction, will be discharged on habeas corpus. (2) Although there may in fact have been a summary hearing and summary conviction thereon, if the warrant of commitment returned as the cause of detention is bad on its face in not alleging that the defendant has been convicted, a formal conviction cannot be received to remedy the defect as Code, sec. 886, applies only to cases in which the warrant alleges a conviction. The Queen v. Lalonde, 9 Can. Cr. Cas. 501.

COMMITMENT FOR WANT OF DISTRESS; WARRANT NOT SHEWING INSUFFICIENCY OF DISTRESS, OR THAT DISTRESS WOULD BE RUINOUS; INVALIDITY; CURATIVE SECTIONS NOT APPLICABLE.

(1) A warrant of commitment for want of distress upon a summary conviction is invalid and will be quashed, if it recites only default in payment of the fine, and does not shew on its face either a return of the distress warrant and that no sufficient distress was found or that a distress was dispensed with under Code, sec. 875, upon an adjudication thereunder. (2) An affidavit of the gaoler verifying a copy of the warrant claimed as the cause of detention may be accepted as a return to a writ or order of habeas corpus. The King v. Skinner, 9 Can. Cr. Cas. 558.

[Referred to in R. v. Ching How, 1 D.L.R. 275, 19 Can. Cr. Cas. 176.]

PART PAYMENT OF FINE AND COSTS; COMMITMENT ISSUED FOR UNPAID PORTION.

Certiorari does not lie to bring up a warrant of commitment to be quashed upon grounds not affecting the convictions under which the warrant issued, nor will the Court quash the warrant in certiorari proceedings in which the conviction is also brought up, if the conviction itself is valid. The proper procedure for reviewing, upon grounds not affecting the conviction, the validity of a warrant of commitment under which the accused is in custody, is by way of habeas corpus. Ex parte Bertin, 10 Can. Cr. Cas. 65.

NEW WARRANT OF DETENTION SUBSEQUENT TO ISSUE OF WRIT OF HABEAS CORPUS; DUTY TO REMAND THEREUNDER.

The Court will not enter into an enquiry upon habeas corpus as to whether the prisoner brought before a justice and remanded by him for an offence committed in Canada was arrested in the United States and brought back to Canada without an extradition warrant. The prisoner must be re-

manded to custody on the return of a writ of habeas corpus if the return shews a proper warrant or other legal cause of detention although of later date than the writ to which the return is made. The King v. Walton, 10 Can. Cr. Cas. 269.

[Referred to in R. v. Wishart, 18 Can. Cr. Cas. 161.]

DEFAULT OF PAYING FINE UNDER SUMMARY CONVICTION; OMISSION TO INCLUDE EXPENSES OF CONVEYING TO GAOL; COMMITMENT TO SHEW JURISDICTION OF CONVICTING OFFICER.

(1) A warrant of commitment under a summary conviction must show on its face that the person by whom it is made has magisterial authority at the place where the offence occurred; and an objection in this respect is not cured by Code, sec. 846. (2) A warrant of commitment under Code, sec. 872 (b), in default of paying a fine, is bad unless it includes the expenses of conveying the defendant to gaol. The King v. Gow, 11 Can. Cr. Cas. 81.

[Referred to in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

INCLUSION OF ILLEGAL COSTS; COSTS OF COMMITMENT ADDED TO COSTS OF CONVEYING TO GAOL.

The inclusion in a justice's warrant of commitment issued in default of payment of fine and costs, of unauthorized costs, i.e., costs of commitment in addition to costs of conveying to gaol, is ground for discharge upon habeas corpus. The King v. Townsend (No. 3), 11 Can. Cr. Cas. 153.

DISORDERLY HOUSE; SUMMARY TRIAL OR SUMMARY CONVICTION; FIXED TERM "OR UNTIL DELIVERED BY DUE COURSE OF LAW."

(1) A conviction by a city stipendiary magistrate for the offence of being an inmate of a bawdyhouse need not expressly state on its face that the accused is a vagrant. (2) A warrant of commitment following a conviction by a magistrate whereby three months' imprisonment was imposed, is not invalid because it directs detention "for three months or until delivered by due course of law." (3) The addition of the words "or until delivered in the course of the law" is in such case a contingent limitation upon the three months' term which would apply upon the quashing of the conviction or other like contingency. The King v. Young, 12 Can. Cr. Cas. 109.

[Referred to in R. v. Harris, 13 Can. Cr. Cas. 398; discussed in R. v. Code, 13 Can. Cr. Cas. 377.]

COMMITMENT AFTER REPEAL OF SPECIAL STATUTE UNDER WHICH CONVICTION HAD; VALIDITY; MINISTERIAL AND JUDICIAL FUNCTIONS OF MAGISTRATE; DUTY NOT TO DELAY COMMITMENT ORDERED BY CONVICTION.

(1) The issue of a warrant of commitment in execution of a summary conviction is a ministerial and not a judicial act. (2) Where a summary conviction has been made under a special statute and the statute is afterwards repealed, a commitment in execution may be issued notwithstanding the repeal. (3) It is the duty of a magistrate making a summary conviction and imposing a penalty of imprisonment to follow up his judgment with a commitment, and it is doubtful whether he has any discretion to suspend the issue of the warrant of commitment. Re Thomas Lynch, 12 Can. Cr. Cas. 141.

[Referred to in R. v. McKinnon, 12 Can. Cr. Cas. 422.]

SUMMARY CONVICTION; AMENDING WARRANT OF COMMITMENT ON RETURN OF HABEAS CORPUS.

A warrant of commitment under the Ontario Liquor License Act may, under the special powers conferred by sec. 105 of that statute, be amended on the return of a habeas corpus by striking out the direction to hold the prisoner for the costs of conveying him to gaol, if such costs are not properly ascertained in the warrant. The King v. Degan, 14 Can. Cr. Cas. 148.

[Followed R. v. Graves (No. 1), 16 Can. Cr. Cas. 152; referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

STATING THE OFFENCE IN.

The warrant of commitment following a summary trial is for the information of the gaoler and of a Court hearing a habeas corpus application and a reference therein to the section of the Code under which the charge was laid will be regarded in aid of the description of the offence. The King v. Gill, 14 Can. Cr. Cas. 294.

DEFECTIVE WARRANT OF; NO STATEMENT OF CONVICTION.

Where the warrant of commitment in execution returned to a writ of habeas corpus states only a charge of the offence and not a conviction therefor, the prisoner should be discharged. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

WARRANT OF; JURISDICTION TO BE SHEWN ON FACE.

(1) A warrant of commitment must shew on its face that the committing magistrate is one having jurisdiction to impose the sentence which it recites. (2) Where the committing magistrate could have jurisdiction only as a stipendiary magistrate for the district and he is designated in the commitment only as a justice of the peace, the defect is not cured by the addition of the letters "S. M." to his signature upon the warrant, for it cannot be inferred therefrom that he was a stipendiary magistrate

for the same district. The King v. Hong Lee, 15 Can. Cr. Cas. 39.

ORDER FOR FURTHER DETENTION PENDING FRESH WARRANT.

Where the warrant of commitment returned on habeas corpus in respect of a magistrate's conviction omits a material ingredient in the description of the offence and consequently does not disclose an offence known to the law, but an amended conviction is returned to a certiorari in aid properly describing the offence, the Court may direct the magistrate to lodge a fresh warrant in conformity with the conviction and order the detention of the accused pending the adjournment of the motion to discharge for the time required to comply with the direction. The King v. Graf, 15 Can. Cr. Cas. 193.

[Referred to in R. v. Frejd, 18 Can. Cr. Cas. 113; specially referred R. v. Mitchell, 19 Can. Cr. Cas. 113.]

DEFECTIVE COMMITMENT; SUBSTITUTING AMENDED COMMITMENT.

On the return of a habeas corpus, leave may be given the Crown to file an amended warrant of commitment in place of the alleged defective commitment, and the prisoner may be remanded under the substituted commitment if in due form without determining the objections taken to the first warrant. The King v. Macdonald, 16 Can. Cr. Cas. 121.

SUMMARY CONVICTION; UNAUTHORIZED COSTS IN CONVICTION AND COMMITMENT.

Where a warrant of commitment includes unauthorized costs to be paid as a condition of release, the Court will not discharge the prisoner on that ground alone, but will remand him for a sufficient time to have the erroneous judgment corrected. The King v. Smith, 16 Can. Cr. Cas. 425.

[Disapproved in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

SMUGGLING; ESSENTIALS OF OFFENCE; KNOWLEDGE NOT CHARGED.

Where the charge to which the prisoner pleaded guilty did not allege that he had been "knowingly concerned" in the prohibited acts, a warrant of commitment in like terms is insufficient and the prisoner is entitled to be discharged on habeas corpus. The King v. McDonald, 16 Can. Cr. Cas. 505.

WHEN DECLARED INVALID.

A commitment for a third offence under a liquor law may be declared invalid on habeas corpus if the conviction for the first offence appears on the papers returned to have been made without jurisdiction. The King v. Broadfoot, 17 Can. Cr. Cas. 71.

QUASHING COMMITMENT AND INDICTMENT WHERE DEPOSITIONS NOT AUTHENTICATED.

(1) If the deposition at a preliminary inquiry are not signed by the presiding magistrate, they are not clothed with the authentic character required by law, and in such case no preliminary enquiry exists on the docket. (2) A motion to quash a commitment based upon such an enquete will be granted. The King v. Robert (No. 1), 17 Can. Cr. Cas. 194.

RETURN OF SUBSTITUTED COMMITMENT ISSUED AFTER DATE OF WRIT.

(1) A substituted warrant of commitment may be returned to a writ of habeas corpus although issued after the writ. (2) When the magistrate is given statutory power to "sit and try" cases arising in his territorial jurisdiction at a city outside of such jurisdiction, he may also issue a warrant of commitment at such city. Re McMurrer (No. 1), 18 Can. Cr. Cas. 41.

WARRANT OF COMMITMENT; ISSUE OF, PRIOR TO DRAWING UP FORMAL SUMMARY CONVICTION.

(1) A warrant of commitment upon a summary conviction may be issued and executed before drawing up the formal conviction. (2) A formal record of a summary conviction may be amended after the conviction has been enforced by warrant of commitment, but the recorded statement of the judgment in the conviction as amended must be in conformity with the actual oral adjudication. The King v. Dagenais, 18 Can. Cr. Cas. 287.

COMMITMENT ON SUMMARY TRIAL; CERTIFIED COPY OF SENTENCE TO PENITENTIARY.

A sentence to a penitentiary imposed by a magistrate acting under the summary Trials clauses of the Criminal Code is subject to the provisions of sec. 44 of the Penitentiary Act and a duly certified copy of the sentence is a sufficient warrant of commitment, without a recital of the preliminaries of the trial. The King v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256.

[See also Reg. v. Peterson, 6 Man. R. 311.]

WARRANT OF COMMITMENT DEFECTIVE; AMENDING INFORMAL WARRANT OF COMMITMENT.

(1) A warrant of commitment is invalid which does not contain even a summary of the nature and gravity of the offence charged against a prisoner, nor give the name of the presiding magistrate who committed him. (2) A prisoner confined under an informal warrant of commitment may be held in custody upon a proper warrant being subsequently issued. (3) The Crown side of the Court of King's Bench will permit the clerks and officers of the police magistrate of the city of Montreal to correct errors and deficiencies in commitment warrants. Lafleur v. Vallee, 19 Can. Cr. Cas. 362, 5 D.L.R. 57.

ABSENCE OF ANYTHING TO SHEW THAT PRISONER ELECTED TO BE TRIED SUMMARILY.

A warrant of commitment is not void because it does not shew that the prisoner consented to be tried summarily for an indictable offence and where the conviction, which was before the Court on an application by the prisoner for his discharge from custody on habeas corpus, shewed that he consented to be so tried, the commitment is validated under sec. 1121, Cr. Code, 1906, which provides that no warrant or commitment shall be held void by reason of any defect therein, if it is therein alleged that the defendant has been convicted and there is a good and valid conviction to sustain the same. [Reg. v. Sears, 17 C.L.T. 124, distinguished.] The King v. Barnes, 19 Can. Cr. Cas. 465.

WHEN PRISONER IS LEGALLY COMMITTED.

A prisoner is legally detained where a gaoler has returned a good warrant, based upon a conviction which was not attacked, and which was apparently regular, the law justifying the sentence imposed. The King v. Fraser, 20 Can. Cr. Cas. 167, 7 D.L.R. 496.

POWER TO ALTER; CHANGING TO "HARD LABOUR."

Where a prisoner was convicted of being a vagrant and sentenced to six months' imprisonment, and no provision was made for "hard labour" and thereafter the words "hard labour" were added in the absence of the accused, and as so changed the commitment was made out to conform to it, such change is invalid and the commitment will be set aside on habeas corpus proceedings. [Criminal Code, sec. 727; see R. v. McAnn, 3 Can. Cr. Cas. 110; Regina v. Hartley, 20 O.R. 481, referred to.] The King v. Kirwin, 20 Can. Cr. Cas. 181.

SUFFICIENCY OF WARRANTY OF COMMITMENT; COSTS OF CONVEYING TO GAOL.

A warrant of commitment in default of paying a fine for an offence under the Nova Scotia Liquor License Act, and which requires as a condition of release that the prisoner should pay also the costs of conveying him to gaol, should shew by endorsement or otherwise, the amount of the latter costs; but, where no bona fide effort has been made to pay the fine, the omission may be cured on a habeas corpus aplication by giving leave to return an amended warrant. [The King v. McDonald, 16 Can. Cr. Cas. 121, applied; The Queen v. Corbett, 2 Can. Cr. Cas. 499, distinguished.] Re Leblanc, 22 Can. Cr. Cas. 208, 15 D.L.R. 572.

SUFFICIENCY OF WARRANT OF COMMITMENT.

A warrant of commitment issued under sec. 690 of the Cr. Code 1906, remanding the accused to prison to stand his trial before the King's Bench, is not invalid merely on the ground that the elements of the offence are not recited in the warrant, if an indictable offence be disclosed in the depositions. [R. v. Phillips, 11 Can. Cr. Cas. 89; and R. v. Brown, [1895] 1 Q.B. 119, followed.] R. v. Beaudoin, 22 Can. Cr. Cas. 319, 17 D.L.R. 273.

SUMMARY CONVICTION; AMENDING COMMITMENT; PROTECTION ORDER.

A defective warrant of commitment following a summary conviction cannot be amended under Code, sec. 1121 on a habeas corpus application if the conviction itself is also bad in law. An order of protection to the magistrate cannot be made on the allowance of a writ of habeas corpus in respect of an invalid warrant of commitment where the prisoner is discharged ex debito justitiæ and there is no motion to quash the conviction or proceeding on which the warrant is based. (Cr. Code, sec. 1131.) [R. v. Lowery (1908), 13 Can. Cr. Cas. 105, 15 O.L.R. 182, followed; R. v. Nelson, 15 Can. Cr. Cas. 10, 18 O.L.R. 484, referred to.] R. v. Peart, 23 Can. Cr. Cas. 259.

HABEAS CORPUS; POWER OF AMENDING COMMITMENT; COSTS; TEMPERANCE ACT.

Where it appears that several commitments in refault of paying fine imposed for infraction of the Canada Temperance Act were all actually executed at the one time, the Court hearing a habeas corpus application may amend the commitments by striking out of all but one of them the costs of conveying the prisoner to gaol which had been included in each commitment; but semble the commitments would not be bad in that respect inasmuch as the magistrate could not foretell that all the commitments would be executed at once. Ex parte Richard; R. v. Steeves, 24 Can. Cr. Cas. 183.

SUFFICIENCY OF WARRANT OF COMMITMENT.

Where there is a good and valid conviction by two Justices sitting together as a summary trial Court under Part XVI of the Cr. Code, a warrant of commitment thereunder is validated under Cr. Code, sec. 1130, although signed and sealed by one of such Justices only and although it recites that the accused was convicted before the signing Justice and makes no mention of the other having participated in the trial. R. v. James, 25 Can. Cr. Cas. 23, 25 D.L.R. 476.

STATUTORY FORM OF WARRANT; COSTS; ILLEGITIMATE CHILDREN'S ACT; HABEAS CORPUS.

A warrant of commitment in default which is drawn in strict conformity with a statutory form will not be set aside on habeas corpus although it does not fix the costs of conveying to gaol which the defendant must pay as a condition of his release; so a commitment in default of giving security in filiation proceedings under the Illegitimate Children's Act, R.S.M. 1913, ch. 92, is valid if issued in form 10

of that Act for the term of six months or until defendant gives the statutory bond or makes the cash deposit and pays "the costs and charges attending the commitment and conveying to gaol." R. v. Book, 25 Can. Cr. Cas. 89.

HABEAS CORPUS; RETURN OF AMENDED COMMITMENT.

An amended warrant of commitment and an amended conviction may be returned to a writ of habeas corpus, so as to omit an unauthorized imposition of hard labour which the justice, making the summary conviction, had no jurisdiction to impose for the particular offence, and this, notwithstanding that the adjudication imposing hard labour had been acted upon; but the unauthorized portion of original commitment and of the original conviction brought before the court may be quashed. [R. v. McAnn, 3 Can. Cr. Cas. 110; R. v. Walton, 10 Can. Cr. Cas. 269; R. v. Barre, 11 Can. Cr. Cas. 1; and R. v. Atkinson, 23 Can. Cr. Cas. 149, 18 D.L.R. 462, considered.] Re Muschik, 25 Can. Cr. Cas. 170.

SUMMARY CONVICTION; SUSPENDED SENTENCE; IRREGULARITY.

The fact that the evidence for the prosecution was sufficient to warrant a summary conviction, and that no evidence was given for the defence, will not support a commitment where no formal conviction was ever drawn up and the minute of adjudication in which the accused was found guilty contained a suspension of sentence which had not been regularly superseded. R. v. Knight, 27 Can. Cr. Cas. 111.

OFFICIAL TITLE; MAGISTRATE.

It will be assumed that a town magistrate signing as magistrate "in and for" the town a warrant of commitment which is headed with the name of both town and county, did so in the town although the warrant does not formerly state that the warrant was there given. R. v. Nolan, 28 Can. Cr. Cas. 100, 35 D.L.R. 334.

HOMICIDE; NEGLIGENCE; COLLISION OF SHIP; FINDING NOT SUPPORTED BY DEPOSITIONS.

If a commitment for trial for manslaughter based on alleged negligence is found on a habeas corpus application to be entirely unsupported by evidence, the prisoner will be discharged on the ground of want of jurisdiction in the magistrate to commit. R. v. Mackey, 29 Can. Cr. Cas. 167. See also 29 Can. Cr. Cas. 282, 419; 40 D.L.R. 287.

COMMON ASSAULT.

See Assault.

COMMON LAW.

Note on procedure for offences at common law apart from the Code. 5 Can. Cr. Cas. 336.

COMMON LAW OFFENCES NOT PROVIDED FOR IN THE CRIMINAL CODE; JURISDICTION.

Counselling a person to commit perjury is not subornation of perjury unless the perjury is actually committed but it is punishable as an incitement to give false evidence which is an offence at common law. It is an offence at common law to offer money to a witness to testify, regardless of its truth or falsehood, to certain allegations which are false, although not shewn to be false to the knowledge of the accused, and although the proposed testimony was not in fact given. The common law jurisdiction as to crime is still operative notwithstanding the Criminal Code, but subject to the latter prevailing where there is a repugnancy between the common law and the Code. Where the charge in respect of which the accused person has been committed for trial is an offence at common law not provided for by the Code and formerly a misdemeanor, one justice of the peace may commit for trial and admit to bail as at common law. The King v. Cole, 5 Can. Cr. Cas. 330.

[Relied on in R. v. Walkem, 14 Can. Cr. Cas. 122, 128, 14 B.C.R. 7.]

COMMUTATION.

See Pardon.

COMPANY.

False statement of affairs by director, incorporation under company law of another province, judicial notice of status of president as director. 1 Can. Cr. Cas. 551.

No preliminary inquiry against, for indictable offence; Proceedings by indictment. 2 Can. Cr. Cas. 252, 254.

Summary proceedings against; Distinction between matters of jurisdiction and of procedure. 2 Can. Cr. Cas. 482.

Liability of company to summary conviction. 4 Can. Cr. Cas. 115.

Criminal nuisances; Corporation endangering the public by omission of legal duty. 10 Can. Cr. Cas. 118.

FALSE STATEMENT OF AFFAIRS; MAILING; LOCALITY OF CRIME.

A charge against the president of an incorporated trading company of having made and published a statement of its affairs knowing the same to be false and with intent to defraud, may be tried either in the province in which the statement was despatched by mail to the party defrauded, or in the province in which it is received by mail at the address to which the defendant directed it. R. v. Gillespie, 1 Can. Cr. Cas. 551.

[Followed in R. v. Gillespie (No. 2), 2 Can. Cr. Cas. 309, 311.]

Where a false statement of a company's affairs is mailed in one province addressed

to and received by a person in another province, the offence is commenced in the province where the letter containing the statement was mailed, and is continued and completed in the province to which it was sent, and under Cr. Code, sec. 553 (b) is to be considered as completed in either jurisdiction. Ibid. 1 Can. Cr. Cas. 551.

PRESIDENT; STATUS AS DIRECTOR.

In considering a charge against the "president" of an incorporated company for publishing a false statement unler Cr. Code, sec. 365, which in terms applies to directors or managers of companies, judicial notice will be taken of the statutes of another province under which the company was incorporated, requiring the president to be chosen from the directors; and a warrant of commitment against the president, as such, after proof of the manner of incorporation, need not allege that he was a director. Ibid. 1 Can. Cr. Cas. 551.

SUNDAY OBSERVANCE; PROVINCIAL ACT; ULTRA VIRES.

A Sunday observance criminal law of Nova Scotia passed before Confederation which applied to individuals only, cannot be amended by the legislature of that province so as to apply to corporations, and a provincial Act purporting to so amend was held to be ultra vires. R. v. Halifax Electric Light Co. 1 Can. Cr. Cas. 424.

PUBLISHING FALSE STATEMENT; LOCALITY OF CRIME; PLACE OF MAILING OR PLACE OF RECEIPT OF POST LETTER.

Where the offence charged was the making, circulating and publication of false statements of the financial position of a company, and it appeared that the statements were mailed from a place in Ontario to the parties intended to be deceived in Montreal, the offence, although commenced in Ontario, is completed in the Province of Quebec by the delivery of the letters to the parties to whom they were addressed. In such case, the Courts of the Province of Quebec have jurisdiction to try the accused, if he has been duly committed for trial by a magistrate of the district. R. v. Gillespie (No. 2), 2 Can. Cr. Cas. 309.

LIABILITY TO SUMMARY CONVICTION BEFORE JUSTICES.

The procedure of the Criminal Code as to summary convictions applies as well to corporations as to natural persons. The fact that a portion of the remedy provided for the recovery of the penalty and costs is personal imprisonment, does not prevent the application of the summary procedure in other respects to corporations. Notice of a summons by justices under the Summary Convictions clauses of the Criminal Code may be given in a manner similar to a notice of indictment under Cr. Code, sec. 637. R. v. The Toronto Railway Company, 2 Can. Cr. Cas. 471.

[Approved in R. v. London, 32 O.R. 326; considered in R. v. Union Colliery Co. 3 Can. Cr. Cas. 509, 7 B.C.R. 201; followed in R. v. Dominion Coal Co. 41 N.S.R. 149.]

MANSLAUGHTER; INDICTMENT OF CORPORATION FOR.

A corporation is not subject to indictment upon a charge of any crime the essence of which is either personal criminal intent or such a degree of negligence as amounts to a wilful incurring of the risk of causing injury to others. Cr. Code, secs. 213 and 220, as to want of care in the maintenance of dangerous things, do not extend the criminal responsibility of corporations beyond what it was at common law. There is no power, under Code, sec. 639, or otherwise, to impose a fine or any other punishment, in lieu of imprisonment, for the offence of manslaughter, and there is consequently no judgment or sentence applicable to a conviction of a corporation for that offence. R. v. Great West Laundry Co. 3 Can. Cr. Cas. 514.

NEGLECT OF DUTY CAUSING DEATH.

Although a corporation cannot be guilty of manslaughter, it may be indicted under Cr. Code, sec. 252, for having caused grievous bodily injury by omitting to maintain in a safe condition a bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grievous bodily injury. A fine is the punishment which must be substituted under Cr. Code, sec. 639, in the case of a corporation, in lieu of the imprisonment mentioned in Cr. Code, sec. 252, and the amount is in the discretion of the Court (Cr. Code, sec. 934). The expression "grievous bodily injury" includes injuries immediately resulting in death, and as a corporation is not amenable to a charge of manslaughter, the death is as to it a circumstance in aggravation of the crime, and does not enlarge the nature of the offence. R. v. Union Colliery Co. 3 Can. Cr. Cas. 523.

[Affirmed in R. v. Union Colliery Co. 4 Can. Cr. Cas. 400, 31 S.C.R. 81; referred to in R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 426.]

NEGLECT OF DUTY CAUSING DEATH.

Under sec. 213 of the Criminal Code a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control. The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a good ground for quashing the indictment. As the Criminal Code provides no punishment for the offence, the common law punishment of a fine may be imposed on a corporation in-

dicted under it. Union Colliery Co. v. R. 4 Can. Cr. Cas. 400.

[Referred to in R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 426; R. v. Hays, 12 Can. Cr. Cas. 429; considered in R. v. Toronto R. Co. 10 Can. Cr. Cas. 115, 31 Can. S.C.R. 81; followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141.]

NUISANCE; NEGLIGENCE ENDANGERING LIFE.

An objection to an indictment against a corporation upon the ground that it does not disclose any offence in respect of which the defendant corporation could be liable, must be taken by demurrer and not by motion to quash. The omission of an electric railway company operating their cars upon a highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of legal duty constituting a common nuisance under the Criminal Code, secs. 191 and 213, for which an indictment will lie. R. v. Toronto Railway Company, 4 Can. Cr. Cas. 4.

[Referred to in The King v. Toronto R. Co. 10 Can. Cr. Cas. 106, 114, 10 O.L.R. 26.]

WHETHER LIABLE TO SUMMARY CONVICTION.

The procedure of the Criminal Code as to summary convictions does not apply to corporations. A magistrate making a summary conviction and directing a distress to levy the fine imposed, is bound to award imprisonment for want of sufficient distress (Code forms and Code, sec. 982), and the summary convictions procedure is not applicable to corporations, as a conviction cannot be made in the terms of the Code Forms (Code, Schedule 1.) As regards charges of a criminal nature, a corporation is not within the statutory term "person," which by the Interpretation Act, R.S.C. 1886, ch. 1, is declared to include "any corporation to whom the context can apply," etc. Ex parte Woodstock Electric Light Co. 4 Can. Cr. Cas. 107.

REGULATION OF CORPORATIONS; REGISTRATION AND LICENSING FEE IN N.W.T.

(1) Subject to the controlling powers of the Dominion Parliament, the Legislature of the North West Territories has the like powers to provide for the licensing of companies doing business in the Territories as a province has written its boundaries. (2) Such powers include the right to require a company incorporated under the Dominion "Companies Act" to register with an officer of the Territories and to deposit a copy of the charter and regulations of the company and a power of attorney to a resident of the Territories to receive process issued against the company. (3) A company incorporated by letters patent under the Companies Act, R.S.C. 1886, ch. 119, to carry on business as implement dealers in the Dominion of Canada is, quoad the Territories, a company carrying on a business to which the legislative authority of the Territories Legislature extends, and is therefore subject to summary conviction under the Territories Foreign Companies Ordinance, 1903, if it carries on business without registering and paying the license fee under the Ordinance. R. v. Massey-Harris Company; Massey-Harris Company v. Wright, 9 Can. Cr. Cas. 25.

INCORPORATED JOCKEY CLUB; LEASE OF BETTING PRIVILEGES; ACQUIESCENCE OF DIRECTOR OR PRESIDENT OF CLUB.

(1) Mere acquiescence by a director in prohibited acts of a corporation is not such a participation therein as will constitute him an aider or abettor or make him criminally liable as a party under Code, sec. 61, for the illegal acts of the corporation. (2) The lease by an incorporated jockey club of the betting privileges at the race-tracks of the club with the knowledge and acquiescence of the club's president in the making of the lease and in the use of the covered betting inclosure by bookmakers exercising its privileges, but without his taking part otherwise in the betting or in the management of the inclosure, does not involve the club's president in criminal liability as the keeper of a common betting house under Code, secs. 197 and 198. The King v. Hendrie, 10 Can. Cr. Cas. 208.

[Referred to in R. v. Saunders (No. 1), 12 Can. Cr. Cas. 37.]

PROCEEDINGS AGAINST; SERVING NOTICE OF CHARGE; LEAVE OF ATTORNEY GENERAL TO PREFER CHARGE; FORMAL CHARGE IN LIEU OF INDICTMENT.

In the Province of Alberta which has no grand jury system, a corporation may be compelled to answer to an indictable offence (ex. gr. conducting a lottery scheme) by a formal written charge in lieu of an indictment, such charge being laid by the Attorney General or by his direction or with the consent or order of a Judge and notice thereof being served on the corporation under sec. 918 of the Revised Code. The King v. Standard Soap Co. 12 Can. Cr. Cas. 290.

WILFUL DISOBEDIENCE OF STATUTE; PROSECUTION OF RAILWAY COMPANY'S MANAGER IN CHARGE OF ITS OPERATIONS.

The manager of a corporation is not criminally liable as for wilful disobedience of a statute under Revised Cr. Code, sec. 164 (former sec. 138), in respect of the corporation's neglect not due to any active participation on his part, to perform a statutory duty imposed upon it. The King v. Hays, 12 Can. Cr. Cas. 423.

SUMMARY CONVICTION; COMPANY'S ADVERTISEMENT INVITING SHARE SUBSCRIPTION A "PROSPECTUS."

Company directors who issue an advertisement in Ontario inviting public subscription to shares of a company incorporated under the Ontario Companies Act are liable to summary conviction thereunder if the advertisement does not include all the statutory requirements of a prospectus. The King v. Garvin, 14 Can. Cr. Cas. 283.

PUNISHMENT ON PLEA OF GUILTY; FINE OF CORPORATION.

(1) On an indictment of a railroad company for omission to take reasonable care of a consignment of dynamite whereby life and property was endangered and fatalities resulted from an explosion, the trial Judge on a plea of guilty may consider the evidence taken at the coroner's inquest held concerning the resultant deaths at which the railroad company was represented by counsel and fix the appropriate fine with reference to the seriousness of the case as so appearing. (2) A fine of $25,000 was imposed where the railroad company knowing the consignment to consist of explosives shipped the same unattended in an ordinary freight car mixed with other freight and after learning that it was dynamite neglected to take any precautions en route, notwithstanding slight explosions and leakages being observed, as a result of which neglect two men were killed and forty others injured. The King v. Michigan Central Railroad Co. 17 Can. Cr. Cas. 483.

CRIMINAL LIABILITY OF COMPANY'S OFFICERS; SECURING CREDIT BY FALSE REPRESENTATION IN A REPORT.

(1) The president of a company is criminally liable for obtaining credit by false pretences, where goods were secured on credit by the company upon false representations contained in a report made by him for the benefit of the company, where he was the largest shareholder in the company, was benefited by the credit obtained and became thereby indebted himself as a shareholder. (2) An officer of a company is criminally liable under art. 69 of the Cr. Code, providing, among other things, that everyone is a party to and guilty of an offence who does an act for the purpose of aiding any person to commit the offence, where on the strength of a false representation in a report made by him with intent to perpetrate the offence of obtaining credit by false pretences, goods were obtained on credit for the company. The King v. Amos Campbell, 19 Can. Cr. Cas. 407, 5 D.L.R. 370.

COMPANY'S INFRACTION OF LIQUOR LAW; LIABILITY OF SHAREHOLDER.

In order to convict an individual shareholder of an offence committed by an incorporated company (e. g., an infraction of liquor laws in the unlawful shipment of liquor), it is necessary to shew active personal participation or at least knowledge of the guilty act on the part of the defendant. (Dictum per Judge Wallace.) [See R. v. Hendrie, 10 Can. Cr. Cas. 198; R. v Hays, 12 Can. Cr. Cas. 423.] R. v. Glassey, 22 Can. Cr. Cas. 73.

COMPENSATION.

See Restitution.

COMPLAINT.

See Information.

COMPOUNDING.

When an offence to compound a misdemeanour. 1 Can. Cr. Cas. 316.

STIFLING PROSECUTION FOR FRAUD ON CREDITORS; EFFECT ON PROMISSORY NOTES IN FURTHERANCE OF SCHEME.

The manager of the business of an insolvent firm was arrested and imprisoned on a charge of having procured the firm, while in insolvent circumstances, to transfer certain of its property to another person with intent to defraud the creditors of the firm. After he had been released on bail an offer was made in writing by his wife and her son to the creditors of the firm to pay a certain percentage of their claims, in addition to the dividend to be paid by the estate of the firm, and to withdraw certain actions and procure the abandonment of certain claims, upon conditions set out in the offer, one of which was that any creditor accepting the offer should not thereafter, directly or indirectly, institute or be a party to any action or proceeding against the husband in respect of any matter or thing in any wise connected with the affairs or business of the firm. This offer was accepted by the plaintiff and a number of the other creditors. After it was made, the husband was discharged from custody, the informant, one of the creditors, not appearing and no evidence being offered in support of the charge. Promissory notes were afterwards made by the wife and her son in favour of the creditors for the stipulated percentage. In an action by one of the creditors upon some of the notes:—Held, that, although not stated in express terms, one object of the defendants in making their offer was to procure the stifling of the prosecution of the charge made against the husband; and it was in accordance with the concluded agreement made by the defendants with the plaintiff and the other creditors that no evidence was offered on the pending charge, which was consequently dismissed; and

that the notes sued upon, having been given on the illegal agreement thus entered into, could not be enforced. [Rawlings v. Coal Consumers' Association (1874), 43 L.J.M.C. 111; Windhill Local Board of Health v. Vint (1890), 45 Ch. D. 351; and Jones v. Merionethshire Permanent Benefit Building Society, [1891] 2 Ch. 587, followed.] Held, also, that as part of the consideration for the agreement was illegal, the whole was bad. [Lound v. Grimwade (1888), 39 Ch. D. 605 at p. 613, followed.] Leggatt v. Brown et al. (1898), 29 O.R. 530.

CONVICTION FOR; ESSENTIALS OF VALID CONVICTION.

A conviction under 37 Vict. ch. 32, sec. 39 (O.), that one M., the defendant, did unlawfully attempt and offer to compound, and offer to compromise, compound and settle with one R. a certain offence which the said R. had charged the said M. for selling spirituous and intoxicating liquors without a license, with a view of stopping or having the said charge dismissed for want of prosecution:—Held, bad and quashed; (1) for not shewing that M. was a person who had violated any of the provisions of the Act; (2) for stating the charge in the alternative with a view of stopping or having; and (3) for adjudging the defendant to pay a sum for costs, without saying to whom. Regina v. Mabey (1875), 37 U.C.Q.B. 248.

PENALTIES RECOVERABLE BY INFORMATION BEFORE JUSTICES.

The defendant was indicted for compounding a penal prosecution instituted by him against one F. under 20 and 30 Vict. ch. 51, sec. 256. It appeared that F. had been convicted under that Act on the information of defendant by the police magistrate of H. and a fine of $50 imposed upon him, and that, on appeal therefrom, defendant for $10 agreed with F. not to prosecute this appeal, but consented that the conviction should be quashed, which was accordingly done:—Held, that the indictment would neither lie at common law, nor, on the authority of Rex v. Crisp, 1 B. & Al. 282, under the 18th Eliz. ch. 5, sec. 4, and the conviction of the defendant was, therefore, ordered to be annulled. Regina v. Mason (1867), 17 U.C.C.P. 534.

FALSE PRETENCES; SETTLEMENT BETWEEN PARTIES; WITHDRAWAL OF CHARGE IN CONSIDERATION OF CONTRACT OF INDEMNITY.

(1) Obtaining money by false pretences is a crime committed against the public as well as against the individual defrauded and an agreement between the latter and the accused to settle the charge pending before the magistrate is void. (2) A contract between the accused and the complainant made in consideration of the withdrawal of a charge of obtaining money by false pretences in respect of which a preliminary enquiry was pending before a magistrate is not enforceable, although the criminal proceedings were dropped in pursuance of the contract. (3) The assent of the magistrate to the charge being withdrawn on being informed of the agreement of settlement, does not validate the agreement. (4) Where the charge is for an offence against the public as distinguished from offences which, although punishable by criminal process are essentially in the nature of private injuries, it is immaterial that the offence charged was not a felony before the abolition of the distinction between felony and misdemeanour by the Criminal Code. (5) Although a person who has parted with his money or property by means of a fraud practised upon him or who has had it stolen from him, is entitled to take his own property if offered to him, he is not permitted to screen the offender by an agreement not to prosecute nor to drop a prosecution already begun. Morgan v. McFee, 14 Can. Cr. Cas. 308.

CONCEALMENT.

Note on fraudulent concealment of goods. 5 Can. Cr. Cas. 344.

ASSIGNMENT TO DEFRAUD CREDITORS.

Upon an indictment under 22 Vict. ch. 96, for making an assignment to defraud creditors:—Held, that a money bond is personalty seizable on an execution under the statutes 13 and 14 Vict. ch. 53 and 20 Vict., ch. 57; and, further, that a transfer made by a party to a creditor, who accepted the same in full satisfaction and discharge of his debt, did not render the party making such assignment less liable under this indictment. (Richards, J., dissenting.) The Queen v. Potter (1860), 10 U.C.C.P. 39.

PERSON CONCEALING HIS OWN GOODS TO DEFRAUD FIRE INSURANCE COMPANY: "ANYTHING CAPABLE OF BEING STOLEN."

A person is guilty of an offence under sec. 354 of the Criminal Code if he fraudulently conceals his own goods for the purpose of obtaining insurance moneys thereon, as if they had been destroyed by fire, and of then keeping the goods for his own use. The gist of the offence created by sec. 354 is the concealing for a fraudulent purpose, and it is not incumbent on the prosecution to shew that the fraudulent purpose was accomplished. The subject-matter of the offence under sec. 154, i.e., "anything capable of being stolen," is not restricted to things capable of being stolen by the accused, but includes anything which comes within the definition given in sec. 303 of

things capable of being stolen. The Queen v. Goldstaub, 5 Can. Cr. Cas. 357.

FRAUDULENT CONCEALMENT OF PROPERTY; ABANDONMENT FOR BENEFIT OF CREDITORS; DISCREPANCY IN STATEMENTS OF AFFAIRS.

In a proceeding of a penal nature involving deprivation of liberty, and brought under a provincial statute for an alleged concealment of property in fraud of creditors, the rules and principles of the criminal law as to the evidence and its effect are applicable, and there must be clear and conclusive evidence to justify a conviction. A finding that an insolvent has secreted a part of his property with the intent of defrauding his creditors is not supported by evidence merely of a discrepancy between two financial statements made by him a few months apart and the failure of the insolvent to account for the deficit in his affairs other than as being the result of an extravagant expenditure of capital in living expenses. Bryce v. Wilks, 5 Can. Cr. Cas. 445.

EVIDENCE OF REMOVAL OR TAKING; REMOVAL OF PART A MONTH PRIOR TO DATE CHARGED IN COUNT; SEPARATE TRANSACTIONS.

A conviction on a charge of fraudulent concealment of goods with intent to defraud an insurance company will not be set aside because it appears in evidence that a part of the goods had been removed a month before the date of removal of the remainder, which latter removal took place on the date charged in the indictment as the date of concealment. The date of removal is not necessarily the date of concealment and the conviction would be valid if the accused were still keeping the goods in concealment on or about the date charged in the count, although the removal took place a month prior thereto. On a further count for fraudulent removal of goods with intent to defraud, a removal of part of the goods a month prior to the time of the offence as charged is not to be presumed to be a part of one continuous taking with the removal of the remainder on the date charged. Although evidence of the first taking was admissible to shew the intent on the second taking which constituted the charge against the accused, the Judge should not have told the jury that they could convict for either the first or the second taking or for both, and the Judge having certified his opinion that the jury were materially influenced by the evidence of the first taking the conviction on the count for fraudulent removal should be set aside. The King v. Hurst, 5 Can. Cr. Cas. 338.

CONDONATION.

NO DEFENCE TO INDICTMENT.

A private party cannot by condoning or forgiving a personal injury done to himself in the commission of crime, thereby condone or pardon the offence against the King so as to enable the wrongdoer to defend on that ground an indictment preferred against him by the Crown. R. v. Strong, 24 Can Cr. Cas. 430, 26 D.L.R. 122.

CONDUCT.

False pretence by. 2 Can. Cr. Cas. 505, 512.

False pretence by conduct. 5 Can. Cr. Cas. 50.

Presumption from silence. 7 Can. Cr. Cas. 90.

CONFESSION.

See Evidence.

CONSENT.

Conduct as proof of. 1 Can. Cr. Cas. 286.

Effect of, in charge of assault. 1 Can. Cr. Cas. 442, 450.

Of prisoner as affecting irregularity in trial. 1 Can. Cr. Cas. 465.

Summary trial by magistrate with, effect as to appeal. 1 Can. Cr. Cas. 112, 113.

Summary trial without consent, in British Columbia, right of appeal. 1 Can. Cr. Cas. 231.

Consent of prisoner or of his counsel in indictable offences. 6 Can. Cr. Cas. 421.

Of accused to summary trial; Procedure on obtaining. 7 Can. Cr. Cas. 129.

Depositions at another trial admissible by consent. 7 Can. Cr. Cas. 457.

OF ASSAULTED PARTY TO FIGHT.

A blow struck in anger or which is intended or is likely to do corporal hurt is a criminal assault, notwithstanding the consent to fight of the person struck. R. v. Buchanan, 1 Can. Cr. Cas. 442.

TRIAL BEFORE POLICE MAGISTRATE; EXTENDED JURISDICTION.

If a prisoner consents to be tried by a police magistrate having the extended powers of a Court of General Sessions where such consent is given, he is liable to sentence for the more onerous punishment which the General Sessions might impose in excess of the powers of an ordinary magistrate. R. v. Conlin, 1 Can. Cr. Cas. 41.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 77.]

CONSENT OF COUNSEL IN MATTER NOT AFFECTING THE COURT'S JURISDICTION.

(1) At the trial of an indictable offence, the presiding Judge may with the consent of counsel for the Crown and for the prisoner respectively, adjourn the hearing to a private house within the same county for the purpose of taking there the evidence of a witness who is too ill to be moved therefrom, and may order that the Court and jury proceed there for that purpose. (2) The prisoner is bound by the consent of his counsel in such a matter which does not go to the jurisdiction of the Court. The King v. Rogers, 6 Can. Cr. Cas. 419.

SUMMARY TRIAL; COUNSEL'S ASSENT TO IMMEDIATE TRIAL BY MAGISTRATE NOT A WAIVER.

(1) Where there is a right to elect a summary trial before a police magistrate, it is imperative that the magistrate state to the accused the Court at which the case can probably soonest be tried by a jury. (2) The right of the accused to be informed by the magistrate as to the next jury Court is not waived by a statement of his counsel that he elects to be then and there tried by the magistrate. (3) The fact that the accused is represented by counsel who was probably aware of the time of the next jury sittings does not abridge the magistrate's statutory duty to himself inform the accused. The King v. Walsh, 8 Can. Cr. Cas. 101.

[Referred to in R. v. Mali, 1 D.L.R. 258; R. v. Howell, 16 Can. Cr. Cas. 182, 19 Man. L.R. 326; Ex parte McDonald, 9 Can. Cr. Cas. 370; R. v. Crooks, 19 Can. Cr. Cas. 153; approved in R. v. McDougall, 8 Can. Cr. Cas. 237, 8 O.L.R. 30.]

See also Summary trial; Speedy trial.

CONSPIRACY.

As to trade combinations, see Trade combinations; Monopoly.

An otherwise lawful act not unlawful because of malicious motive. 1 Can. Cr. Cas. 215.

Definition of. 1 Can. Cr. Cas. 259.

Indictment valid although means of conspiracy not stated. 1 Can. Cr. Cas. 216.

Unlawful purpose and unlawful means as affecting. 1 Can. Cr. Cas. 215.

When particulars may be ordered on application of accused. 1 Can. Cr. Cas. 216.

Where prosecutor a party to fraud. 1 Can. Cr. Cas. 215.

Trade combines, etc. 3 Can. Cr. Cas. 575.

Attempt to effect unlawful escape by force of arms; Homicide. 5 Can. Cr. Cas. 309.

Trade Combinations Act; Trial without a jury. 9 Can. Cr. Cas. 521.

CHANGE IN GOVERNMENT BY BRIBERY; INDICTABLE OFFENCE; JURISDICTION OF LEGISLATURE.

On demurrer to an indictment (set out in the report of the case) for 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:—Held, O'Connor, J., dissenting. (1) That an indictable offence was disclosed; that a conspiracy to bribe members of Parliament is a misdemeanour at common law, and as such indictable. (2) That the jurisdiction given to the legislature by R.S.O. (1887), ch. 12, secs. 45, 46, 47, 48, to punish as for a contempt, does not oust the jurisdiction of the Courts where the offence is of a criminal character, but that the same act may be, in one aspect a contempt of the legislature, and in another aspect a misdemeanour. (3) That the legislative assembly has no criminal jurisdiction, and hence no jurisdiction over the matter, considered as a criminal offence. (4) That the indictment, considered as a pleading, sufficiently stated the offence intended to be charged. Regina v. Bunting, 7 O.R. 524.

COMBINATION NOT TO BUY OR SELL; ABSENCE OF MALICIOUS MOTIVE OR COERCION.

Plaintiff and defendant were members of a corporation known as "The Winnipeg Grain and Produce Exchange" and dealt in grain both on their own account and for others on commission. The defendants and others, members of the exchange, having come to the conclusion that the plaintiff was using his position as a member to assist other dealers not members to carry on dealings in grain with members in violation of the rules of the exchange as to commission, agreed amongst themselves that they would neither sell grain to nor buy from the plaintiff; and the defendants afterwards carried out this agreement, thereby causing loss and damage to the plaintiff in his business as a grain dealer. The defendants in so combining were not actuated by any malicious feeling towards the plaintiff, but solely by the desire to serve the business interests of themselves and the members of the exchange generally, and in the protection of the market created under the rules of the exchange. They had not attempted to coerce the plaintiff by violence or threats or to induce him or others to break any contract, nor had they tried to induce others to refrain from dealing with the plaintiff:—Held, that the acts of the defendants were no more than a lawful exercise of their rights, and that there was no conspiracy to do any illegal act or for any illegal object, or to use any means that would be unlawful if used by an individual, and that in the absence of any evidence of any malicious or improper

motive, the combination and the pursuit of its objects did not affect any legal right of the plaintiff, or operate to do him any legal injury. A combination such as the defendants had entered into, although resulting in damage to some person or persons, is actionable only in cases where its object is unlawful, or where, if lawful, such object is attained by unlawful means. Gibbons v. Metcalf, 15 Man. R. 560.

FRAUDULENT ELECTION RETURNS; TESTIMONY OF ACCOMPLICE; CORROBORATION.

Upon an indictment for conspiracy to procure by fraud the return of one F. as a member for the Legislative Assembly:—Held, that a conviction upon the evidence of an accomplice not corroborated by other testimony is not illegal, but held that in this case such evidence was clearly confirmed, and that the verdict against all the defendants was warranted. It is clearly unnecessary to prove that all the defendants, or any two of them, actually met together and concerted the proceeding carried out; it is sufficient if the jury are satisfied from their conduct, and from all the circumstances, that they were acting in concert. R. v. Fellowes (1859), 19 U.C.Q.B. 48.

EVIDENCE.

In a charge of conspiracy, it is not necessary to prove that the parties came together and actually agreed in terms to carry out their common design; but the jury may group the detached acts of the parties severally, and view them as indicating a concerted purpose on the part of all as proof of the alleged conspiracy. R. v. Connolly, 1 Can. Cr. Cas. 468.

[Referred to in R. v. Hutchinson, 8 Can. Cr. Cas. 496; R. v. Central Supply Co., 12 Can. Cr. Cas. 390; followed in R. v. Wilson, 21 Can. Cr. Cas. 105.]

When the existence of the common design on the part of the defendants has been proved, evidence is then properly receivable as against both of what was said or done by either in furtherance of the common design. Evidence is admissible of what was said or done in the furtherance of the common design by a conspirator not charged, as against those who charged, after proof of the existence of the common design on the part of the defendants with such conspirator. Ibid., 1 Can. Cr. Cas. 468.

FAILURE OF OBJECT.

A conspiracy to defraud is indictable, although the conspirators have been unsuccessful in carrying out the fraud. R. v. Frawley, 1 Can. Cr. Cas. 253.

INDICTMENT; PARTIES.

One conspirator may be indicted and convicted without joining the others, although living and within the jurisdiction. Ibid., 1 Can. Cr. Cas. 253.

LOCALITY OF CRIME; OVERT ACT.

Any overt act of conspiracy is to be viewed as a renewal or continuation of the original agreement made by all the conspirators, and, if done in another jurisdiction than that in which the original concerted purpose was formed, jurisdiction will then attach to authorize the trial of the charge in such other jurisdiction. R. v. Connolly, 1 Can. Cr. Cas. 468.

OVERT ACT.

The bare consulting of those who merely deliberate in regard to the proposed conspiracy, although they may not agree on a plan of action, is of itself an overt act. Ibid., 1 Can. Cr. Cas. 468.

TO COMMIT A CIVIL WRONG.

Conspiracy to defraud is indictable although the object was to commit a civil wrong, and although if carried out the act agreed upon would not constitute a crime. R. v. Defries, 1 Can. Cr. Cas. 207.

VENUE.

The venue in an indictment for conspiracy may be laid either where the agreement was entered into or where any overt act was done in pursuance of the common design. R. v. Connolly, 1 Can. Cr. Cas. 468.

CONSPIRACY TO DEFRAUD; EMPLOYEE DISCLOSING EMPLOYER'S SECRETS FOR REWARD; PROOF OF INTENT.

(1) An indictment for conspiracy to defraud may properly charge that the conspiracy was with persons unknown, if neither the Crown nor the private prosecutor had definite information of the identity of the alleged coconspirators. (2) Where at the trial of such an indictment the name of one of the alleged coconspirators is for the first time disclosed in the testimony of a Crown witness, that information may then be added to the statement of particulars of the indictment. (3) It is a conspiracy to defraud a railway company for an employee of the audit office of the railway to agree with train conductors to sell to them secret information as to the time of special audits of passenger tickets on their trains, which information it was the duty of the accused as such employee to keep secret. (4) The system of special audits on trains being designed to prevent the railway company being defrauded by irregularities not only on the train audited but on others, and being dependent for its effectiveness on the secrecy as to the time when it will take place, the disclosure of same for reward is evidence of an attempt to cause the company a financial loss, although such disclosure tended to prevent any loss on the occasion when such audits

took place. The King v. Johnston, 6 Can. Cr. Cas. 232.

CONSPIRACY TO DEFRAUD; BRIBERY OF RAILWAY CLERKS TO DISCLOSE TIME OF PROPOSED TRAIN AUDITS.

Upon a charge of conspiracy to defraud the Canadian Pacific Railway Co. by bribing clerks in the company's employ to illegally and fraudulently disclose information of the secret audits to be made on trains and to furnish such information to conductors to enable them to be prepared for the audits when made and to be free at other times to retain fares and to allow passengers to ride free or for a reduced fare, the Court properly rejected evidence of conductors to the effect that if they knew the date of a proposed secret audit they would communicate it to the conductor whose train was to be audited, for a purpose other than that of defrauding the company. The King v. Carlin (No. 1), 6 Can. Cr. Cas. 365; affirmed in 6 Can. Cr. Cas. 507, 12 Que. K.B. 483.

PARTICIPATION IN LARCENY; OVERT ACT IN CONSPIRACY TO DEFRAUD; EFFECT OF PROCEEDING WITH CHARGE OF CONSPIRACY IN THE FOREIGN COUNTRY.

(1) Conspiracy to defraud is in itself not an extraditable offence between Canada and the United States, but extradition will lie as for a separate crime in respect of an overt act of a conspiracy which constitutes one of the crimes mentioned in the extradition arrangement. (2) The extraditable offence of larceny or participation in larceny is charged sufficiently in an information laid on instituting extradition proceedings therefor, if, following a charge of conspiracy to defraud between the accused and another person and an embezzlement and theft by such other person in pursuance thereof, the information alleges that the accused "did participate in the said offence of embezzlement and theft." (3) Where extradition is sought upon a charge of participation in a theft alleged to have been committed with respect to property of the government of the demanding country, and the demanding country produces, in support of the extradition charge, an indictment found in that country wherein acts of theft are charged as overt acts of the conspiracy, the demanding country is not thereby estopped from treating such overt acts as independent acts of larceny for the purposes of extradition. United States v. Gaynor; Re Gaynor and Greene (No. 3), (P.C.), 9 Can. Cr. Cas. 205, reversing 7 Can. Cr. Cas. 389.

TRADE COMBINES; CONSPIRACY TO PREVENT OR LESSEN COMPETITION IN ARTICLE OF COMMERCE; COAL ASSOCIATION.

(1) A person who organizes an association to restrict and control the business of retail coal dealing to the members of the association and to prevent anyone else from obtaining coal from the foreign shippers at wholesale rates for resale in the district in which the association operates is properly convicted under Code, sec. 520 (d), of conspiracy to prevent competition in the sale of a commodity which is the subject of trade. (2) Even if Code, sec. 930, which limits certain proceedings to two years after the offence could be held to apply to a prosecution by indictment, it did not apply to bar this prosecution for the offence was a continuing one, the association remaining in active operation under the presidency of the defendant up to the commencement of the prosecution. (3) The right of appeal under secs. 4 and 5, the Trade Combinations Act, where the defendant elects trial without a jury, is limited to an appeal from the conviction, and the Crown has no appeal from an acquittal on other counts of the indictment. (4) (Per Meredith, J., at the trial.) Where there is but one agreement there is only one conspiracy, and the conviction can be for one offence only where offences under other subdivisions of Code, sec. 520, based upon the same agreement, are laid in other counts of the indictment. The King v. Elliott, 9 Can. Cr. Cas. 505.

[Referred to in R. v. Beckett, 15 Can. Cr. Cas. 433; R. v. Gage (No. 2), 13 Can. Cr. Cas. 431; followed in R. v. Clarke (No. 2), 14 Can. Cr. Cas. 63.]

DISCLOSING PARTICULARS; FAILURE TO PROVIDE MEDICAL CARE; "CHRISTIAN SCIENCE" TREATMENT; ENDANGERING LIFE BY "UNLAWFUL AND IMPROPER MEANS."

An indictment for unlawfully conspiring and agreeing together and with each other to deprive another of the necessaries of life, to wit, proper medical care and nursing whereby his death was caused, but not alleging any duty to supply such care and nursing is bad as not disclosing an offence known to the law, because of such omission. In a case of conspiracy to do that which is not a crime or to do a wrong which is not well known as being the subject of a criminal conspiracy, the facts should be set out in the indictment that it may appear whether or not the conspiracy charged is an indictable offence. An indictment for conspiracy to cure another of a sickness endangering life, "by unlawful and improper means" and thereby causing his death is bad and should be quashed because it does not specify the unlawful and improper means nor indicate the specific crime or wrong intended to be relied upon. The King v. Goodfellow, 10 Can. Cr. Cas. 424.

[Referred to in R. v. Sinclair, 12 Can. Cr. Cas. 32; R. v. McGuire, 13 Can. Cr. Cas. 323.]

DEFRAUDING CANDIDATE FROM BEING RETURNED AS MEMBER; DEFRAUDING ELECTORS.

(1) The offence of conspiracy to defraud under the Revised Code, sec. 444, does not include a conspiracy to defeat a candidate's chances of election by the employment of unlawful devices. (2) A charge of conspiracy the particulars of which severally allege that the accused conspired to defraud a candidate at an election to the Saskatchewan Legislature, the electors of the division and the public, by illegally obtaining the return of the opposing candidate, does not disclose an offence under sec. 573 of the Revised Criminal Code, for the acts alleged as the object of the conspiracy do not constitute an indictable offence either by statute or at common law. The King v. Sinclair, 12 Can. Cr. Cas. 20.

INDICTMENT OF TWO CORPORATIONS AS JOINT CONSPIRATORS; CORPORATION TAKING OVER ILLEGAL BUSINESS OF PRIOR UNINCORPORATED ASSOCIATION.

(1) Two or more corporations may be indicted for conspiracy in furtherance of a trade combine under sec. 498 of the Revised Code, 1906, without joining a personal defendant. (2) For the purpose of proving the motive and effect of certain corporate acts, evidence is properly admissible on a charge of conspiracy laid against two corporations, to shew that the formation and operation of an illegal trade combine was the object of the incorporation of each of them, and that the formal agreements whereby the property and assets of unincorporated trade associations were respectively assumed by them, were made in furtherance of that design. (3) Evidence of the nature of the conspiracy alleged may be given before proof of the criminal agreement. The King v. Central Supply Association Limited, 12 Can. Cr. Cas. 371.

[Referred to in R. v. Beckett, 15 Can. Cr. Cas. 434.]

TRADE COMBINE; WHAT IS A TRADE CONSPIRACY; APPLICATION OF STATUTORY DEFINITION; CONSPIRACY WITH PERSONS UNKNOWN.

(1) The definition of a trade combination or conspiracy in Code, sec. 496, applies to sub-sec. (b) of sec. 498, but not to sub-secs. (a), (c) and (d) thereof which in themselves define the classes of offence to which they relate. (2) A conviction on indictment for conspiring with certain persons named and others unknown "or with some or one of them" is not invalid for indefiniteness or uncertainty, the names of the persons being in the nature of particulars only and not material to the constitution of the offence. (3) Where a defendant is arraigned and tried alone upon a charge of conspiracy, he may be convicted and sentenced without first proceeding with the trial of the coconspirators. The King v. Clarke (No. 2), 14 Can. Cr. Cas. 57.

OVERT ACTS CHARGED AS COMMITTED IN SEPARATE COUNTIES; TAKING ACCUSED PERSONS OUT OF COUNTY OF RESIDENCE UNDER PROCESS; FAILURE TO PROVE ANY OVERT ACT COMMITTED IN COUNTY OF TRIAL.

(1) It will be assumed that a conspiracy alleged in an indictment (or charge) to have taken place within two counties some distance apart is not identical with a conspiracy proved to have been wholly carried on in only one of the counties named. (2) Where a conspiracy is shewn to have been carried on in two counties there is jurisdiction to commit for trial and to hold the trial itself in either of the counties or in another county within the same Province if the accused persons are apprehended in such other county. (3) Where persons are brought by process from one county to another upon a conspiracy charge and committed for trial therein but the Crown fails to prove against them any overt act committed within the county in which the proceedings are taken, although charged as committed in both counties, the Court of that county has no jurisdiction to convict for a conspiracy committed wholly within the county from which the accused were brought. (4) The defendants brought by process into the county of trial are to be considered as in custody solely in respect of the charge laid and jurisdiction is not conferred on the Courts of the county to which they are taken to try them, because of their presence in custody, on any other charge preferred by the Crown as to which such Court would otherwise have no jurisdiction. (5) An allegation of the place of the offence is a material one and necessary to be proved to confer jurisdiction where the accused were not found or apprehended in the same county in which the trial is to take place. (6) An election of speedy trial without a jury in the County Court Judge's Criminal Court does not confer jurisdiction in a case in which there would be no jurisdiction over the accused if the trial were upon indictment before a jury. (7) Semble, had the charge in the preliminary enquiry not included both counties as the locality of the conspiracy and had not evidence been proven before the committing magistrate of overt acts in his county by some of the persons charged, the committal for trial and the indictment or charge which followed might have been quashed; but if the evidence of an overt act within the county upon which the committal order was founded is discredited at the subsequent trial the fact of the committal having been made does not aid the jurisdic-

tion. The King v. O'Gorman, 15 Can. Cr. Cas. 173.

[Referred to in Fournier v. Attorney-General, 19 Que. K. B. 436, 17 Can. Cr. Cas. 113.]

TRADE UNION; WORKMAN'S APPLICATION FOR MEMBERSHIP REFUSED; NOTICE OF REJECTION BY TRADE UNION TO HIS EMPLOYER.

The refusal of a trade union to admit an applicant for membership and the subsequent notification of such refusal to the applicant's employer, as a consequence of which he was discharged from his employment, will not support a charge of conspiracy to prevent the applicant from working at his trade, particularly where there is no evidence to shew any agreement between the defendants to reject the application for the purpose of depriving the applicant of employment. The King v. Day, 17 Can. Cr Cas. 403.

TRADE COMBINE; ASSOCIATION OF JOBBERS AND RETAILERS TO CONTROL TRADE AND EXCLUDE NONMEMBERS FROM DEALING WITH MEMBERS.

(1) An agreement between an association of plumbers and an association of jobbers in plumbers' supplies made with the object of restricting the jobbers who joined the jobbers' association, from selling to non-members of the plumbers' association and of restricting the plumbers who joined the plumbers' association from buying from jobbers who were nonmembers of the jobbers' association is illegal, as it is made to unduly limit the facilities for dealing in articles of commerce, to restrain or injure commerce, to unreasonably enhance prices and to unduly lessen competition in contravention of Cr. Code, sec. 498. (2) An officer of one of the signing companies who as its representative took part in the negotiations which led up to such agreement, and the issuing of lists of signatories to be sent out to the respective trades, and who endeavoured to have his company, conform to such agreement is personally liable as an aider and abettor in the illegal trade combine and may be punished as a principal. The King v. McMichael, 18 Can. Cr. Cas. 185.

EVIDENCE; CORROBORATION OF ACCOMPLICE.

On a charge of conspiracy to defraud, the evidence of the accomplice may be sufficiently corroborated by entries found in a memorandum book found upon the prisoner. The King v. St. Pierre, 19 Can. Cr. Cas. 82.

COMBINATION IN RESTRAINT OF COMPETITION; RESTRICTING PRICES TO BE PAID.

(1) An agreement between two dealers in junk aimed to destroy all competition in that business in the territory in which they were operating and aimed to lower prices paid by them for the stuff and indirectly to raise prices paid to them by their customers, the profits resulting to be divided between them, is not void at common law as being in restraint to trade. (2) An agreement between two junk dealers aimed to destroy all competition in that business in the territory in which they were operating and to lower prices paid by them for the stuff and indirectly to raise prices paid to them by their customers, the profits resulting to be divided between them, is void and unenforceable under the Criminal Code of 1906, sec. 498, declaring everyone to be guilty of an indictable offence who conspires, combines, agrees or arranges with any other person to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any article or commodity which may be a subject of trade or commerce. [R. v. Elliott, 9 Can. Cr. Cas. 505; R. v. Gage (No. 1), 13 Can. Cr. Cas. 415; R. v. Gage (No. 2), 13 Can Cr. Cas. 428; Mogul Co. v. McGregor, [1892] A.C. 25, specially referred to.] Weidman v. Shragge, 20 Can. Cr. Cas. 117, 2 D.L.R. 734, reversing 20 Man. L.R. 178.

CRIME INVOLVING FRAUD; PRIOR ATTEMPTED OFFENCE; PROVING INTENT.

The intent of the offence of arson is similar to the intent of the offence of a conspiracy to commit arson, so that evidence of an attempt to commit the former offence at a prior date not too remote may be shewn as a similar act to that charged in proof of the design with which the latter was committed. R. v. Wilson, 21 Can. Cr. Cas. 105.

ASSISTING ALIEN ENEMY; INDICTMENT.

A conviction against the husband only upon an indictment of husband and wife, upon which the wife was acquitted, for conspiracy to aid and comfort a public enemy at war with the King by inciting and assisting a subject of the enemy country to leave Canada and join the enemy's forces, is not sustainable where there was no evidence of the husband conspiring with any person other than the person named in the indictment as the person incited and assisted, although the indictment charged that the two defendants did maliciously and traitorously conspire, confederate and agree with each other "and with others," for if it had been intended to cover a charge of a conspiracy with the assisted alien he should have been specifically named; the words "with others" must, in that connection, be construed as excluding the person specifically named as the alien who was assisted to leave Canada and as referring to persons unknown. [R. v. Johnston (1902), 6 Can. Cr. Cas. 232; R. v. Ahlers,

[1915] 1 K.B. 616, referred to.] R. v. Nerlich, 24 Can. Cr. Cas. 256, 25 D.L.R. 138,

[Referred to in R. v. Kelly, 27 Can. Cr. Cas. 140.]

To defraud street car company; fraudulent use of transfer. R. v. Bythell, 24 Can. Cr. Cas. 276.

TO DEFRAUD; AGREEMENT OF REAL ESTATE AGENT WARRANTING REFUND OR SALE AT ADVANCE; "PROTECTIVE GUARANTEE;" CONTRACT; GOOD FAITH OF BROKER.

R. v. Sinclair, 25 Can. Cr. Cas. 116.

TO DEFRAUD PUBLIC; EVIDENCE.

On a charge under Criminal Code, sec. 444 of conspiracy to defraud the public, if there is no direct proof of the existence of the unlawful agreement between the defendants and the acts proved are not such as to show from their very nature that they are parts of a common scheme, the jury must separately consider the case of each defendant and determine from his conduct whether there is evidence of the conspiracy alleged; it is only after the conspiracy has been proved that the acts of the one become evidence against the other. R. v. McCutcheon, 25 Can. Cr. Cas. 310, 28 D.L.R. 378.

CONSTABLE.

Constable informant; Whether disqualified from executing process in his own case; Note. 6 Can. Cr. Cas. 21.

Resisting arrest by; Summary procedure. 7 Can. Cr. Cas. 167.

Informant in extradition proceedings; Execution of warrant of arrest by. 8 Can. Cr. Cas. 321.

DISQUALIFICATION OF CONSTABLE PROSECUTOR TO EXECUTE ORDER.

The prosecutor of a charge of keeping liquor for sale contrary to the Canada Temperance Act, being personally liable for costs in the event of the prosecution failing is, though a peace officer, disqualified from executing a search warrant or an order for the destruction of the liquor in respect of which the information was laid. Ex parte McCleave, 5 Can. Cr. Cas. 115.

[Distinguished in Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15; Ex parte Dewar, 15 Can. Cr. Cas. 274; Stone v. Vallee, 18 Can. Cr. Cas. 223; referred to in Ex parte Wilson, 15 Can. Cr. Cas. 270; R. v. LeBlanc, 21 Can. Cr. Cas. 221.

ENFORCING INVALID CONVICTION; PROTECTION OF POLICE OFFICER ALTHOUGH HE IS PROSECUTOR.

(1) A peace officer executing a warrant of arrest which he believes to be good is exempt from criminal responsibility therefor by sec. 21 of the Criminal Code, although the warrant was bad on its face as following a conviction also bad on its face. (2) A constable is not disqualified from executing a warrant for enforcing a conviction for an offence under the Criminal Code, because of his having been the informant, nor does such fact disentitle him to the protection from civil action given to public officers by R.S.O. 1897, ch. 88. Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15.

[Followed in Stone v. Vallee, 18 Can. Cr. Cas. 223.]

NEGLIGENT PERFORMANCE OF DUTY; "RESPONDEAT SUPERIOR;" LIABILITY OF MUNICIPAL CORPORATION BY WHICH APPOINTED.

A police officer is not the agent of the municipal corporation which appoints him to the position and, if he is negligent in performing his duty as a guardian of the public peace, the corporation is not responsible for such negligence in provinces where the English common law applies. McCleave v. City of Moncton, 6 Can. Cr. Cas. 219.

[Applied in Tremblay v. City of Quebec, 7 Can. Cr. Cas. 343; Ex parte Wilson, 15 Can. Cr. Cas. 269.]

A municipal corporation is not responsible for the acts of its police officers unless it has authorized or adopted such acts. Tremblay v. City of Quebec, 7 Can. Cr. Cas. 343.

TRESPASS; PRIVATE DWELLING HOUSE; SEARCH FOR INTOXICATING LIQUORS WITHOUT WARRANT.

In a civil action against a constable for trespass, the question whether the constable, in doing the act complained of, was acting bona fide in the discharge of his duty, is a question for the jury. Bell v Lott, 9 Can. Cr. Cas. 341.

CONSTITUTIONAL LAW.

Note on provincial statutes imposing penalties. 2 Can. Cr. Cas. 278.

Conferring summary jurisdiction on justices of the peace. 5 Can. Cr. Cas. 17.

Note on legislative power to confer jurisdiction in criminal matters. 5 Can. Cr. Cas. 85.

Establishment of Dominion prisons; Industrial homes or schools for juvenile offenders. 7 Can. Cr. Cas. 240.

Provincial offences; Appointment of tribunal; Statute operative only after electoral vote. 7 Can. Cr. Cas. 470.

British North America Act, secs. 91 and 92; Powers of Federal Parliament and of Provincial Legislatures. 8 Can. Cr. Cas. 382.

ACTS ULTRA VIRES OF LOCAL LEGISLATURE.

By sec. 57 of R.S.O. ch. 181, the Liquor License Act, any person who in any prosecution under the Act tampers with a wit-

ness either before or after he is summoned or appears as such witness on any trial or proceeding under the Act, or by the offer of money or by threats or in any way induced or attempts to induce any such person to absent himself, or swear falsely, shall be guilty of an offence under the Act, and liable to a penalty of $50; and by sec. 59 such penalty is recoverable in default of distress by imprisonment not exceeding thirty days:—Held, affirming the judgment of Gwynne, J., that this was ultra vires of the Local Legislature, for the acts declared by sec. 57 to be offences were criminal offences at common law, and within the exclusive jurisdiction of the Dominion Legislature and were not brought within the Local Legislature by sub-sec. 15 of sec. 92 of the B.N.A. Act, either as coming under municipal institutions, or as being enactments to enforce the law as to shop, saloon, etc., licenses, in order to raise a revenue for provincial local, or municipal purposes. A conviction, therefore, under the Act for inducing a witness to absent himself, etc., was quashed. Quære, whether under sec. 77 a conviction imposing an unauthorized sentence, such as imprisonment at hard labour, could be amended on motion to quash by striking out the words "with hard labour." (Per Gwynne, J.) Regina v. Lawrence (1878), 43 U.C.Q.B. 164.

AUTHORITY OF LIEUT.-GOVERNOR-IN-COUNCIL.

The Lieut.-Governor-in-council has authority to issue commissions of oyer and terminer. Regina v. Malott (1885), 1 B.C.R., Pt. II., 207.

AUTHORITY OF LOCAL LEGISLATURES TO PROHIBIT THINGS HURTFUL TO PUBLIC HEALTH; USING TERM OF CRIMINAL LAW.

Held, that while the local legislatures have no jurisdiction to deal with an indictable misdemeanour, that being a matter of criminal law assigned exclusively to the Parliament of Canada, they have authority to legislate for the prohibition of things hurtful to public health, not matter for indictment at common law, such as factory chimneys "sending forth smoke in such quantity as to be a nuisance." The local legislatures possess this power as coming under "municipal institutions" under B.N.A. Act, sec. 92, No. 8, and the fact that a term of the criminal law ("nuisance") is used in a local Act to characterize an offence within the jurisdiction of the local legislature, does not make the enactment ultra vires when the offence is not per se an indictable offence under the criminal law. Pillow v. The City of Montreal, M.L.R. 1 Q.B. 401.

BY-LAW ULTRA VIRES.

47 Vict. (O.), ch. 32, sec. 13, sub-sec. 12, enacts that by-laws may be passed "for regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noises, or noises calculated to disturb the inhabitants," etc. Sec. 2 of by-law No. 179 of the city of London, passed under that Act, is as follows: "No person shall, on 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 of make, as 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 any branch thereof, of any militia corps lawfully organized under the laws of Canada. The prisoner was convicted, under the by-law of beating a drum on a public street in the city of London:—Held, the the by-law, so far as it sought to prohibit the beating of drums simply, without evidence of the noise being unusual, or calculated to disturb, was ultra vires and invalid, and that the refusal to receive evidence on the prisoner's behalf was a valid ground for her discharge. Held also that the above proviso was not an exception that must be negatived in either the commitment or conviction. Regina v. Nunn, 10 P.R. (Ont.) 395.

CONSTITUTIONALITY; SUNDAY OBSERVANCE LAWS.

The statute 54 and 55 Vict. ch. 25, sec. 4, does not empower the Governor-General-in-council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. (Sedgwick, J., dissenting.) The said section provides that the Governor-in-council may refer important questions of law or fact touching specific subjects "or touching any other matter with reference to which he sees fit to exercise this power:—Held, that such "other matter" must be ejusdem generis with the subjects specified. (Sedgwick, J., contra.) Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. [Attorney-General for Ontario v. Hamilton Street Railway Co. [1903] A. C. 524, followed.] Re Sunday Observance Laws, 35 Can. S.C.R. 581.

CONSTITUTIONALITY OF CANADA; BIGAMY STATUTES; REPUGNANT TO IMPERIAL LEGISLATION.

R.S.C. ch. 161, sec. 4, which enacts that every one who being married marries any other person during the life of the former husband or wife, whether the second marriage takes place in Canada or elsewhere, is guilty of felony, provided that the per-

son who contracts such second marriage is a subject of Her Majesty, resident in Canada, and leaving the same with intent to commit the offence, is not ultra vires the Dominion Legislature either as being repugnant to Imperial legislation or on any other grounds. This statutory law is nearly half a century old; it has been confirmed by the Court, passed upon more than once by competent colonial legislatures, and ratified by the express sanction of the Imperial Parliament and Her Majesty in person. (Per Boyd, C.) R. v. Brierly, 14 O.R. 525.

EX POST FACTO STATUTE.

The Court cannot refuse to give effect to an ex post facto statute which is clearly so in its terms. R. v. Madden, 10 L.C. Jur. 342.

CONSTITUTIONALITY OF GAME ACT; INTRA-PROVINCIAL POWERS.

A clause in a Provincial statute which contained other provisions for the protection of game within the Province, provided: "No person shall at any time purchase, or have in possession with intent to export or cause to be exported or carried out of the limits of this Province, or shall at any time or in any manner export, or cause to be exported or carried out of the Province, any, or any portion of the (game) animals or birds mentioned in this Act in their raw state: "—Held, affirming a conviction of defendant for having deer hides in his possession in their raw state with intent to export same; that, as the preservation of game within the Province is within the competence of the Provincial Legislature, the prohibition against export did not render the enactment ultra vires as interference with trade and commerce, such provisions being subsidiary and incidental to the general purpose of the statute. Regina v. Boscowitz, 4 B.C.R. 132.

CONSTITUTIONALITY OF LIQUOR LICENSE ACT.

The retail clauses of the Liquor License Act of 1886 are intra vires. Weatherbe, J., dissenting. The Queen v. McKenzie, 23 N.S.R. 6.

GAMBLING HOUSE; OFFENSE AGAINST THE GENERAL CRIMINAL LAW.

A "gambling house" is the same thing as a "common gaming house." Keeping a gambling house is an offence against the general criminal law; consequently it can be dealt with only by the Parliament of Canada, and cannot be made an offence by a Provincial Act, or by a municipal by-law, passed under the authority of such an Act. Regina v. Shaw, 7 Man. L.R. 518. [See Reg. v. Davidson, 8 Man. L.R. 325; Rex. v. Herman, 8 Man. L.R. 330.]

JURISDICTION OF COURTS OF GENERAL SESSIONS.

The power granted by the British North American Act, sec. 92, sub-sec. 14, to the Provincial Legislature to constitute Courts of civil and of criminal jurisdiction, necessarily includes the power of giving jurisdiction to those Courts, and impliedly includes the power of enlarging, altering, amending and diminishing the jurisdiction of such Courts. The Act 53 Vict. ch. 18, sec. 2 (O.), so far as it provides that the Courts of General Sessions of the Peace shall have jurisdiction to try any person for any offence under any of the provisions of secs. 28 to 31 of R.S.C. ch. 165, an Act respecting forgery, is within the powers of the Legislature of Ontario, as being in relation to the constitution of a Provincial Court of criminal jurisdiction, and does not in any way trench upon the exclusive authority given to the Parliament of Canada by sec. 91, sub-sec. 27, to make laws in relation to criminal law and criminal procedure. Regina v. Levinger (1892), 22 O.R. 690.

JURISDICTION OF MAGISTRATES; ULTRA VIRES OF PROVINCIAL PARLIAMENT.

Procedure in criminal matters, which by B.N.A. Act, sec. 91, sub-sec. 27, is assigned exclusively to the Parliament of Canada, includes the trial and punishment of the offender; and therefore sec. 2 of 53 Vict. ch. 18 (O.), which authorizes police magistrates to try and convict persons charged with forgery is ultra vires of the Provincial Legislature. Regina v. Toland (1892), 22 O.R. 505.

LORD'S DAY ACT; CONVICTION; REVIEW OF FINDING OF MAGISTRATE.

Defendant, a druggist in the city of Toronto, sold five cents worth of peppermint lozenges at his shop on a Sunday. The purchaser did not ask for them as medicine, he had no doctor's certificate, and he was asked no questions. It was shewn that peppermint lozenges were generally kept and sold by druggists as medicine. Defendant having been convicted on this evidence under the "Act to prevent the Profanation of the Lord's Day," C.S.U.C. ch. 104, and fined $20 and costs, the conviction was removed by certiorari:—Held, (1) that the finding of the magistrate as to whether the lozenges were or were not medicine was subject to review by this Court. (2) That there was no evidence to sustain the conviction; for the article, sold as it was by a druggist, must be considered prima facie a medicine, though it was not expressly asked for or sold as such, and the case was within the exception in the Act, "selling drugs and medicine," Wilson, J., doubting. The conviction, therefore, was quashed. The Court will not quash a conviction upon the weight or upon a conflict of evi-

dence, but there must be reasonable evidence to support it, such as would be sufficient to go to the jury upon a trial. The extreme severeety of the fine under the circumstances of the case remarked upon. Regina v. Howarth (1873), 33 U.C.Q.B. 537.

PARDONING POWER OF LIEUTENANT-GOVERNOR; CONSTITUTIONALITY OF ACT.

The local legislatures have the right and power to impose punishments by fines and imprisonment as sanction for laws which they have power to enact. B.N.A. Act, sec. 92 sec. 15. The Lieutenant-Governor of a province is as much the representative of Her Majesty the Queen for all purposes of provincial government as the Governor-General himself is for all purposes of the Dominion Government. Inasmuch as the Act 51 Vict. ch. 5 (O.) declares that in matters within the jurisdiction of the Legislature of the province all powers, etc., which were vested in or exercisable by the Governors or Lieutenant-Governors of the several provinces before Confederation shall be vested in and exercisable by the Lieutenant-Governor of this Province, if there be no proceeding in dispute which has been attempted to be justified under 51 Vict. ch. 5 (O.) it is impossible to say that the powers to be exercised by the said Act by the Lieutenant-Governor are unconstitutional. Quære, is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning in the Imperial Parliament only, or, if not, in what legislature does it reside? Gwynne, J., dissenting, was of opinion that 51 Vict. ch. 5 (O.) is ultra vires of the Provincial Legislature. See 19 Ont. App. 31. Atty-Gen. (Can.) v. Atty-Gen. (Ont.) (1892), 23 Can. S.C.R. 458.

POWERS OF DOMINION PARLIAMENT.

To the extent of the powers conferred upon it, the Dominion Parliament exercises not delegated, but plenary powers of legislation. The Queen v. Riel (No. 2), 1 Terr. L.R. 23.

PROVINCIAL CRIMES; PROCEDURE UNDER LIQUOR LICENSE ACT.

Notwithstanding the reservation of criminal procedure to the Dominion Parliament in sub-sec. 27 of sec. 91 of the British North America Act, a provincial legislature has power to regulate and provide for the course of trial and adjudication of offences against its lawful enactments, in this case a breach of the Liquor License Act, even though such offences may be termed crimes; and therefore to regulate the giving of evidence by defendants in such cases, which they have done by R.S.O., ch. 61, sec. 9, providing that where the proceeding is a crime under the provincial law, the defendant is neither a competent nor compellable witness. R. v. Bittle, 21 O.R. 605.

APPEALS IN CRIMINAL CASES; RULES OF JUDICIAL COMMITTEE; INTRA VIRES STATUTE; SHORTHAND EVIDENCE.

The rule of the Judicial Committee is not to grant leave to appeal in criminal cases except where some clear departure from the requirements of justice is alleged to have taken place:—Held, that 34 and 35 Vict. ch. 28, which authorizes the Parliament of Canada to provide for "the administration, peace, order, and good government of any territory not for the time being included in any province" vests in that Parliament the utmost discretion of enactment for the attainment of those objects. Accordingly Canadian Act 43 Vict. ch. 25, is ultra vires the legislature. Sec 76, sub-sec. 7, which prescribes that full notes of evidence be taken is literally complied with when those notes are taken in shorthand. R. v. Riel, 10 A.C. 675.

BY-LAW AGAINST SELLING GOODS AT AUCTION WITHOUT LICENSE.

The defendant having sold land by auction under a decree of the Chancery Division of the High Court of Justice, was convicted of a breach of the by-law of the county of Huron, passed pursuant to the Municipal Act, R.S.O. 1877, ch. 174, sec. 465, sub-sec. 2, 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:—Held, that the conviction was clearly bad, for the by-law did not refer to lands; nor would the statute have authorized such a by-law. Regina v. Chapman (1882), 1 O.R. 582.

FRAUDS AGAINST CHEESE FACTORIES.

The Act 52 Vict. ch. 43 (D.), an Act to provide against frauds in the supplying of milk to cheese factories, etc., is intra vires of the Dominion Parliament. Reg. v. Stone (1892), 23 O.R. 46.

JURISDICTION OF LEGISLATURE TO PUNISH FOR CONTEMPT.

Held (O'Connor, J., dissenting), that the jurisdiction given to the Legislature by R.S.O. 1877, ch. 12, sub-sec. 45 to 48, to punish for a contempt does not oust the jurisdiction of the Courts where the offence is of a criminal character, but that the same act may be in one aspect a contempt of the Legislature, and in another aspect a misdemeanour. Regina v. Bunting, 7 O.R. 524.

STATUTES; PREAMBLE; EMBRACING SEVERAL SUBJECTS NOT EXPRESSED IN TITLE.

Remarks as to embracing in one Act several subjects which are not expressed in the title; and as to the effect of the title and preamble of a statute as guides to the con-

struction. Regina v. Washington (1881), 46 U.C.Q.B. 221.

ULTRA VIRES ACTS.

Sec. 84 of the Ontario Liquor License Act, R.S.O. 1887, ch. 194, is ultra vires the Ontario Legislature. [Regina v. Lawrence, 43 U.C.Q.B. 164, followed.] Regina v. Holland, 14 C.L.T. 294.

BIGAMY; EXTRA-TERRITORIAL ACT; LEAVING CANADA WITH INTENT TO COMMIT.

The Parliament of Canada has jurisdiction to constitute the leaving Canada by a British subject resident therein with an intent to perform elsewhere a prohibited act an indictable offence, upon the act itself being performed. Re Bigamy Sections, 1 Can. Cr. Cas. 172.

[Followed in R. v. Brinkley, 12 Can. Cr. Cas. 457.]

CONFISCATION IN CRIMINAL PROCEEDINGS.

A statutory provision by the Parliament of Canada, purporting to authorize a magistrate to adjudge forfeiture to the Crown of moneys, etc., found in a common gaming house, and declaring the keeping of a gaming house a criminal offence, and imposing punishment therefor, is not ultra vires, and the judgment of confiscation is not an interference with "property and civil rights," the jurisdiction in regard to which belongs to the provinces, although the party claiming the money was not a party to the proceedings in which the confiscation was decreed. O'Neil v. Attorney-General, 1 Can. Cr. Cas. 303.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 502.]

PROVINCIAL STATUTE BEFORE B.N.A. ACT.

A provincial statute relating to criminal law passed before Confederation becomes as to that province a part of the criminal law of Canada, and is subject to repeal or amendment by a Dominion statute only. R. v. Halifax Electric Co. 1 Can. Cr. Cas. 424.

PROVINCIAL STATUTE; REPEAL.

A statute of the legislature of the Province of Quebec purporting to repeal the Act passed before confederation, conferring the right to a mixed jury, is ultra vires so far as such right is sought to be affected. R. v. Sheehan, 1 Can. Cr. Cas. 402.

NUMBER FOR PANEL; NUMBER TO FIND TRUE BILL.

It is within the power of a provincial legislature to fix the number of the grand jurors who should compose the panel, that being part of the organization or constitution of the Court. A provincial legislature has no power to fix the number of grand jurors necessary to find a good bill of indictment, that being a matter of criminal procedure and exclusively within the powers of the Dominion Parliament. R. v. Cox, 2 Can. Cr. Cas. 207.

[Referred to in R. v. Fouquet, 10 Can. Cr. Cas. 225, 14 Que. K.B. 91; R. v. Hayes, 11 B.C.R. 8; R. v. Hayes (No. 1), 9 Can. Cr. Cas 106; approved in R v. Walton, 11 Can. Cr. Cas. 206, 12 O.L.R. 1, 7 O.W.R. 312.]

MIXED JURY; CRIMINAL PROCEDURE.

A statute of the former Province of Canada in force at the time of Confederation which conferred the right to a mixed jury in Lower Canada, now the Province of Quebec, remains in force thereafter as a matter of "criminal procedure" as to that province, and can be varied or repealed only by the Parliament of Canada. B.N.A. Act, sec. 91 (27). R. v. Yancey, 2 Can. Cr. Cas. 320.

COURTS OF GENERAL SESSION IN ONTARIO.

An appeal from a summary conviction under the Criminal Code is, in Ontario, to be taken to the Court of General Sessions of the Peace sitting without a jury; and Code, sec. 881, constituting such Court the absolute Judge as well of the facts as of the law in respect of the conviction or decision appealed against, is intra vires of the Dominion Parliament. A statutory provision that the Appellate Court shall try the appeal without a jury is one relating to the procedure and not to the constitution of the Court. R. v. Malloy, 4 Can. Cr. Cas. 116.

[Referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 252.]

LOTTERY LICENSED BY PROVINCIAL AUTHORITY.

Provincial legislatures have no power to authorize the running of lotteries. Brault v. St. Jean-Baptiste Association of Montreal, 4 Can. Cr. Cas. 284.

LIQUOR LICENSE LAW.

Sec. 53 of the Ontario Liquor License Act is intra vires of the provincial legislature. R. v. Lighthurne, 4 Can. Cr. Cas. 358.

SUNDAY OBSERVANCE LAW.

The selling of cigars on Sunday may be prohibited either directly by a provincial legislature or by municipal by-laws authorized by such legislature; and in either case such restriction is of a merely local nature, and is to be classed as a police or municipal regulation and not as a matter essentially appertaining to the "criminal law," and so within the sole competence of the Parliament of Canada. The New Brunswick statute to prevent the profanation of the Lord's Day, 62 Vict. ch. 11, is intra vires of the provincial legislature. Re Greene, 4 Can. Cr. Cas. 182.

[Referred to in R. v. Weatheral, 18 Can. Cr. Cas. 376.]

DOMINION LEGISLATION EXTENDING JURISDICTION OF PROVINCIAL COURT.

The Parliament of Canada has not the power to give to a provincial Court a jurisdiction which is not within the scope of such Court's powers as established by the provincial legislature. Sec. 103 of the Canada Temperance Act, R.S.C. 1886, ch. 106 (amended by 51 Vict. ch. 34, sec. 6) is ultra vires of the Dominion Parliament in so far as it purports to confer jurisdiction upon Parish Court Commissioners in New Brunswick to entertain prosecution thereunder. A summary conviction by a magistrate for a third offence under the Canada Temperance Act was quashed on the ground that one of the prior convictions relied upon was made by a Parish Court Commissioner, the jurisdiction of which Court under provincial law did not extend to such prosecutions. Ex parte Flanagan, 5 Can. Cr. Cas. 82.

[Referred to in Ex parte Le Bel, 16 Can. Cr. Cas. 370; considered in R. v. Johnson, 17 Can. Cr. Cas. 174.]

PARDONING POWER; IMPRISONMENT IN DEFAULT OF PAYING FINE UNDER PROVINCIAL STATUTE; REMISSION.

Fines imposed under the Montreal city charter belong to the Crown as represented by the Government of the Province of Quebec, and not to the city of Montreal, and the city has no power to remit the same. The royal prerogatives cannot be diminished or abrogated by a statute unless mentioned therein, but they may be extended by a statute in general terms. Semble, the pardoning power is an exercise of the royal prerogative, and unless a statute expressly limits such prerogative, the same is to be exercised by the Sovereign or by his representative (in Canada by the Governor-General) acting under a special delegation of power from the Sovereign, and the remission of a penalty under a provincial statute for default in payment whereof the accused is undergoing imprisonment is an exercise of the pardoning power. Semble, the Provincial Legislature of Quebec, has no constitutional power to remit a fine imposed under the Montreal city charter, for default in payment of which the accused has been sentenced to imprisonment, nor could it remit or authorize the city to remit the fine in such a case were it payable to the city. Ex parte John Armitage, 5 Can. Cr. Cas. 345.

MUNICIPAL LAW; PREVENTION OF FIRES; BY-LAW REGULATING STORAGE OF PETROLEUM PRODUCTS.

Municipal regulations of a merely local character, made in exercise of police powers for the prevention of fires and authorized by provincial legislation, are not invalid as to the storage of petroleum and its products because of Dominion revenue laws dealing with such storage, nor are they an interference with "trade and commerce" within the meaning of the British North American Act. The King v. McGregor, 5 Can. Cr. Cas. 485.

CIVIL REMEDY FOR CRIMINAL ACT; SUSPENSION OF, UNTIL AFTER CRIMINAL PROSECUTION.

(1) Sec. 534 of the Criminal Code, which provides that no civil remedy for any act or omission shall be suspended or affected by reason of the same amounting to a criminal offense, is not "criminal law" legislation, but legislation dealing with civil rights and is ultra vires of the Federal Parliament. (2) Semble, the establishment of the English criminal law by the Quebec Act (14 Geo. III. (Imp.), ch. 83) in the Provinces of Ontario and Quebec having been effected by a legislative body having absolute jurisdiction over both civil and criminal law, it must be taken as having introduced in the Province of Quebec the English law with respect to the suspension of civil remedies for criminal wrongs. Paquet v. Lavoie, 6 Can. Cr. Cas. 314.

LIQUOR LICENSE LAW; ILLEGAL SALES BY LICENSEE, HIS SERVANT, AGENT OR EMPLOYEE; STATUTORY PRESUMPTION; INTERFERENCE WITH LIBERTY OF THE SUBJECT.

Sec. 64, sub-sec. 5 of the Liquor License Ordinance (N.W.T.) is not ultra vires as constituting an undue interference with the liberty of the subject, although its effect may be to punish a license holder by imprisonment for illegal acts which have been committed by his servant, agent or employee, and which by virtue of the Ordinance are presumed to be the acts of the licensee. The Queen v. McLeod (No. 2), 6 Can. Cr. Cas. 94.

LEGISLATIVE POWER OF PROVINCE TO CONFER JUDICIAL AUTHORITY ON COUNTY COURT JUDGE OUTSIDE OF HIS COUNTY; VALIDITY OF REFERENCE TO PUBLIC VOTE TO BRING STATUTE INTO FORCE.

(1) The Ontario Legislature has power to enact as part of a statute respecting the sale of intoxicating liquors that a vote of the electors of the province shall be taken upon the question of bringing the Act into force, and that the restrictive part of the statute shall become operative only upon an affirmative vote of a stated proportion of the electors and upon a proclamation to be thereupon issued. (2) The provisions contained in the Liquor Act (Ont.), 1902, for the designation of a County Court Judge to "conduct the trial" of persons accused of illegal acts in the taking of the vote of the electors and making the procedure of the Ontario Election Act applicable thereto constitutes the Judge selected thereunder a special Court to summarily try the of-

fenders without the right to a trial by jury. The King v. Walsh, 6 Can. Cr. Cas. 452.

[Referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 252.]

PROVINCIAL FORESHORE LIMITS; DOMINION FISHERY LICENSE FOR EXCLUSIVE RIGHTS INVALID.

(1) The Dominion Government has no authority to demand a license fee from fishermen for the exclusive right to set nets or traps within certain limits of provincial foreshore waters, and sub-sec. 7 of sec. 14 of the Fisheries Act, R.S.C. 1886, ch. 95, is consequently ultra vires. (2) The Dominion fishery officers have the right to regulate the kind of nets and traps to be used in the provincial foreshores and to control the manner of fishing, but without compelling the payment of a license fee. (3) A special statutory provision would be necessary to authorize the imposition by the Dominion of a license fee upon fishermen operating in provincial waters if imposed under the federal power of so raising a revenue for the general purposes of Canada. The King v. Chandler, 6 Can. Cr. Cas. 308.

ONTARIO LORD'S DAY ACT, R.S.O. 1897, CH. 246, ULTRA VIRES.

The Ontario Lord's Day Act, R.S.O. 1897, ch. 246, is ultra vires of the Ontario Legislature, as the subject-matter thereof comes under the classification of "criminal law," which by the British North America Act, is under the exclusive legislative authority of the Parliament of Canada. Attorney-General (Ont.) v. Hamilton Street Railway, 7 Can. Cr. Cas. 326.

[Followed in R. v. Sunday Legislations, 35 Can. S.C.R. 581; R. v. Yaldon, 13 Can. Cr. Cas. 489, 17 O.L.R. 179; discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 500; Tremblay v. City of Quebec, 16 Can. Cr. Cas. 255 (No. 2), 16 Can. Cr. Cas. 496; referred to in Re Criminal Code and Lord's Day Act, 16 Can. Cr. Cas. 476; Kennedy v. Kokoliades, 17 Can. Cr. Cas. 6; R. v. Stinson, 10 Can. Cr. Cas. 18; R. v. Wetheral, 18 Can. Cr. Cas. 375; R v. Wells, 18 Can. Cr. Cas. 379; applied in R. v. Marsh, 21 Can. Cr. Cas. 413.]

MINES REGULATION.

(1) The constitutional right of a provincial legislature to enact laws relating to "property and civil rights" does not cover legislation, the effect of which is to prohibit a large class of persons from working as miners because of their inability to speak English. (2) Such legislation relates to the subjects of "trade and commerce" and "aliens," both of which are under Federal jurisdiction. (3) Rule 34 of the B. C. Coal Mines Regulation Act, prohibiting Chinamen and persons unable to speak English from being employed below ground is, in that respect, ultra vires. The King v. Priest, 8 Can. Cr. Cas. 265.

HARBOURING DESERTERS FROM FOREIGN SHIP; OFFENSE UNDER SEAMAN'S ACT (CAN.)

Sec. 104 of the Seaman's Act, R.S.C. 1886, ch. 74, which makes it an offense to wilfully harbour a deserted seaman knowing him to be a deserter, is intra vires of the Parliament of Canada. The King v. Martin, 8 Can. Cr. Cas. 148.

SUMMARY TRIAL; CONSTITUTION OF COURT FOR ENFORCEMENT OF PART LV. OF CRIMINAL CODE.

(1) It is within the legislative powers of a provincial legislature to enact that every police magistrate shall constitute a Court with such jurisdiction as the Parliament of Canada confers or purports to confer or may hereafter confer upon him. (2) Such a statute is not an attempted delegation by the province of its constitutional right of constituting Courts. Ex parte Vancini, 8 Can. Cr. Cas. 164.

[Referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 240.]

JURISDICTION OF MAGISTRATE; CONSTITUTION OF CRIMINAL COURTS.

(1) Although there are no "Courts of General Sessions" except in Ontario, the 1900 amendment of Cr. Code, sec. 785, extending its provisions to cities and towns of other provinces is not, therefore, inoperative, but gives to a magistrate in any other province the jurisdiction created for Ontario by sec. 785. (2) Though the organization of Courts of criminal jurisdiction is within the exclusive powers of the provincial legislature, the Parliament of Canada may impose upon existing Courts or judicial officers the duty of administering the criminal law, and its action to that end need not be supplemented by provincial legislation. Re Vancini (No. 2), 8 Can. Cr. Cas. 228.

[Referred to in Ex parte Seeley, 13 Can. Cr. Cas. 265; followed in R. v. Wells, 15 Can. Cr. Cas. 221; Ex parte Le Bel, 16 Can. Cr. Cas. 370; Geller v. Loughlin, 18 Can. Cr. Cas. 468.]

PROVINCIAL LEGISLATIVE POWER; DELEGATION TO MUNICIPAL CORPORATIONS; INDECENCIES IN THEATRE PERFORMANCES.

(1) A provincial legislature has jurisdiction to legislate concerning matters of police regulation of public morals, but in so far as the same subject is dealt with by the Dominion Parliament, the Dominion legislation will prevail. (See now sec. 179a of the Criminal Code.) (2) The power of enacting such police regulations may be delegated by the provincial legislature to municipal councils. (3) A by-law of the city of Montreal passed under the authority of the Montreal charter and providing a punishment for indecencies in theatre

performances is ultra vires. Ex parte Ashley, 8 Can. Cr. Cas. 328.

SHOP REGULATION; POWER TO REGULATE HOURS FOR KEEPING OPEN OF RETAIL STORES; SHOP REGULATIONS ACT, R.S.M., 1902, CH. 156.

(1) A municipal plant is not invalid upon the grounds of its being unreasonable or oppressive or in restraint of trade, if passed in the express terms of a statute under which the legislature delegated to municipal councils the power to pass by-laws in respect to the subject-matter. (2) The question of reasonableness is in such cases solely for the legislature if the subject matter is within its legislative power. (3) The Shop Regulations Act of Manitoba, which purports to authorize municipalities to limit the hours during which shops shall be kept open for the sale of goods by retail is intra vires of the provincial legislature as a matter of a merely local nature under the British North America Act. The King v. Schuster, 8 Can. Cr. Cas. 354.

REGULATION OF CORPORATIONS; REGISTRATION AND LICENSING FEE IN N.W.T.

(1) Subject to the controlling powers of the Dominion Parliament, the Legislature of the North-West Territories has the like powers to provide for the licensing of companies doing business in the Territories as a province has within its boundaries. (2) Such powers include the right to require a company incorporated under the Dominion "Companies Act" to register with an officer of the Territories and to deposit a copy of the charter and regulations of the company and a power of attorney to a resident of the Territories to receive process issued against the company. (3) A company incorporated by letters patent under the Companies Act, R.S.C., 1896, ch. 119, to carry on business as implement dealers in the Dominion of Canada is, quoad the Territories, a company carrying on business to which the legislative authorities of the Territories Legislature extends, and is therefore subject to summary conviction under the Territories Foreign Companies Ordinance, 1903, if it carries on business without registering and paying the license fee under the Ordinance. The King v. Massey-Harris Company; Massey-Harris Company v. Wright, 9 Can. Cr. Cas. 25.

LIQUOR LICENSE; PROVINCIAL STATUTE IMPOSING PENALTY FOR ILLEGAL SELLING ALREADY PUNISHABLE UNDER FEDERAL STATUTE; CONCURRENT LEGISLATIVE POWER.

(1) The Legislature of the Province of Quebec has no power to repeal any portion of the Temperance Act of 1864 enacted by the former Province of Canada; and sec. 97 of the Quebec License Act of 1870 purporting to repeal certain sections thereof in so far as the same relates to the Province of Quebec and to matters within the control of the Provincial Legislature, is of no effect. (2) The repeal of secs. 1 to 10 inclusive of the Temperance Act of 1864 by the Canada Temperance Act, 1878, left still in force as provincial legislation the sections of the Quebec License Law of 1870 embodying similar provisions to those contained in the sections so repealed. (3) The Quebec provincial statute, 49 and 50 Vict., ch. 3, sec. 4 (now sec. 68 of the Quebec License Law), declaring that the sale of intoxicating liquors without license in municipalities where the Canada Temperance Act is in operation shall be held to be a contravention of the provincial license law, is within the legislative powers of the province. (4) A prosecution for selling liquor without license will lie under the Quebec License Law of 1900, although such sale took place in a district in which the Temperance Act of 1864 is in force and had been so continuously since Confederation. (5) The fact that the offense was an infraction of the Temperance Act of 1864 does not prevent its being also an offense under a provincial law and punishable under either or both, the Federal and provincial jurisdictions to constitute the sale an offense being concurrent. Ex parte O'Neil, 9 Can. Cr. Cas. 141.

JURISDICTION OF EXTRADITION COMMISSIONERS; LEGISLATIVE POWER.

That part of sec. 5 of the Canadian Extradition Act which purports to empower the Federal Government to appoint extradition commissioners to act judicially in extradition matters within the limits of one province, is within the legislative powers of the Dominion, and does not contravene the exclusive power conferred on provincial legislatures respecting the "constitution, maintenance and organization of provincial Courts." Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 240.

EXTRADITION; IMPERIAL ORDER-IN-COUNCIL.

The Canadian Extradition Act of 1886 remains in force under the Imperial Order-in-Council of 1888, notwithstanding the addition to the statute in 1889 by the Parliament of Canada of a new section relating to fugitives charged with nonextraditable offenses (52 Vict. (Can.) ch. 36). Re Gaynor and Greene (No. 6), 9 Can. Cr. Cas. 486.

SPREADING FIRE; PROVINCIAL OR TERRITORIAL LEGISLATION APPLYING TO DOMINION RAILWAYS.

(1) The Prairie Fire Ordinance (N.W.T.) in so far as it imposes a penalty on anyone causing a fire to run at large on the lands of another is binding upon a railway company operating under Federal law in respect of fires caused by sparks from loco-

motives spreading to lands adjoining the railway lands, if no additional duties to those which railway companies are under at common law are imposed on the company. (2) A local legislature has jurisdiction to enact a law for the summary conviction and fine of a railway company for its default in not providing reasonable proper appliances on locomotives for lessening the escape of sparks therefrom, in case a loss has been thereby occasioned, although the railway in question is subject to the Dominion Railway Act; such legislation is provincial as being of a merely local and private nature and as relating to property and civil rights. (3) The local legislature may provide rules of evidence to govern in such cases and may shift the burden of proof upon the railway company of shewing itself within any exception, proviso or condition under which the legislature has declared that it shall not be liable to the penalty. The King v. Canadian Pacific Railway Company, 9 Can. Cr. Cas. 328.

[Overruled in C. P. R. v. R., 13 Can. Cr. Cas. 160.]

INSTALMENT CONTRACTS; CONTINGENT RIGHTS DEPENDENT UPON OTHER SIMILAR CONTRACTS; RIGHT OF PROVINCE TO RESTRICT OR PROHIBIT.

(1) The effect of the Ontario Loan Corporations Act R.S.O. 1897, ch. 205, as amended by 4 Edw. VII. ch. 17, is to prohibit persons not acting for a company authorized thereunder, from soliciting contracts for the supply of goods in which the right of the customer is made to depend upon the number or persistence of other contract holders or the sequence of the particular contract. (2) It is within the competence of the Provincial Legislature to prohibit the making of such contracts within its territorial jurisdiction, and to impose a penalty recoverable by summary conviction procedure for infraction of such law. The King v. Pierce, 9 Can. Cr. Cas. 395.

PROVINCIAL STATUTE ADDING PUNISHMENT FOR HABITUAL DRUNKENNESS ON PROSECUTION UNDER MUNICIPAL LAW.

(1) Section 493 of the Quebec statute 62 Vict. ch. 58, punishing incorrigible habitual drunkards with a sentence of six months to one year relates to a matter pertaining to the criminal law and is ultra vires of the Provincial Legislature. (2) The fact that such punishment is to be imposed only upon conviction for a municipal offense within the jurisdiction of a provincial legislature conjointly with the habitual drunkenness charged in aggravation thereof, does not validate the additional punishment imposed for the latter cause nor bring it within the provincial jurisdiction. Re Beaulieu, 12 Can. Cr. Cas. 346.

APPOINTMENT PRO TEM. OF JUDGE IN ADJOINING COUNTY BY PROVINCIAL AUTHORITY.

(1) A provincial legislature has power to enact that in case of a vacancy in the office of Judge for a district or county, the Lieutenant-Governor-in-Council may designate the Judge of another district or county to act pro tem., during the vacancy. (2) On a vacancy occurring by death, and before the appointment of a new Judge, the Judge so designated by the provincial Lieutenant-Governor-in-Council has authority to hold "speedy trials" under the Criminal Code. The King v. Brown, 13 Can. Cr. Cas. 133.

SPREADING FIRE; PROVINCIAL OR TERRITORIAL LEGISLATION; ULTRA VIRES AS TO DOMINION RAILWAYS.

(1) The Prairie Fire Ordinance (N.W. T.) in so far as it imposes a penalty on anyone causing a fire to run at large on the lands of another is not binding upon a railway company operating under Federal law in respect of fires caused by sparks from locomotives spreading to lands adjoining the railway lands. (2) A local legislature has no jurisdiction to enact a law for the summary conviction and fine of a railway company operating under the Dominion Railway Act for not providing reasonably proper appliances on locomotives for lessening the escape of sparks therefrom. Canadian Pacific Railway Co. v. The King, 13 Can. Cr. Cas. 160.

[The King v. C.P.R. (1905), 9 Can. Cr. Cas. 328, overruled.]

GAMING ON SUNDAY.

Section 3 of the Lord's Day Act of Upper Canada, C.S.U.C., ch. 104, prohibiting gambling with dice on Sunday is in force in Ontario. The King v. Yaldon, 13 Can. Cr. Cas. 489.

[Followed in R. v. Lezros, 14 Can. Cr. Cas. 164; R. v. Farrell, 15 Can. Cr. Cas. 288; distinguished in R. v. Graves (No. 2), 16 Can. Cr. Cas. 337.]

TOWN POLICE MAGISTRATE; APPOINTMENT BY ORDER-IN-COUNCIL.

An appointment of a police magistrate by the Lieutenant-Governor-in-Council is effective from the date of the Order-in-Council unless the order provides otherwise. The King v. Reedy, 14 Can. Cr. Cas. 256.

SUNDAY OBSERVANCE; CONSTITUTIONALITY OF QUEBEC SUNDAY OBSERVANCE ACT; RECOGNITION OF PROVINCIAL STATUTE BY FEDERAL STATUTE.

(1) The Quebec Sunday Observance Act, 7 Edw. VII. ch. 42, is not in conflict with the Dominion Lord's Day Act, R.S.C. 1906, ch. 153; and, being recognized as valid by the Dominion statute, the provincial statute is not subject to objection on the ground that it is ultra vires. (2) The prosecutor instituting summary proceedings under the

Quebec Sunday Observance Act must under the provincial law be a British subject, but no allegation to that effect need be made in the information if the fact is proved at the trial. The King v. Panos (No. 2), 14 Can. Cr. Cas. 408, affirming 14 Can. Cr. Cas. 291.

INDICTABLE OFFENCE BY FOREIGN SEAMEN ON BRITISH SHIP; OBTAINING LEAVE OF GOVERNOR-GENERAL PENDING PRELIMINARY ENQUIRY.

(1) A preliminary enquiry may be begun in respect of an indictable offense committed by a foreigner on a British ship within the three-mile limit without first obtaining the leave of the Governor-General under Code, sec. 591, and the accused may be remanded for the purpose of obtaining the leave of the Governor-General for the trial and punishment of the accused. (2) The Territorial Waters Jurisdiction Act, 1878 (Imp.), from which Code, sec. 591, is derived, applies, and the phrase "proceedings for the trial of the offence" used in Code, sec. 591, must be construed in accordance to the statutory limitation which sec. 4 of the Imperial Statute provides. The King v. Tano, 14 Can. Cr. Cas. 440.

DOMINION COMMISSIONER OF POLICE FOR PROVINCE; JURISDICTION AS A MAGISTRATE; VALIDITY OF DOMINION POLICE ACT.

(1) The Dominion Police Act, R.S.C. (1906), ch. 92, whereby commissioners of police appointed by the Governor-in-Council, are given magisterial jurisdiction is within the legislative power of the Dominion Parliament. (2) A Dominion commissioner of police for a province may exercise his judicial functions at any place within the province in respect of offenses within the locality in respect of which he is specially designated by a separate commission. (3) The reading over of depositions to the witness under Cr. Code, secs. 682 and 721 (3) is a matter of procedure only and its omission does not deprive the magistrate of jurisdiction to proceed with the case. The King v. Wells, 15 Can. Cr. Cas. 218.

COMMISSIONS OF ASSIZE; PRACTICE AND CONSTITUTION OF COURT.

A provincial legislature having legislative power over the constitution of criminal Courts may dispense with the issue of commissions of assize without concurrent legislation of the Dominion Parliament being obtained in respect of the incidental change in practice whereby the reading of a commission at the opening of the Courts is omitted. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. V. Sylvester, 19 Can. Cr. Cas. 214, 1 D.L.R. 186.]

LEGISLATIVE POWERS; LORD'S DAY ACT.

(1) Although an Act to prevent the profanation of the Lord's Day is, in a broad sense, an Act in a criminal matter exclusively within the legislative competence of the Parliament of Canada, a provincial legislature may for the maintenance of good order in municipalities, authorize the latter to order by by-law the closing, during Sunday, of theatres, moving picture shows, or other entertainments to which the public is admitted. (2) A by-law which prohibits the "taking part and assisting" at these shows, etc., under penalty of a fine, applies to those who pay the admission fee and attend as spectators. (3) The Quebec statute 9 Edw. VII. ch. 80, sec. 7, authorizing such by-law, is valid as a mere modification of the Quebec statute 7 Edw. VII. ch. 42, the right to enact which was reserved to the province by the Dominion Lord's Day Act. Tremblay v. City of Quebec (No. 1), 16 Can. Cr. Cas. 253.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 500.]

LEGISLATIVE AUTHORITY TO APPOINT MAGISTRATES; DOMINION COMMISSIONERS OF POLICE.

The Dominion statute respecting the police of Canada authorizing the Governor-in-Council to appoint commissioners of police to act as magistrates in the enforcement of certain Federal laws is not ultra vires of the Dominion Parliament. Ex parte LeBel, 16 Can. Cr. Cas. 363.

FERRIES ACT (CAN.); RESTRICTED OPERATION OF STATUTE; PROTECTION OF FEDERAL LICENSE ONLY.

(1) A summary conviction for ferrying passengers for hire within the limits assigned to the complainant as a ferryman and so interfering with his ferry rights is not authorized under the Ferries Act, Canada, where the ferry licensed is one operated wholly within one province. (2) The definition of "ferry" by sec. 2 of the Ferries Act, R.S.C., ch. 108, for the purpose of this Act restricts its operation to ferries between any Province of Canada and any British or foreign country, or between any two provinces of Canada. Ex parte Savoy, 16 Can. Cr. Cas. 457.

SUNDAY OBSERVANCE; SUNDAY OBSERVANCE STATUTE C.S.L.C. CH. 23, STILL IN FORCE IN QUEBEC SUBJECT ONLY TO DOMINION LEGISLATION.

(1) The Sunday observance law in force in the Province of Quebec at Confederation, C.S.L.C. ch. 23, is still in force in that province not only because the Dominion Parliament has sole legislative power to modify or repeal it but because it is specially continued in force by the Lord's Day Act of Canada, R.S.C. (1906), ch. 153. (2) Sec. 5 of the Lord's Day Act (Canada), whereby its prohibition of Sunday business is made subject to the exceptions provided

in that Act or in any provincial Act or law now or hereafter in force" does not have the effect of validating a provincial statute or by-law relating to Sunday observance which was void ab initio because it was ultra vires. (3) A by-law under the Montreal Charter, 62 Vict. (Que.) ch. 58, purporting to authorize certain Sunday sales by traders is ultra vires in so far as it is in conflict with the terms of ch. 23 of the Consolidated Statutes of Lower Canada and of the Lord's Day Act (Canada). Kennedy v. Kokoliades, 13 Can. Cr. Cas. 4.

[Reversed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495.]

STATUTORY PERMISSION TO CERTAIN CLASSES OF DEALERS; LEGISLATIVE AUTHORITY.

(1) The Montreal Charter (1899), authorizing the city council to pass by-laws concerning the Sunday sales of fruit, confectionery, cigars, and temperance beverages has the effect of amending as to the city of Mostreal the provincial statute regarding Sunday observance C.S.L.C., sec. 3498 (now sec. 4462 Con. Statutes of Quebec (1909)), and that portion of the Montreal by-law which permits such sales by retail where the dealer carries on trade in all of such articles is not ultra vires on the ground of dealing with a matter of criminal law. (2) The Quebec Sunday Observance Statute, C.S.L.C. 1888, sec. 3498 (now C.S. Que. (1909), sec. 4462) which is applicable only to shop-keepers and keepers of public houses is one of local municipal regulation and is not ultra vires as dealing with a matter of criminal law. [Attorney-General (Ont.) v. Hamilton Street Railway Co., [1903] A.C. 524, distinguished.] Kennedy v. Couillard, 17 Can. Cr. Cas. 239.

ONTARIO LORD'S DAY ACT.

(1) Under Cr. Code, sec. 761, a magistrate may state a case in a summary conviction matter in respect of an offense under Federal jurisdiction, although the statute under which the prosecution is taken was passed before Confederation and applies only to one province. (2) On a prosecution under the Ontario Lord's Day Act C.S.U.C. (1859), for selling candies and beverages on Sunday, it is a question of fact, whether the accused comes within the exception of the statute as to "restaurant keepers," and the accused is not necessarily a restaurant keeper under that statute in the matter of such sales, because of his having taken out a municipal license as such, in respect of the premises in which the sales were made. (3) A restaurant keeper who on Sunday, sells candies and similar commodities apart from the giving of meals on the premises and so as to be taken away to be consumed elsewhere, is liable under that statute as for carrying on the business of a merchant. The King v. Weatheral, 18 Can. Cr. Cas. 372.

LORD'S DAY ACT, C.S.U.C. CH. 104; SUNDAY SALES BY "MERCHANTS AND TRADESMEN."

(1) Neither a hotel keeper nor a restaurant keeper is, as such, a "merchant or tradesman" within the Ontario Lord's Day Act, C.S.U.C., ch. 104. (2) While a restaurant keeper may sell a cigar as an incident to a meal, it is of the essence of the business that what he sells in that capacity is sold to be consumed upon the premises; if the restaurant keeper also keeps a cigar stand or a candy stand for the purpose of selling to the public he becomes, as to such ancillary business a "merchant or tradesman" within the Ontario Lord's Day Act, C.S.U.C., ch. 104. (3) The sale to the public of bottled temperance beverages, on Sunday to be taken away from the place of sale, is an offence against the Ontario Lord's Day Act notwithstanding that the seller is a restaurant keeper. (4) It is an offense under the Ontario Lord's Day Act, C.S.U.C., ch. 104, for a druggist to sell cigars on Sunday to all parties asking for them; such sales are not protected by the exemption of "drugs and medicines" in the statute. (5) A Judge of the High Court has jurisdiction to hear a stated case under sec. 761 of the Criminal Code in respect of a summary conviction under a statute passed by the Parliament of Canada before Confederation and remaining in force in Ontario. The King v. Wells, 18 Can. Cr. Cas. 377.

JURISDICTION OF CRIMINAL COURTS NOTWITHSTANDING STATUTORY POWERS GRANTED TO A PUBLIC SERVICE BOARD.

The Ontario provincial legislation, 6 Edw. VII. ch. 31, and amending Acts, conferring jurisdiction upon the Ontario Railway and Municipal Board in respect of certain street railway matters, including the operation of electric railways under provincial control, does not deprive a provincial Court having criminal jurisdiction of its power to deal with the same matters when involved in an indictable offence. The King v. Toronto Railway Co. (No. 1), 18 Can. Cr. Cas. 417, affirmed in 25 Can. Cr. Cas. 183.

LEGISLATIVE AUTHORITY TO APPOINT COMMISSIONERS OF DOMINION POLICE; JURISDICTION.

(1) Sec. 3 of the Dominion Police Act, R.S.C. 1906, ch. 92, authorizing the appointment of commissioners of police by the Governor-in-council and conferring upon them the authority of justices of the peace in matters arising under Dominion laws, is within the legislative powers of the Dominion Parliament. (2) A commissioner of police appointed under R.S.C. 1906, ch. 92, is a person "fulfilling a public duty" within the terms of the Ontario statute, R.S.O. 1897, ch. 88, and is entitled to notice of

action thereunder before suit is brought against him for a return of a fine and costs alleged to have been irregularly levied upon the plaintiff by the commissioner in virtue of his office in respect of plaintiff's possession of intoxicating liquor within a prohibited district in alleged contravention of Cr. Code, secs. 150 and 151. (3) Where an order for the forfeiture and destruction of intoxicating liquor seized was made by a commissioner of Dominion police assuming to act under the authority of Code, sec. 614, in the presence of the owner of the liquor brought before him by the seizing officer, and the comissioner had, by statute, jurisdiction over the subject-matter and over the owner in respect thereof, a notice of action must be given within six months under R.S.O. 1897, ch. 88, even if the forfeiture was irregularly made or was wholly void or contrary to natural justice, and was not reduced to writing; and semble the action itself must be brought within six months under Cr. Code, sec. 1149. (4) The Dominion Parliament has power to make it a crime to be in possession of liquor for the purpose of giving it or selling it to another person within a defined distance of any public work under construction; and Code, sec. 143, is therefore not beyond the legislative power of the Canadian Parliament. Geller v. Loughrin, 18 Can. Cr. Cas. 461.

[Specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

SUNDAY OBSERVANCE STATUTE, C.S.L.C., CH. 23.

(1) Whether or not a by-law under the Montreal charter, passed by the Quebec Legislature, purporting to authorize certain Sunday sales by traders is ultra vires as dealing with a question of criminal law, the provincial statute is a protection to those who exercise the privileges or exemptions, which it purports to confer; and until such statute has been declared invalid by a Court of superior jurisdiction after due notice to the Attorney-General, a police magistrate's summary conviction, based upon his finding that such provincial legislation was ultra vires, will be quashed. (2) Where the by-law passed in conformity with a provincial statute purports to authorize certain Sunday sales of fruit and temperance beverages, the provincial statute operates as a de facto authority, which constitutes a good defense to a penal prosecution in respect of acts which such legislation purports to authorize, committed prior to the legislation being so declared ultra vires. Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495, reversing 17 Can. Cr. Cas. 4.

DELEGATION OF JUDICIAL POWER; APPOINTMENT OF MAGISTRATES; PROVINCIAL AUTHORITY.

It is within the legislative power of the Legislature of Nova Scotia to pass a statute empowering the Lieutenant-Governor-in-council to appoint stipendiary magistrates for incorporated towns and municipalities throughout the Province of Nova Scotia. The King v. Basker, 19 Can. Cr. Cas. 158, 1 D.L.R. 295.

APPOINTMENT OF MAGISTRATES.

The power of the provincial legislature, under the British North America Act, to legislate on the subject of the administration of justice, including the constitution, maintenance and organization of Courts, and with respect to the appointment of provincial officers, extends to the appointment of stipendiary magistrates, although the power to appoint Judges of Superior, District and County Courts is reserved to the Governor-General of Canada. Ibid.

ONTARIO LEGISLATURE; REGULATION OF SALES OF INTOXICATING LIQUORS; COMPELLING THE DISCLOSURE OF PARTY FROM WHOM LIQUOR WAS PURCHASED.

The Ontario Legislature was acting within its powers in passing sec. 13 of Act 2 Geo. V. (Ont.), ch. 55, providing that in a municipality in which a by-law, under sec. 141 of the Liquor License Act, R.S.O. 1897, ch. 245, prohibiting the sale by retail of liquor, is in force, a person found upon a street or in any public place in an intoxicated condition owing to the drinking of liquor shall be guilty of an offense against the Liquor License Act aforesaid, and, upon any prosecution for such offence, he shall be compelled to state the name of the person from whom and the place in which he obtained such liquor, and in case of his refusal to do so, he shall be imprisoned for a period not exceeding three months or until he discloses such information. [Hodge v. The Queen, 9 App. Cas. 117, followed.] The King v. Riddell, 19 Can. Cr. Cas. 400, 4 D.L.R. 662.

PROVINCIAL ACT REGULATING SALE OF COCAINE AND MORPHINE; SUBSEQUENT ACT OF DOMINION PARLIAMENT DEALING WITH SAME SUBJECT; DECLARING A CRIME.

(1) If the enactment of the Provincial Parliament of Quebec, of 1 Geo. V., ch. 35, regulating the sale of cocaine, morphine, or their compounds, and providing a punishment for violation thereof, is not void because it is criminal legislation exclusively within the province of the Dominion Parliament, it was rendered ineffectual by the subsequent enactment by the latter body of 1 and 2 Geo. V., ch. 17, prohibiting the use or sale of such drugs, since the Provincial Act was in contravention to and

incompatible with the Dominion Act. [Regina v. Wason, 17 Ont. A. R. 221; Fielding v. Thomas, [1896] App. Cas. 600; The Manitoba Liquor Act Case, [1902] App. Cas. 73; Local Prohibition Case, [1896] App. Cas. 348; and sub-sec. 27 of sec. 91 of the British North America Act, 1867, specially referred to.] (2) Under the Confederation Act of 1867 it is within the power of the Dominion Parliament to declare any act a crime which it may consider necessary to so characterize. Dufresne et al. v. The King, 19 Can. Cr. Cas. 414, 5 D.L.R. 501.

MUNICIPAL BY-LAW OR REGULATION SUPERSEDED BY CRIMINAL LAW STATUTE; RESCUE OF ANIMALS BEING IMPOUNDED.

(1) To rescue cattle from the custody of a poundkeeper while he is taking the cattle to the pound is a criminal offence in Manitoba by virtue of the Imperial statute 6 and 7 Vict. ch. 30, there in force (Cr. Code of Canada 1906, sec. 12), and the provisions of that statute supersede the provisions of any municipal by-law purporting to impose penalties for the like offence. (2) The Imperial statute 6 and 7 Vict. ch. 30, making it a criminal offence to rescue from a poundkeeper cattle which are in his lawful custody is a part of the criminal law in force in Manitoba by virtue of sec. 12 of the Criminal Code of Canada 1906, declaring that the criminal law of England as of 15 July, 1870, shall be the criminal law of Manitoba in so far as such English law is applicable and in so far as it has not been repealed, modified, or affected by English or Canadian legislation. The King v. Laughton, 20 Can. Cr. Cas. 30, 6 D.L.R. 47.

BY-LAW; ULTRA VIRES; ADULTERATION ACT (CAN.).

Where the Adulteration Act, R.S.C. 1906, ch. 133, penalizes the sale of milk below a certain standard but makes no provision thereunder by which municipal corporations may enact prohibitory by-laws fixing a standard of milk under the Act, and where the Province of Saskatchewan has not legislated in reference thereto, a municipal corporation in Saskatchewan is without authority to pass such a by-law. City of Regina v. Sharley, 20 Can. Cr. Cas. 164, 5 D.L.R. 877.

[Russell v. The Queen, 7 A.C. 829, and Regina v. Stone, 23 O.R. 46, referred to. See also R.S.C. 1906, ch. 133, secs. 26, 31.]

TOWN OFFICERS; SALARY OF STIPENDIARY MAGISTRATE.

The provisions of the Towns Incorporation Act (R.S.N.S. 1900, ch. 71, secs. 121 to 124) empowering a Judge of the Supreme Court to reinstate, when improperly removed, a town officer whose appointment is during good behaviour, or to rescind a resolution reducing his salary where such resolution is not passed in the exercise of the bona fide discretion of the town council, do not apply to stipendiary magistrates appointed by the Lieutenant-Governor-in-Council, although the magistrate's salary is fixed by the town council. Re Pelton, 20 Can. Cr. Cas. 299, 7 D.L.R. 465.

SUNDAY LAWS; THEATRES; B.N.A. ACT, SEC. 91, SUB-SEC. 27.

(1) The Act, 7 Edw. VII. (Que.), ch. 42, as amended by the statute 9 Edw. VII. (Que.), ch. 51, which, among other things, prohibits, under penalty, the giving of theatrical performances on Sunday for gain except in case of necessity or urgency, is void because it is criminal legislation which, under sec. 91, sub-sec. 27, of the British North America Act, is exclusively within the power of the Dominion Parliament to enact. [Attorney-General v. Hamilton Street R. Co., [1903] A.C. 524, 7 Can. Cr. Cas. 331, followed; Russell v. The Queen, 7 A.C. 829; Re Sunday Legislation, 35 Can. S.C.R. 581; Pringle v. Napanee, 43 U.C.R. 285; Cowan v. Milburn, L.R. 2 Ex. 230, and Vidal v. Girard's Executors, 43 How. U. S. 198, referred to.] (2) The statute 7 Edw. VII. ch. 42, as amended by ch. 51, 9 Edw. VII. of Quebec, which, among other things, prohibits, under penalty, the giving on Sunday of theatrical performances for gain, is prohibitive and not permissive, and cannot be upheld under sec. 16 of the Dominion Lord's Day Act, R.S.C. 1906, ch. 153, which permits provincial legislatures to except from its operation any Act which provincial legislation; existing at the time the Federal Act came into force or which might be subsequently enacted, "permitted" to be done. Ouimet v. Bazin, 20 Can. Cr. Cas. 458, 3 D.L.R. 593.

[Applied in Budette v. Daniel, 21 Can. Cr. Cas. 403, 13 D.L.R. 240.]

"PROVINCIAL CRIMINAL LAW;" FEDERAL JURISDICTION, ITS EFFECT.

Provincial legislatures, passing statutes of which the principal matter is within one of the classes of subjects assigned to the provinces by the British North America Act, may include, under the authority of sub-sec. 15 of sec. 92 of the Act, provisions of a criminal character; and when such "provincial criminal law" is enacted, an accusation thereunder is a "criminal charge," notwithstanding the jurisdictional provisions of sub-sec. 27 of sec. 91 of the B.N.A. Act. (Per Fitzpatrick, C.J., and Davies, and Anglin, JJ.) Re McNutt, 21 Can. Cr. Cas. 157, 10 D.L.R. 834, quashing appeal from 20 Can. Cr. Cas. 174, 7 D.L.R. 651.

[Referred to in Quong Wing v. The King, 23 Can. Cr. Cas. 113, 18 D.L.R. 121.]

MUNICIPAL BY-LAW PROHIBITING DISORDERLY HOUSES; ULTRA VIRES.

A by-law of a city prohibiting the maintenance of disorderly houses within its limits and imposing a punishment therefor, enacted under power conferred by the Provincial Legislature of Alberta is ultra vires and void, since the object of the by-law was to create offences and provide punishments in the interest of public morals, a subject exclusively within the power of the Federal Parliament under sec. 91 of the B.N.A. Act. [R. v. Wason, 17 A.R. (Ont.) 221; R. v. Shaw, 7 Man. L.R. 518; and R. v. Keefe, 1 Terr. L.R. 280, referred to.] Upton v. Brown, 21 Can. Cr. Cas. 190, 18 D.L.R. 461.

COMPELLING ATTENDANCE OF WITNESSES; CONVICT; HABEAS CORPUS.

It was competent for the Quebec legislature to amend that provision of the Quebec Code of Civil Procedure in force at Confederation by which a prisoner in a penitentiary within the province might be brought up to give evidence in a civil cause by means of a writ of habeas corpus issued upon the order of a judge, so as to provide, as was done by article 302 C.P. Que., that thereafter an order alone should be sufficient without the issue of a writ of habeas corpus. Laing Packing and Provision Co., Ltd. v. Duval, 21 Can. Cr. Cas. 201.

SUNDAY LAWS; THEATRES; PROVINCIAL AND FEDERAL STATUTES.

That part of the Quebec statute 7 Edw. VII. ch. 42, as amended by statute 9 Edw. VII. (Que.) ch. 51, which prohibits theatrical performances on Sunday is ultra vires as criminal law legislation within the exclusive jurisdiction of the federal Parliament, and it is not permissive legislation of the class which under sec. 16 of the Dominion Lord's Day Act, R.S.C. 1906, ch. 153, might be excepted from the operation of the federal statute by an Act of a provincial legislature. [Ouimet v. Bazin, 3 D.L.R. 593, 20 Can. Cr. Cas. 458, 46 Can. S.C.R. 502, applied.] Audette v. Daniel, 21 Can. Cr. Cas. 403, 13 D.L.R. 240.

LORD'S DAY ACT; CRIMINAL LEGISLATION.

A conviction made against a restaurant keeper under the Act respecting the Observance of the Lord's Day, C.S.N.B. 1903, ch. 107, for selling meals on Sunday, will be set aside on the ground that such Act was ultra vires of the Provincial Legislature. [Attorney-General v. Hamilton Street Railway, [1903] A.C. 524, 7 Can. Cr. Cas. 326, applied.] R. v. Marsa; Ex parte Washington, 21 Can. Cr. Cas. 413.

SUNDAY OBSERVANCE; BRITISH COLUMBIA STATUTE; ULTRA VIRES.

The restriction introduced by the consolidated Sunday Observance Act of British Columbia in 1888, limiting the application of certain Imperial Acts (including 29 Charles II. ch. 7) as to Sunday observance to the old colony of British Columbia, was beyond the competency of the legislature of British Columbia as an infringement upon the exclusive jurisdiction of the Parliament of Canada, prior to the delegation of certain powers by Parliament to the provincial legislatures under the Lord's Day Act (Can.), 6 Edw. VII. ch. 27, R.S.C. 1906, ch. 153, sec. 5. [See also special case Re Provincial Legislative Jurisdiction on Sunday Observance, 35 Can. S.C.R. 581.] Up to the enactment of the Lord's Day Act, R.S.C. 1906, ch. 153, the Sunday observance laws of British Columbia stood as they had existed at Confederation in 1867 by virtue of the exclusive jurisdiction of the Parliament of Canada. The provisions of sec. 16 of the Lord's Day Act, R.S.C. 1906, ch. 153, against interference with any provincial law then "in force" is to be construed to cover only such provincial laws as were then "validly in force" and not to validate any ultra vires legislation, notwithstanding the provisions of sec. 5 and sub-sec. (g) of sec. 2 of that Act. Sec. 5 of the Lord's Day Act, R.S.C. 1906, ch. 153, had the effect of delegating to the Province of British Columbia the power to pass, as it did in enacting the Revised Statutes of British Columbia, 1911, the prohibition of Sunday sales contained in R.S.B.C. 1911, ch. 219 (the Sunday Observance Act of B.C.) The declaration of the British Columbia legislature limiting to the mainland the operation of certain Sunday observance Imperial Acts (cited in the consolidation of R.S.B.C. 1911, ch. 219) does not prevent the application to Vancouver Island of the new general prohibition embraced in sec. 5 of the Dominion Lord's Day Act, R.S.C. 1906, ch. 153. R. v. Laity, 21 Can. Cr. Cas. 417, 13 D.L.R. 532.

SUNDAY LAWS; DOMINION ACT; PROVINCIAL POWER.

The Lord's Day Act, R.S.C. 1906, ch. 153, by the proviso in sec. 5, enables a province to reduce the scope or mitigate the severity of the general prohibition in respect of the topics mentioned therein, but does not clothe the province with power either itself to deal generally with the matter of Sunday observance or to confer such powers on municipalities so as to enlarge the scope of the Dominion Act; and a conviction under a municipal by-law so framed under the Municipal Act, R.S.B.C. 1911, ch. 170, cannot be sustained. [Ouimet v. Bazin, 3 D.L.R. 593, 46 Can. S.C.R. 502, 20 Can. Cr. Cas. 458, distinguished.] R. v. Waldon, 22 Can. Cr. Cas. 122, 14 D.L.R. 893, affirmed in 22 Can. Cr. Cas. 405, 18 D.L.R. 109.

COURTS; TERMS AND SESSIONS; POWER TO CHANGE DATES AS TO CRIMINAL COURTS.

Section 27 of the Nova Scotia Judicature Act, R.S.N.S. 1900, ch. 155, is not ultra vires

of the Nova Scotia legislature in respect of the change it purports to make in the times at which fixed sessions of certain provincial courts of criminal jurisdiction are to take place. R. v. Cook, 23 Can. Cr. Cas. 50, 22 Can. Cr. Cas. 241, 18 D.L.R. 706. See also 23 Can. Cr. Cas. 86, 19 D.L.R. 318.

PROHIBITING EMPLOYMENT OF WHITE WOMEN BY PROVINCIAL LAW.

Chapter 17 of the Sask. statutes, 1912, 2 Geo. V. (Sask.) ch. 17, prohibiting the employment of white women in any restaurant, laundry, or other place of business or amusement which is kept, owned or managed by a Chinaman, Japanese or other Oriental person, is not ultra vires, although it imposes fine and imprisonment for its infraction. [Union Colliery Co. v. Bryden, [1899] A.C. 580; Cunningham v. Tomey Homma, [1903] A.C. 151, and Re McNutt, 21 Can. Cr. Cas. 157, 47 Can. S.C.R. 259, 10 D.L.R. 834, referred to.] Quong Wing v. The King, 23 Can. Cr. Cas. 113, 18 D.L.R. 121, affirming 21 Can. Cr. Cas. 326, 12 D.L.R. 656.

QUASI-CRIMINAL MATTERS; LIQUOR ACT; TAMPERING WITH WITNESS.

A summary conviction purporting to be made under sec. 78 of the Liquor License Act, R.S.O. 1914, ch. 215, for attempting to tamper with a witness in a prosecution under that Act, will not be quashed on the ground that the Ontario legislature had not authority to deal with the subject-matter, as the federal parliament has enacted similar legislation applicable to prosecutions under provincial liquor laws in the Canada Temperance Act, R.S.C. 1906, ch. 152, sec. 150, and the magistrate had jurisdiction under the conjoint legislation. [R. v. Lawrence (1878), 43 U.C.Q.B. 164, referred to.] R. v. Armstrong, 26 Can. Cr. Cas. 151, 31 D.L.R. 82.

CRIMINAL PROCEDURE; "PROVINCIAL CRIME."

A provincial legislature has exclusive legislative authority to regulate matters of procedure and evidence in prosecutions under the provincial statutes even where the offence may be termed a "provincial crime" because punishable by fine or imprisonment. The exclusive control given by the B.N.A. Act (sec. 91) to the federal Parliament in respect of "procedure in criminal matters" does not include procedure with reference to the so-called "provincial crimes." [Re McNutt (1912), 21 Can. Cr. Cas. 157, 47 Can. S.C.R. 259, 10 D.L.R. 834, considered.] R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

CRIMINAL LAW AND PROCEDURE.

It was competent to the Parliament of Canada under sec. 91 (27) of the B.N.A. Act, 1867, Imp., in legislating as to criminal law and procedure, to declare that what might previously have constituted a criminal offence should no longer do so although a procedure in form criminal was kept alive. Toronto Ry. Co. v. The King, 29 Can. Cr. Cas. 29, 38 D.L.R. 537, reversing 25 Can. Cr. Cas. 183, 25 D.L.R. 586, 18 Can. Cr. Cas. 417, 23 O.L.R. 186.

KEEPING INTOXICATING LIQUOR FOR EXPORT.

The Saskatchewan Act to prevent the keeping of liquor for export to other provinces or to foreign countries is ultra vires as an interference with trade and commerce and not within the jurisdiction of a Provincial Legislature. [Attorney-General of Ontario v. Attorney-General of Canada, 65 L.J.P.C. 26, and Attorney-General of Manitoba v. Manitoba License Holders, [1902] A.C. 73, applied.] Hudson Bay Co. v. Heffernan, 29 Can. Cr. Cas. 38, 39 D.L.R. 124.

INTOXICATING LIQUORS; SOLICITING ORDERS; TRANSACTIONS WITHIN PROVINCE.

The Manitoba Legislature had legislative authority to pass the Manitoba statute of 1917, 7 Geo. V. ch. 50, in so far as it prohibits residents of Manitoba taking orders in Manitoba on behalf of liquor dealers outside of the Province for the supply of intoxicating liquors for beverage purposes to persons within the Province. [Attorney-General of Manitoba v. Manitoba License Holders Association, [1902] A.C. 73, specially referred to.] R. v. Shaw, 29 Can. Cr. Cas. 130.

CONSTITUTIONAL LAW; INTOXICATING LIQUOR FOR EXPORT.

Gold Seal Co. v. Attorney-General, 29 Can. Cr. Cas. 244.

COMPELLING ATTENDANCE OF WITNESSES; SPECIAL TRIBUNAL; PUBLIC ENQUIRIES ACT.

It is beyond the competence of a provincial legislature to provide for the issue of a commission with powers to compel the attendance of witnesses and the giving of evidence, as to the infraction of a federal criminal or penal law, with a view to ascertaining and reporting the persons guilty of such infraction and to their subsequent prosecution in the criminal courts. A legislature with limited powers cannot create a coercive triunal to examine into matters over which it has no jurisdiction, and prohibition lies at the instance of a person required by the commissioner to attend as a witness in the proceedings taken by the commissioner in the exercise of the powers so assumed to have been conferred by the Lieutenant-Governor-in-Council under the authority of a provincial law. [Att'y-Gen'l of Australia v. Colonial Sugar Refining Co., [1914] A.C. 237, applied.] R. v. Gartshore; R. v. Clement, 30 Can. Cr. Cas. 309, 44 D.L.R. 623.

WAR MEASURES ACT; PROHIBITION ACT.

Paragraphs 5 and 11 of the regulations made and approved March 11, 1918, under the provisions of the War Measures Act, 1914, do not operate to abrogate, annul or supersede the provisions of sec. 28 of the British Columbia Prohibition Act, but are meant to apply only to sales which the province has no jurisdiction to prohibit. Re Prohibition Act, 30 Can. Cr. Cas. 332, 44 D.L.R. 584.

CONSTRUCTION.

See Interpretation.

CONTEMPT OF COURT.

Note on contempt of Court by newspaper comment. 5 Can. Cr. Cas. 110.

JURISDICTION OF COUNTY COURT TO PUNISH FOR; REVIEW BY SUPERIOR COURT.

Every Court of record has the power to punish for contempt, but if the Court is one of inferior jurisdiction, the Superior Court may intervene and prevent any usurpation of jurisdiction by it. Where, therefore, a barrister, during the sittings of the County Court of Carleton, used words which might have been and were, by the learned Judge, considered to have been used to insult the Court, on being told that unless he offered some apology he would be fined, to which he replied that he had nothing to say, and he was then adjudged guilty of contempt and fined, upon motion for certiorari to remove the order:—Held, that there was no excess of jurisdiction, and that this Court could not interfere. Ex parte Lees, 24 U.C.C.P. 214.

REFLECTION ON JUDGE IN A LETTER TO A NEWSPAPER; APOLOGY; COSTS ON STAY OF PROCEEDINGS.

While a criminal information for libel was pending against one W., defendant wrote a letter to a newspaper, reflecting upon one of the Judges who had delivered judgment on the application for such information, and stating that W. was "as certain to be convicted as a libeller ever was before his trial":—Held, that such letter was clearly a contempt of Court, but the defendant, on an application to commit him therefor, having made a full and unreserved apology, the proceedings were stayed on payment of costs by him, and no fine was imposed. Regina v. Wilkinson, Re Houston (1877), 41 U.C.Q.B. 42.

CRIMINAL OFFENCE; PROVING OF.

Contempt of Court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity. Re Scaife, 5 B.C.R. 153.

APPEAL FROM PROCEEDINGS FOR CONTEMPT; "FINAL JUDGMENT."

Contempt of Court is a criminal proceeding and unless it comes within sec. 68 of the Sup. Court Act an appeal does not lie to this Court from a judgment in proceedings therefor. [O'Shea v. O'Shea, 15 P.D. 59, followed; In re O'Brien, 16 Can. S.C.R. 197, referred to.] In proceedings for contempt of Court by attachment until sentence is pronounced there is no "final judgment" from which an appeal could be brought. Ellis v. The Queen (1893), 22 Can. S.C.R. 7.

COMMITMENT FOR SHOULD SHEW CONVICTION.

A commitment by a magistrate for contempt, if there be no recorded conviction, should shew that the party was convicted of the contempt; stating that he was charged with it is insufficient. McKenzie v. Mewburn, 6 U.C.Q.B. O.S. 486.

COSTS OF THE APPLICATION TO COMMIT.

The decision of a provincial Court in a case of constructive contempt is not a matter of discretion in which an appeal is prohibited by sec. 27 of the Supreme and Exchequer Courts Act. (Taschereau, J., dubitante.) The Supreme Court has jurisdiction to entertain such an appeal from the judgment of the Court of Appeal of the Province, not only under sec. 24, sub-sec. (a) of Supreme and Exchequer Courts Act as a final judgment in an action or suit, but also under sub-sec. (1) of sec. 26 of the same Act, as a final judgment "in a matter or other judicial proceeding" within the meaning of said sec. 26. The adjudication that the appellant, a solicitor and officer of the Court, and moved against in that quality, has been guilty of a contempt is by itself an appealable judgment, although no sentence for the contempt has been pronounced by the Court. When the party in contempt has been ordered to pay the costs of the application to commit, the Court in effect inflicts a fine for the contempt. The alleged contempt consisted in publishing in a newspaper comments on a judgment rendered by a Master in Chambers in a cause in which the writer was solicitor for the defendant. The motion to commit was made by the relator in such cause. Notice of appeal from said judgment had been given, but before the motion was made the notice was counterclaimed and the appeal abandoned. Reg ex rel. Felitz v. Howland, Re O'Brien, 16 Can. S.C.R. 197.

OBSERVATIONS IN NEWSPAPER PENDING SUIT: APPLICATION TO COMMIT.

The Court has power summarily to commit for constructive contempt notwithstanding Code, secs., 290, 292, and 293, as to fair reports of Court proceedings and fair comment upon public affairs; but the

Court will not exercise the power where the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice. A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of Court. A statement to the effect that a Judge of the Court having taken an active part in a general election, would have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt. A statement to the effect that the spectacle of such a Judge trying election cases is not edifying and that it does not produce a good impression in the public mind, is not a contempt. A party to a suit has a status to move to commit a stranger to the suit for constructive contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt is calculated to prejudice him in his suit. Any person may bring to the notice of the Court any alleged contempt; but, unless the offence is of so serious a nature as to make it necessary to inflict summary punishment in order to prevent interference with the course of justice, there should be no committal. Stoddard v. Prentice, 5 Can. Cr. Cas. 103.

NEWSPAPER COMMENT; NEWSPAPER PROPRIETOR COMMENTING ON PROSECUTION OF INDICTMENT AGAINST HIMSELF; REQUIRING SECURITY TO REFRAIN FROM FURTHER NEWSPAPER COMMENT UNTIL CASE ENDED.

(1) Where the jury disagreed upon the trial of an indictment and a new jury was ordered for another sittings, the cause is meanwhile still a pending one and improper and impartial comments thereon published by one of the accused will constitute a contempt of Court by him. (2) The Court imposing sentence upon a newspaper proprietor for a contempt of Court contained in newspaper comment may, in addition to the infliction of a fine and imprisonment, require the accused to find securities to keep the peace and to refrain from publishing further articles reflecting on the pending cause, and may order imprisonment for six months, or until security is sooner given, or until the pending cause is sooner ended. The King v. Charlier, 6 Can. Cr. Cas. 486.

[Discussed in Fournier v. Attorney-General, 17 Can. Cr. Cas. 148.]

NEWSPAPER IMPUTATION OF CORRUPT MOTIVES AND POLITICAL FAVORITISM; CRIMINAL OFFENCE AT COMMON LAW.

(1) A charge of contempt of Court for having published a newspaper article scandalizing some of the members of the Court in their judicial capacity is a criminal charge, although instituted by the issue of a rule nisi from the Court attacked. (2) A Superior Court of original jurisdiction has inherent power to punish for scandalous contempt, whether the publication is pending the litigation to which it refers or after the termination of same. (3) Although the only publication alleged was at Montreal in the Montreal judicial district, the resultant interference with the course of justice also took place at Quebec, where the Judges attacked held Court and the Superior Court of the Province of Quebec therefore had jurisdiction to deal with the offence by rule nisi in the Quebec judicial district. (4) The merits of an adjudication of a Court of record on a charge of contempt by scandalizing such Court will not be enquired into on an appeal, but an appeal lies to the Court of Appeal by way of reserved case or leave pursuant to the Criminal Code to decide (1) whether or not there was jurisdiction in the Court below, (2) whether what was adjudged a contempt is such in law and (3) whether the punishment was authorized by law. (Per Cross, J.) (5) The appeal from the Superior Court to the Court of King's Bench of Quebec in such case is by virtue of article 43 of the Quebec Code of Civil Procedure and not under the Criminal Code of Canada. (Per Archambeault, J.) (6) The person charged with contempt by scandalizing the Court has no right to a jury trial, nor to adduce the testimony of witnesses on his own behalf, and he may be required to answer interrogatories. (Per Cross, J.) Fournier v. Attorney-General, 17 Can. Cr. Cas. 168.

PROCEDURE; AFFIDAVITS; SERVICE ON RESPONDENT.

In launching a motion for an attachment for contempt against the publisher of alleged prejudicial comments on a criminal case pending before a magistrate, copies of the affidavits in support must be served on the respondent with the notice of the motion for a writ of attachment. Rex. v. Cook; Re Dennis and McCurdy, 22 Can. Cr. Cas. 211, 15 D.L.R. 501.

OPPORTUNITY TO DEFEND.

A conviction for the criminal offence of contempt of Court can be made only where the specific charge against the accused has been distinctly stated and he has been given an opportunity of answering it. [Chang Hang v. Piggott, [1909] A.C. 312, applied; Re Pollard, L.R. 2 P.C. 106, referred to.] R. v. Evans; Re Fisher, 24 Can. Cr. Cas. 125.

SUMMARY JURISDICTION; NEWSPAPER COMMENT.

To support a charge of contempt of Court against a newspaper editor for published comment about a pending case, the comment must be such as to manifest that the object is to taint the source of justice or to obtain a result of legal proceedings dif-

ferent from that which would follow in the ordinary course. The disciplinary power of the Court to punish for contempt the publisher of a newspaper making improper comment on a pending case is to be sparingly and carefully exercised, and it must be shewn that it was probable that the publication would substantially interfere with a fair trial. [Re Finance Union (1895), 11 Times L.R. 167; Skipworth's Case (1873), L.R. 9 Q.B. 219, approved.] Re Lewis; Meriden Britannia Co. v. Walters, 24 Can. Cr. Cas. 364, 25 D.L.R. 167.

CHARGE OF MISCONDUCT AGAINST CROWN PROSECUTOR; MOTION FOR COMMITTAL.

For a newspaper to falsely publish pending the prosecution of a criminal charge that the Crown prosecutor had proceeded with the preliminary enquiry without the authority of the Attorney-General and that he was engaged in prosecution and seeking notoriety in the matter, is contempt of Court punishable summarily on a motion to the Superior Court of criminal jurisdiction by committal or fine, as tending to impair the administration of justice; the article could not be considered as one directed to a criticism of the Attorney-General's Department as a branch of the public service so as to be exempt on that score. R. v. McInroy; Re Whiteside, 25 Can. Cr. Cas. 49, 26 D.L.R. 615.

BEFORE JUSTICES; JURISDICTION.

A justice of the peace not being a police magistrate, district magistrate or magistrate (Cr. Code, sec. 607), has no power to commit for contempt for insulting statements made to him by the person being tried under the summary convictions clauses. [Young v. Saylor, 23 Ont. R. 513, 20 A.R. 645, followed.] Re Reiben, 30 Can. Cr. Cas. 271.

CONVICTION.

See Summary conviction; Certiorari; Habeas Corpus; Summary trial; Speedy trial; Indictment.

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INFRINGEMENT; SUPPRESSING NAME OF FOREIGN AUTHOR; BERNE CONVENTION.

The person who suppresses the name of the author of a theatrical play written by a foreigner but protected by the Imperial Statute (1886) 49-50 Vict., ch. 33 (Berne Convention), without the consent of the author, and who has it represented in a theatre in Canada, renders himself guilty of a criminal offence falling under sec. 508B of the Criminal Code. R. v. Daoust, 26 Can. Cr. Cas. 69, 28 D.L.R. 293.

CORONER.

Depositions of accused at inquest; Admissibility. 1 Can. Cr. Cas. 373.

Duty of, in taking down depositions at inquest. 1 Can. Cr. Cas. 157, 160.

No right to take statement not under oath. 7 Can. Cr. Cas. 388.

No trial on inquisition of. 1 Can. Cr. Cas. 386.

Note on using at trial the depositions taken at a cororner's inquest. 5 Can. Cr. Cas. 550.

Inquest in Territories. 9 Can. Cr. Cas. 574.

SUNDAY INQUEST.

A coroner's inquest held on Sunday is invalid. In re Elizabeth Cooper and Jane R. Cooper (1870), 5 Ont. P.R. 256.

CORONER'S INQUEST; EXCLUDING BARRISTER FROM INQUEST ROOM; ACTION AGAINST CORONER FOR EXCLUSION.

A barrister cannot insist upon being present at a coroner's inquest, and upon examination and cross-examining the witnesses, etc., and can mantain no action against the coroner for excluding him from the room. Agnew v. Stewart, 21 U.C.Q.B. 296.

EVIDENCE; PRIVILEGE; INCRIMINATING ANSWERS.

A witness before a coroner's Court is compelled under the Canada Evidence Act to answer incriminating questions, such Court being a Criminal Court and a Court of Record, and proceedings before the coroner are within the jurisdiction of the Federal Parliament, although no one is there charged with the offence of causing the death of the deceased. R. v. Hammond, 1 Can. Cr. Cas. 373.

[Referred to in R. v. Black, 5 Can. Cr. Cas. 241.]

DEPOSITIONS OF WITNESS AT CORONER'S INQUEST.

A coroner is not "a justice" within the meaning of Cr. Code, sec. 687, as to using upon a trial the depositions "taken by a justice in the preliminary or other investigation of any charge," of a witness absent from Canada. R. v. Graham, 2 Can. Cr. Cas. 388.

SUMMONING JURORS BY VERBAL DIRECTION ONLY; VERBAL ORDER FOR POST-MORTEM EXAMINATION.

A coroner's Court is a Court of record, and a coroner is a Judge of a Court of record. A coroner has power to himself summon the coroner's jury by a mere verbal direction to the jurors. A post-mortem examination may be directed by the coroner, and proceeded with under such direction, before impanelling of the jury. Although the surgeon making the postmortem examination may not be bound to do so without the coroner's written direction, yet if he proceeds on a verbal direction the latter

constitutes a legal justification. Davidson v. Garrett, 5 Can. Cr. Cas. 200.

DEPOSITIONS BEFORE CORONER; IRREGULAR RETURN OF; USE OF IN CROSS-EXAMINATION; PROOF OF SIGNATURE.

Depositions signed by a witness at a coroner's inquest may be used on the cross-examination of that witness at the trial for the purpose of contradicting his testimony, or of testing his memory, although they were irregularly returned by the coroner to the clerk of the Crown instead of to the magistrate. (Code, sec. 568.) The King v. Laurin (No. 2), 5 Can. Cr. Cas. 545.

DEPOSITION AT CORONER'S INQUEST; CONTRADICTING WITNESS WITH HIS FORMER DEPOSITION; STATEMENT NOT PURPORTING TO BE COMPLETE.

The signed deposition of a witness at a coroner's inquest may be used on the cross-examination of the witness at the homicide trial for the purpose of contradicting the witness' testimony, although it is not certified to have been read over to the deponent, and although it does not appear thereby that the deponent had no further testimony to add. The King v. Laurin (No. 3), 5 Can. Cr. Cas. 548.

LOCAL JURISDICTION ONLY.

(1) A coroner is a local officer and a coroner's warrant cannot, therefore, be executed outside of the territorial jurisdiction for which he holds his appointment. (2) In Ontario a coroner is bound by statute to summon such witnesses as the Crown officer directs, and a coroner's warrant to apprehend a witness who had defaulted in attendance upon a summons being a ministerial and not a judicial act, certiorari will not be granted in respect of such warrant. (3) A coroner may summons a witness to reattend to give further evidence on new matter alleged to have been disclosed to the Crown since the witness' examination in the same inquest. Re Anderson and Kinrade, 14 Can. Cr. Cas. 448.

OMISSION TO FOLLOW STATUTORY DIRECTIONS.

The verdict of a coroner's jury finding the petitioner guilty of manslaughter by negligence will not be quashed on certiorari for the coroner's failure to make the preliminary declaration of belief that the death was caused by violence, negligence or unlawful means as required by the Quebec statute 4 Geo. V., 1914, ch. 38, or for omission to follow other merely directory regulations contained in that statute. [See also Davidson v. Garrett 5 Can. Cr. Cas. 200, 30 Ont. R. 653.] Robin v. McMahon, 27 Can. Cr. Cas. 407.

CORPORATION.

See Company.

CORROBORATION.

See Evidence.

COSTS.

On amendment of conviction after removal. 1 Can. Cr. Cas. 132.

Where motion to quash conviction unopposed. 1 Can. Cr. Cas. 10.

Under Act as to frauds against cheese factories. 2 Can. Cr. Cas. 114.

Note on excessive costs allowed on summary convictions. 2 Can. Cr. Cas. 232.

Award of costs against private prosecutor when bill of indictment ignored; Review by Court en banc. 3 Can. Cr. Cas. 312.

Order for, on trial of indictable offence. 3 Can. Cr. Cas. 594.

Note on jurisdiction as to costs in certiorari, habeas corpus and prohibition. 5 Can. Cr. Cas. 459.

Should not be made payable to the magistrate in a summary conviction. 7 Can. Cr. Cas. 468.

Justice collecting illegal fees. 7 Can. Cr. Cas. 360.

Of conveying to gaol must be fixed in summary conviction. 7 Can. Cr. Cas. 468.

Against private prosecutor proceeding after discharge on preliminary enquiry. 7 Can. Cr. Cas. 432.

Quashing appeals from summary convictions; Jurisdiction as to costs; Cr. Code, sec. 884. 8 Can. Cr. Cas. 109, 111

Costs in criminal libel; Cr. Code, sec. 833. 8 Can. Cr. Cas. 405, 408.

CONDEMNATION FOR COSTS IN CRIMINAL LIBEL; ACTION TO RECOVER.

The plaintiff had been prosecuted by defendant in a criminal Court for defamatory libel and acquitted. No demand was made when the verdict was given for a condemnation of defendant for costs, but plaintiff afterwards sought to recover them by action. After hearing the cause in the Superior Court, the presiding Judge discharged the délibéré to enable the plaintiff to have his costs taxed before the Judge who presided at the criminal trial, which was done, and the cause was reheard. It was held that plaintiff could claim his costs and disbursements from defendant by an ordinary action, though he had not asked for a condemnation against defendant therefor at the time of the verdict; also, that the Judge who presided at the criminal trial could, even after proceedings in such action, tax such costs and disbursements. Mackay v. Hughes (1901), 19 Que. S.C. 367, (Sup. Ct.); and see sec. 1047.

ACTION OF LIBEL; RECOMMENDATION OF JURY AS TO COSTS; AFFIDAVITS OF JURORS; DEPRIVING SUCCESSFUL DEFENDANT OF COSTS; "GOOD CAUSE;" COSTS OF SPECIAL JURY.

When the special jury before which an action of libel was tried returned to the Court room after considering their verdict, the foreman announced a verdict for the defendant. He then asked if the jury had anything to do with the question of costs. The trial Judge replied that he thought not, but if any recommendation was made it would be considered. The foreman then announced that in the opinion of the jury each party ought to pay his own costs. Upon a motion by the plaintiff to the trial Judge for an order disposing of the costs in the way recommended by the jury:—Held, that the recommendation of the jury as to costs was not a part of their verdict, but if so it was an announcement of a result at which they had no right in law to arrive; the verdict was complete before anything was said as to costs. If the verdict for the defendant would not have been given except with the recommendation as to costs, that would be matter for consideration upon a motion for a new trial, and not upon the present motion. Upon the motion the plaintiffs filed affidavits of some of the jurors, stating that they would not have agreed in a verdict for the defendant if they had thought the result would be to throw upon the plaintiffs the whole costs of the action. Held, that these affidavits were not receivable in evidence. [Regina v. Fellowes, 19 U.C.R. 48, followed; Jamieson v. Harker, 18 U.C.R. 590, distinguished.] It was also contended by the plaintiffs that the trial Judge should make an order depriving the successful defendant of costs, upon the recommendation of the jury and the facts appearing in evidence. Held, that the question of costs was within the power of the trial Judge, and he could only interfere with the event for "good cause" (rule 1170). By acting on the recommendation of the jury he would, in effect, be abdicting his functions and allowing the jury to determine what was "good cause." "Good cause" means some misconduct leading to the litigation, or in the course of litigation, which requires the Court in justice to interfere; and there is a marked distinction between interfering with costs going to the plaintiff and costs going to the defendant; and upon the facts of this case there was no "good cause" for interfering. The trial Judge certified for the defendant's costs of a special jury summoned at his instance. Farquhar et al. v. Robertson (1889), 13 P.R. (Ont.) 156.

DISCHARGE OF RULE NISI ON TECHNICAL GROUND.

Where a rule nisi to quash a conviction after return of a certiorari was not intituled in a clause, if was discharged, but, being on a technical objection, without costs. Reg. v. Mortson, 27 U.C.Q.B. 132.

FEES OF MAGISTRATES OR CONSTABLES.

Held, that there is no provision for fees to a magistrate or a constable under the tariffs in R.S.O., 1897, ch. 95, or sec. 81 of Criminal Code, for any proceedings which do not come within the summary jurisdiction of justices. Tuttle v. McDonald, 36 C.L.J. 642.

OBSTRUCTING HIGHWAY; PROSECUTION BY MUNICIPALITY; REMOVAL OF CHARGE TO COURT; "AGGRIEVED PARTY."

A township municipality prosecuting an indictment for obstructing a highway in the township, which indictment had been removed on defendant's application into this Court, and the defendant convicted thereon:—Held, to be "the party aggrieved" within the 5 and 6 W. & M., ch. 11, sec. 3; and the defendant, having to pay their costs and his own, amounting to over $400, was finded only $1. Regina v. Cooper (1876), 40 U.C.Q.B. 294.

GRANTING COSTS IN TEST CASE.

Quære, whether defendant should not get the costs of quashing a conviction made to test the law. Regina v. Jamieson (1884), 7 O.R. 149.

JURISDICTION OF THE COURT OF QUARTER SESSIONS TO AWARD COSTS ON DISCHARGING APPEAL.

Under 32-33 Vict. ch. 31, sec. 65, and 33 Vict. ch. 27 (D.), the Court of Quarter Sessions 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 decide it upon the merits. Re Robert Madden (1871), 31 U.C.Q.B. 333.

POWER OF COURT TO AWARD AFTER DISMISSING RULE NISI.

The Court has authority under its general powers to award costs against a defendant on dismissing a rule nisi to quash his conviction, although he has not entered into recognizance to pay costs, if unsuccessful. Reg. v. Starkey, 7 Man. L.R. 262.

REMOVAL OF CERTIORARI OF CHARGE OF OBSTRUCTING HIGHWAY; DISCRETION TO IMPOSE COSTS.

Where an indictment for obstructing a highway had been removed by certiorari, at the instance of the private prosecutor, into this Court, and defendant had been acquitted, it was held, that there was no power to impose payment of costs on such prosecutor. The Court, however, has power to make payment of costs a condition of any indulgence granted in such a case, such as a postponement of the trial, or a new trial. Regina v. Hart (1880), 45 U.C.Q.B. 1.

TARIFF TO BE FIXED BY MAGISTRATE.

As the statute authorizes the justices to award costs, and does not fix any tariff, the justices may allow such costs as they consider reasonable. Reg. v. Starkey, 7 Man. L.R. 489.

UPON DISMISSAL OF APPEAL NOT ON THE MERITS.

Where an appeal to the Sessions is dismissed without being heard and determined on the merits, there is no power to impose costs. [Re Madden, 31 U.C.R. 333, followed.] Regina v. Becker, 20 O.R. 676.

AFTER RECOGNIZANCE TO PROSECUTE.

(1) The costs to be allowed under a recognizance under Cr. Code, sec. 595, taken to prefer an indictment after the justice had discharged the accused, are not the fees and disbursements paid by the accused to his counsel, such payment being a matter between client and counsel, but such costs as are analagous to the costs recoverable from a losing party in a civil suit. (2) The costs recoverable under a recognizance given to prefer an indictment after the justice had discharged the accused should be taxed according to a tariff made for criminal proceedings, and in the absence of such tariff they are to be taxed in the discretion of the Judge, by implication, according to the spirit of the provisions contained in art. 835 of the Criminal Code. R. v. St. Louis, 1 Can. Cr. Cas. 141.

[Considered in R. v. Gouilliould, 7 Can. Cr. Cas. 432; referred to in Beauchesne v. Scottstown, 16 Que. S.C. 324.]

CERTIORARI; PRACTICE.

Cost of quashing a conviction by certiorari proceedings are not awarded except in cases of misconduct of the informant or of the justice. R. v. Banks, 1 Can. Cr. Cas. 370.

[Referred to in R. v. Rondeau, 9 Can. Cr. Cas. 523, 5 Terr. L.R. 483; Kokoliades v. Kennedy, 18 Can. Cr. Cas. 502.]

Cost of certiorari proceedings were refused to the justices as against the defendant as the application was justifiable at the time it was launched. Re Plunkett, 1 Can. Cr. Cas. 365.

Costs of quashing a conviction are recoverable by action where no order of protection is made. R. v. Somers, 1 Can. Cr. Cas. 46.

[Followed in R. v. Coulson, 24 O.R. 246; Kokoliades v. Kennedy, 18 Can. Cr. Cas. 502; referred to in Beauchesne v. Scottstown, 16 Que. S.C. 324.]

The practice is not to order costs against the informant on quashing a conviction. R. v. Somers, 1 Can. Cr. Cas. 46.

A motion, to quash a conviction being unopposed, no costs were allowed and terms were imposed that no action should be brought by defendant. R. v. McLeod, 1 Can. Cr. Cas. 10.

Costs awarded against a magistrate in respect of an unsuccessful interlocutory application made by him in certiorari proceedings are not governed by Cr. Code, sec. 897, and should be directed to be paid to the opposite party direct, instead of to the clerk of the peace or other officer of the Court which made the order. R. v. Graham, 1 Can. Cr. Cas. 405.

COMMISSIONER OF DOMINION POLICE; LIABILITY FOR.

The accused having been discharged on the preliminary inquiry, and the Commissioner of Dominion Police having bound himself by recognizance to prefer and prosecute an indictment on the charge contained in his information, and the Grand Jury having thrown out the bill of indictment, the commissioner was held, under art. 595 of the Criminal Code, to be personally liable for the costs incurred by the accused on the preliminary inquiry and before the Court of Queen's Bench. R. v. St. Louis, 1 Can. Cr. Cas. 141.

[Considered in R. v. Gouilliould, 7 Can. Cr. Cas. 432, and R. v. Hooyoke, 10 Can. Cr. Cas. 313; referred to in Beauchesne v. Scottstown, 16 Que. S.C. 324.]

ENFORCEMENT OF PAYMENT.

The proceedings for enforcement of an order for costs provided by Cr. Code, sec. 898, apply only to costs dealt with by a Court of General Sessions on affirming or quashing a conviction or order on appeal to that Court, and not to costs in certiorari proceedings. R. v. Graham, 1 Can. Cr. Cas. 405.

IMPRISONMENT; DISCHARGE ON PAYMENT OF FINE.

When the authorizing statute states that a person who is condemned to a term of imprisonment in default of the payment of a fine and costs, can obtain his discharge before the expiration of such term upon the payment of the fine, it is illegal to require in addition the payment of the costs of the prosecution and of the charges of his conveyance to prison. Ex parte Lon Kai Long, 1 Can. Cr. Cas. 120.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289.]

SUMMARY CONVICTION; EXCESSIVE FEES.

The allowance by the magistrate on a summary conviction of excessive costs in respect of mileage to the constable for serving subpœnas upon witnesses, is not a ground for quashing the conviction. Ex parte Rayworth, 2 Can. Cr. Cas. 230.

OF MOTION FOR CERTIORARI; NOVA SCOTIA CROWN RULES.

In Nova Scotia, if the magistrate and the informant appear upon and unsuccessfully oppose an application for a writ of certiorari to remove a conviction, they may be ordered to pay the costs of the motion

in the event of the conviction being quashed. R. v. Sarah Smith, 2 Can. Cr. Cas. 485.

OF CONVEYING TO GAOL; CUSTOMS ACT (CAN.).

A warrant of commitment by justices in default of payment of a fine imposed under the Customs Act for smuggling, and under which the accused is required to pay also the expenses of being conveyed to gaol before he can obtain his liberty, is invalid if the amount of such expenses are not stated therein. R. v. Thomas McDonald, 2 Can. Cr. Cas. 505.

CERTIORARI; RETURN OF AN AMENDED CONVICTION.

Where the only record of conviction produced before the institution of certiorari proceedings to quash the same is bad, and a valid amended conviction is produced in such proceedings, the costs of opposing the motion to quash should not be awarded against the applicant. R. v. McAnn, 3 Can. Cr. Cas. 110.

IRREGULAR "COSTS OF COMMITMENT."

Where in a summary conviction it was adjudged that in default of payment of the fine and of the amount taxed to the prosecutor for his costs, and in default of sufficient distress therefor, the defendant may be imprisoned for a term specified, unless such fine and costs, etc., and the costs of commitment, were sooner paid, the words "costs of the commitment" irregularly included therein may be treated as surplusage, and their inclusion will not invalidate the conviction, if, in fact, there are no costs of commitment apart from the costs taxed and allowed in the conviction and warrant of commitment. R. v. Doherty, 3 Can. Cr. Cas. 505.

[Distinguished in R. v. King, 4 Can. Cr. Cas. 426; relied on in R. v. Townsend, 11 Can. Cr. Cas. 156.]

SUMMARY TRIAL OF INDICTABLE OFFENCE.

A magistrate summarily trying, with the consent of the accused, a charge of aggravated assault, has jurisdiction to award costs against the accused as well as to impose both fine and imprisonment. R. v. Burtress, 3 Can. Cr. Cas. 536.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 80, 39 N.S.R. 125.]

COSTS OF CONVEYING TO GAOL.

The costs of conveying the defendant to gaol cannot be legally awarded against him on a conviction for a third offence under the Nova Scotia Liquor License Act. Where the sum of such costs is stated in the warrant of commitment, the improper inclusion of same cannot be treated as surplusage, and will invalidate the warrant. Re J. W. King, 4 Can. Cr. Cas. 426.

IN CERTIORARI PROCEEDINGS.

Where a magistrate returns an amended conviction in certiorari proceedings and the conviction is sustained only by reason of the amendment, costs of the certiorari proceedings should not be awarded against the applicant. R. v. Whiffin, 4 Can. Cr. Cas. 141.

[Referred to in R. v. McKenzie, 12 Can. Cr. Cas. 444, 41 N.S.R. 188.]

SUMMARY CONVICTION.

The award of costs under a summary conviction should direct payment thereof to the informant and not to the justice. R. v. Roche, 4 Can. Cr. Cas. 64.

[Referred to in R. v. Chisholm, 6 Can. Cr. Cas. 498; Aikin v. Simpson (No. 2), 19 Can. Cr. Cas. 331.]

TIME OF MAKING ORDER FOR COSTS OF APPEAL.

Where an appeal to a Court of General Sessions of the Peace from a summary conviction is not proceeded with, an order giving costs to the respondent can only be made at the same sittings for which notice of appeal was given; but where the appeal is heard, and determined against the appellant, the formal order need not be drawn up at the same sittings, and the respondent's costs may be taxed nunc pro tunc at the next sittings and included in a formal order then issued in pursuance of the direction therefor made at the previous sittings. Where an appeal from a summary conviction has been heard and determined and a minute made by the chairman of the Sessions dismissing the same with costs and directing the clerk to tax the same, but no formal order was ever drawn up, the clerk's certificate of taxation and a subsequent order of the Court of General Sessions directing a distress for the costs taxed are irregular, and will be quashed. Where a prosecution is instituted by a police officer in his own name as informant, in respect of an offence against a municipal by-law, the police officer is personally a party both to the proceedings before the magistrate and to the appeal from his decision, and the municipal corporation is not properly named as a party to such appeal, nor can costs be awarded in favour of the corporation. Bothwell v. Burnside, 4 Can. Cr. Cas. 450.

INCLUDING COSTS OF APPEAL IN CONVICTION.

Where an order is made allowing the prosecutor's appeal from a justice and convicting the accused, the costs of the appeal may be included in the costs awarded by the conviction, and the payment thereof may be enforced by a distress warrant and imprisonment in default. R. v. Hawbolt, 4 Can. Cr. Cas. 229.

[Referred to in Victoria v. Belyea, 12 B.C.R. 115.]

JURISDICTION OVER COSTS OF APPEAL NOT PERFECTED.

On an appeal from a summary conviction there is no jurisdiction to award costs against the appellant in respect of the proceedings in appeal at any other sittings than the one for which notice was given (Code, sec. 884). McShadden v. Lachance, 5 Can. Cr. Cas. 43.

[Referred to in Pakhula v. Hannuksela, 20 Can. Cr. Cas. 250, 8 D.L.R. 34.]

COSTS OF DISTRESS AND CONVEYING TO GAOL; NONINCLUSION IN MINUTE OF CONVICTION; VARIANCE.

If the justice making a summary conviction adjudges a pecuniary penalty and a distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction. It is unnecessary for the justice to insert in the minute of conviction any provision that the defendant shall pay such costs of distress and conveying to gaol, as a prerequisite to his discharge from custody before the end of the term of imprisonment. The formal conviction may provide under Code, sec. 872 (a) for the payment of the costs both of the distress and of conveying to gaol, although the minute of conviction does not include the costs of distress, but merely directs imprisonment unless the penalty and costs and the costs of conveying to gaol are sooner paid. The expression "costs and charges" used in Code forms WW. and FFF. has the same meaning as the term "expenses" in Code, sec. 872 (a). The Queen v. Vantassel (No. 1). 5 Can. Cr. Cas. 128.

[Followed in R. v. Beagan, 6 Can. Cr. Cas. 58; referred to in R. v. Gow, 11 Can. Cr. Cas. 84.]

SUMMARY CONVICTION; IMPRISONMENT IN DEFAULT OF DISTRESS; COSTS OF DISTRESS AND CONVEYING TO GAOL.

If the justice making a summary conviction adjudges a pecuniary penalty and a distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction. The omission of that provision from the formal conviction in such a case invalidates the conviction. The Queen v. Vantassel (No. 2), 5 Can. Cr. Cas. 133.

[Followed in R. v. Beagan (No. 2), 6 Can. Cr. Cas. 58; referred to in R. v. Sen Bow, 7 Can. Cr. Cas. 469; R. v. Gow, 11 Can. Cr. Cas. 84.]

CERTIORARI; COSTS AGAINST PROSECUTOR AND MAGISTRATE ON QUASHING CONVICTION; JURISDICTION; DISTINCTION BETWEEN OFFENCES UNDER DOMINION AND PROVINCIAL LAWS.

The High Court in Ontario has no jurisdiction in certiorari proceedings respecting a criminal charge under Dominion laws, to award costs against the prosecutor or the magistrate on quashing the conviction. There is jurisdiction to award costs against an unsuccessful applicant in certiorari proceedings respecting a purely criminal charge, either because of the recognizance or of an inherent power of the Court. Semble, in certiorari proceedings in respect of quasi-criminal prosecutions under Ontario statutes the provisions of the Ontario Judicature Act as to costs are applicable since the passing of the Law Courts Act (Ont.) 1896. The King v. Bennett, 5 Can. Cr. Cas. 456.

[Followed in R. v. Jones, 18 Can. Cr. Cas. 417.]

ENFORCING INVALID CONVICTION.

A resolution of a municipal council to pay the costs of enforcing an invalid conviction in a criminal matter is ultra vires. Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15.

APPEAL FROM SUMMARY CONVICTION; DISMISSAL AS NOT LODGED IN DUE FORM; JURISDICTION AS TO COSTS.

Where an appeal from a summary conviction is entered and prosecuted but is dismissed on the ground that it was not lodged in due form, there is no jurisdiction to award costs against the appellant. Code, sec. 884, only applies where the appellant fails to proceed with his appeal without abandoning it according to law. The King v. Ah Yin (No. 2), 6 Can. Cr. Cas. 66.

[Referred to in Pakhula v. Hannuksela, 20 Can. Cr. Cas. 250, 8 D.L.R. 34.]

COSTS OF DISTRESS AND OF CONVEYING TO GAOL.

The costs of distress and of conveying to gaol are obligatory where a summary conviction imposes a fine and awards distress and imprisonment in default of distress, and therefore the omission of any reference to such costs in the minute of adjudication will not invalidate the formal conviction which includes them. The King v. Beagan (No. 2), 6 Can. Cr. Cas. 56.

[Applied in Collette v. R., 16 Can. Cr. Cas. 281, 19 Que. K.B. 133.]

SUMMARY TRIAL; AWARD OF COSTS AGAINST ACCUSED; TIME AND MANNER OF PAYMENT; INSTALMENTS NOT ESSENTIAL.

(1) Where the person convicted upon a summary trial is released upon suspended sentence and is directed to pay the informant's costs, such costs are payable forth-

with unless otherwise ordered. (2) The power under Code, sec. 271, to award such costs to be paid "within such period and by such instalments as the Court directs" does not make it necessary to divide the costs into instalments. The King v. McLellan (No. 1), 10 Can. Cr. Cas. 1.

PENALTY; STATUTORY AUTHORITY TO REMIT; WHETHER PROSECUTOR'S COSTS INCLUDED; WHETHER ORDER FOR COSTS ENFORCEABLE AFTER REMISSION OF PENALTY.

The power conferred upon the Minister of Marine by the Fisheries Act to remit penalties does not authorize him to remit the costs awarded to a private prosecutor, and a mandamus should go to the justice to issue a distress warrant for such costs. (Per Tuck C.J., Hannington and McLeod, JJ.) The fine having been remitted, there is no remedy for the recovery of the prosecutor's costs and the justice could not be directed by mandamus to issue a distress warrant to enforce payment. (Per Barker and Gregory, JJ.) The word "penalty" in sec. 18, sub-sec. 6, of the Fisheries Act includes both fine and costs, and the Minister of Marine has power to remit both. (Per Landry, J.) The Court being equally divided, no order made. Ex parte Gilbert, 10 Can. Cr. Cas. 38.

NUISANCE; MOTION FOR WRIT DE NOCUMENTO; ABATEMENT PENDING MOTION; JURISDICTION AS TO COSTS.

If a municipality found guilty of maintaining a nuisance by not repairing a highway, makes default under the judgment ordering abatement thereof, but repairs the highway pending a motion for a writ of de nocumento, the Court may in its discretion order the costs of the motion to be paid by the defendant. The King v. Portage la Prairie, 10 Can. Cr. Cas. 125.

APPEAL FOR SUMMARY CONVICTION; DEFECT APPARENT ON FACE OF PROCEEDINGS; COSTS ON QUASHING.

The Court to which an appeal might properly be taken from a summary conviction has jurisdiction to award costs to the respondent on quashing an appeal for want of jurisdiction through a defect in the notice of appeal. The King v. Doliver Mountain Mining and Milling Co. 10 Can. Cr. Cas. 405.

[Referred to in Pakhula v. Hannuksela (No. 1), 20 Can. Cr. Cas. 249.]

WARRANT OF COMMITMENT; INCLUSION OF ILLEGAL COSTS; COSTS OF COMMITMENT ADDED TO COSTS OF CONVEYING TO GAOL.

The inclusion in a justice's warrant of commitment issued in default of payment of fine and costs, of unauthorized costs, i. e., costs of commitment in addition to costs of conveying to gaol, is a ground for discharge upon habeas corpus. The King v. Townsend (No. 3), 11 Can. Cr. Cas. 154.

[Referred to in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

SUMMARY CONVICTION; AWARD OF COSTS AND DAMAGES TO OWNER.

The award of costs to the owner of the dog on whose behalf his wife had laid the information instead of to the informant is a mere irregularity which is cured by sec. 1124 of the Revised Code. Ex parte Grey, 12 Can. Cr. Cas. 481.

COSTS ON MOTION TO QUASH SUMMARY CONVICTION.

No costs will be ordered against the defendant applying to quash a summary conviction if the Court thereupon amends the conviction by reducing a sentence in excess of the statutory limit, although other objections to the conviction were overruled. The King v. McGuire, 13 Can. Cr. Cas. 312.

ILLEGAL COSTS IN DEFAULT OF FINE; AWARD OF DEFENDANT'S WITNESS FEES.

(1) Where unauthorized costs are included in a summary conviction, the Court on certiorari has power, under Code, sec. 1124, to amend the conviction by reducing the costs to the proper items. (2) The amount of the costs and charges of conveying the accused to gaol in default of payment of the fine (Cr. Code, sec. 739), need not be fixed in the summary conviction; and quære whether the warrant of commitment need state the amount since the new form No. 41 introduced with the Criminal Code of 1906. The King v. Code, 13 Can. Cr. Cas. 372.

[Referred to in R. v. Harris, 13 Can. Cr. Cas. 398; R. v. Turnbull, 15 Can. Cr. Cas. 5; distinguished in R. v. Mah Sam, 19 Can. Cr. Cas. 5.]

CIVIL ACTION AGAINST POLICE OFFICER; MALICE AND WANT OF PROBABLE CAUSE.

Malice and want of reasonable and probable cause having been charged against the officer but not proved, the officer had a statutory right to his costs of defence under R.S.O. (1897), ch. 88, sec. 22, and the same were not in the discretion of the trial Judge. Ing Kon v. Archibald, 14 Can. Cr. Cas. 201.

MISCONDUCT OF MAGISTRATES; CONVICTION SUSTAINED BUT MAGISTRATES AND INFORMANT DEPRIVED OF COSTS OF OPPOSING MOTION TO QUASH.

Where the magistrates hearing a prosecution under a liquor license law reserved judgment and sent for the license inspector who was the informant and held a private conference with him as to the witness' costs, their conduct although to be deprecated, is not sufficient to quash the conviction, but is ground for depriving not only the magistrates, but the informant of their costs of

opposing the certiorari proceedings. The King v. McArthur, 14 Can. Cr. Cas. 343.

[Referred to in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.

"SUBSEQUENT COSTS;" COSTS OF CONVEYING TO GAOL.

A statutory provision for release from imprisonment on paying the fine and costs up to conviction and "subsequent costs" includes under the latter head the costs of arrest and commitment and conveying to gaol. **The King v. Dubuc**, 15 Can. Cr. Cas. 353.

COSTS OF CONVEYING TO GAOL.

The costs of conveying to gaol in default of paying a fine need not be stated in a summary conviction under the Ontario Liquor License Act, but they may nevertheless be included and fixed in the warrant of commitment. The King v. Ackers (No. 1), 16 Can. Cr. Cas. 218.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 346.]

SUMMARY CONVICTION; FEES OF JUSTICES; PENALTY AND COSTS.

(1) The inclusion in a summary conviction of items of costs not allowed under Code, sec. 770, in default of payment of which the accused is committed to gaol, is a ground for discharge on habeas corpus. (2) The tariff of justice's fees under Code, sec. 770, does not permit a charge per folio for taking down the evidence, the original depositions not being a "copy" under item 13. (3) The charge of fees prohibited by Code, sec. 770, by a magistrate and their addition to the penalty and lawful charges awarded against the defendant, constitutes an excess of the magistrate's jurisdiction. The King v. Crowley, 16 Can. Cr. Cas. 373.

COSTS OF APPEAL TO BE FIXED BY COUNTY COURT JUDGE; UNAUTHORIZED AWARD OF COSTS TO BE TAXED BY CLERK.

Where upon an appeal from a summary conviction the County Court Judge purports to delegate the taxation of the costs of the appeal to the clerk of the Court, instead of himself fixing the costs of the appeal, a Superior Court on an application for prohibition from collecting the costs taxed by the clerk, may enlarge the motion to allow of an application to the County Court Judge to fix the costs and amend his judgment accordingly. The King v. Hamlink, 17 Can. Cr. Cas. 162.

EXCESSIVE FEES FOR CONVEYING TO GAOL.

The defendant detained under a warrant of commitment on nonpayment of fine and costs will not be discharged for the inclusion of so large a sum as $25 for costs of conveying to gaol, but will be left to his civil remedy if the fees are excessive. The King v. Berrigan, 17 Can. Cr. Cas. 329.

FEES FOR ADJOURNMENTS.

Fees for adjournments before justices are not to be allowed in summary conviction matters. Aikins v. Simpson, 18 Can. Cr. Cas. 99, affirmed in 19 Can. Cr. Cas. 325.

SUMMARY CONVICTION; PROHIBITION.

Where prohibition is granted because of an adjournment of the trial of a summary matter having been made for more than eight days contrary to sec. 722 of the Criminal Code, and it appears that an adjournment of the hearing was moved by defendant's counsel, costs of the prohibition motion will be refused the defendant petitioning for the prohibition. Donohue v. Recorder's Court of Quebec, 18 Can. Cr. Cas. 182.

COST OF CONVEYANCE TO GAOL.

It is not in the summary conviction, but in the warrant of commitment thereunder, that the law requires the amount of the expenses of conveying the convicted person to the common gaol to be mentioned and fixed. White v. Leek, 18 Can. Cr. Cas. 337.

CERTIORARI; JURISDICTION TO AWARD COSTS TO CROWN.

The practice of granting costs to the Crown of opposing an unsuccessful certiorari application in conformity with Crown Rule (Criminal) No. 1, has not been abrogated by the passing of the British Columbia Crown Costs Act, 1910, by the British Columbia Legislature by which the Crown is not to pay or receive costs except under the provisions of a statute expressly authorizing it. The King v. Jones, 18 Can. Cr. Cas. 414.

QUASHING SUMMARY CONVICTION; COSTS ON.

Costs will not be granted against the informant and the magistrate on quashing a summary conviction in certiorari proceedings, unless misconduct is proved against them. Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495.

ON AMENDMENT; CHANGING NAME OF DEFENDANT.

Upon permitting an amendment as to the name of one defendant from the "municipality of Saanich" to its true corporate name, "the corporation of the district of Saanich," costs will not be awarded the defendants where they were not misled by the error in the name of such defendant. Robinson v. District of Saanich and Aikman, 20 Can. Cr. Cas. 241, 7 D.L.R. 499.

APPEAL FROM SUMMARY CONVICTION; QUASHING FOR NONPROOF OF NOTICE; HEARING AND DETERMINING.

(1) Although Cr. Code, sec. 755, applies to authorize an order against the appellant for costs of an appeal not prosecuted or entered only in case a valid notice of appeal has been given from a summary conviction, the Court has power under Code, sec. 751,

to award costs where the appeal is brought on for hearing, but the defendant (respondent) succeeds in having the same quashed or dismissed upon objection taken that notice of appeal had not been served upon him and that there was no sufficient proof of compliance with an alternative method of service available to the appellant, viz., service upon the trial justice. (2) Where the appellant has filed his recognizance in the statutory form on an appeal from a summary conviction he thereby submits to an award of costs against him on the quashing of the appeal for failure to prove compliance with the statutory prerequisites, and this apart from the power given under Cr. Code, sec. 751. [Rex v. Edelston, 17 Can. Cr. Cas. 155, disapproved; Ex parte Sprague, 8 Can. Cr. Cas. 109, considered.] Pahkala v. Hannuksela, 20 Can. Cr. Cas. 247, 8 D.L.R. 34.

OF COMMITMENT; TEMPERANCE ACT.

In the absence of an affirmative shewing that the excess above the legal costs of commitment to gaol on two warrants, on both of which costs of commitment were endorsed, although there was but one conveyance to gaol, was not allowed by the magistrate for the expenses and disbursements of the trip, such costs will not be declared excessive. On conviction of a violation of the N.S. Temperance Act of 1910, costs may be imposed notwithstanding the Act is silent with regard thereto, since the provisions of the Summary Convictions part of Criminal Code, R.S.C. 1906, ch. 146, as to costs is, by reference, made a part of the former Act. Re Hoskins, 21 Can. Cr. Cas. 435, 13 D.L.R. 25.

CERTIORARI PROCEEDINGS.

No power is conferred under N.W.T. Crown rule 39, in force in Alberta under the Alberta Act, 4-5 Edw. VII. (Can.) ch. 3, sec. 16, upon the court to order the Crown directly to pay the costs of the successful applicant in certiorari proceedings about a criminal matter, although the application was opposed by counsel instructed by the Attorney-General. R. v. Knowles, 22 Can. Cr. Cas. 66, 13 D.L.R. 773. See also 21 Can. Cr. Cas. 321, 12 D.L.R. 639.

APPEAL; CERTIORARI; SUMMARY CONVICTION.

It is a ground for refusing costs to the successful defendant on his conviction being quashed on certiorari that he might instead of taking certiorari proceedings have appealed to a local court from the summary conviction and that the local court would have had even wider powers upon the appeal than were available to the superior court in the certiorari proceedings. R. v. Roach, 23 Can. Cr. Cas. 28, 19 D.L.R. 362.

SUMMARY CONVICTION; ENFORCEMENT OF FINE; COSTS OF COMMITMENT.

A summary conviction for illegally selling intoxicants to an Indian in contravention of the Indian Act (Can.) May, under Cr. Code, sec. 739, properly adjudge costs of commitment and conveying to gaol in default of payment of the fine. R. v. Verdi, 23 Can. Cr. Cas. 47.

CERTIORARI PROCEEDINGS; TOWN ORDINANCE; MOTION.

Where a conviction under a municipal ordinance has been removed by writ of certiorari and is quashed by the Court for want of jurisdiction in the convicting justice, and terms are imposed that no action is to be brought against the prosecutor, the Court has jurisdiction and discretion to give or withhold costs and may do so even though the motions for the writ and to quash are unopposed. R. v. Sullivan, 23 Can. Cr. Cas. 222, 19 D.L.R. 112.

SUMMARY CONVICTION; LIQUOR LAW; EXCESSIVE AMOUNT; STRIKING OUT.

A summary conviction under a liquor license law cannot be supported in so far as it awards as an arbitrary sum, fifty dollars to the complainant for costs where no witnesses were brought from a distance, but the court on a motion to quash may amend the conviction by striking out the award of such costs. R. v. Palmer, 24 Can. Cr. Cas. 20, 22 D.L.R. 300.

COST OF CONVEYANCE TO JAIL; EXCESS; HABEAS CORPUS.

When a warrant for commitment to jail in default of paying a fine has been issued with an overcharge in the costs of conveyance to the common jail, it will be quashed on habeas corpus and the prisoner discharged, as the warrant is indivisible. Ex parte Nisadaquis, 24 Can. Cr. Cas. 384.

PENALTY AND COSTS; ERROR; AMENDMENT.

A justice making a summary conviction and imposing a fine and costs to an amount then stated may, at least before making his minute of adjudication or the formal conviction, correct in the presence of defendant an error in the calculation of the costs although the sum first mentioned is increased. R. v. Dicery (Dickey) 25 Can. Cr. Cas. 55.

ON CERTIORARI; QUASHING CONVICTION.

It is a ground for granting costs to the successful applicant for a certiorari that a term is imposed that no action shall be brought for proceeding under the conviction which is set aside. R. v. Hubley, 25 Can. Cr. Cas. 102, 28 D.L.R. 376.

SUMMARY CONVICTION; APPEAL; REHEARING.

Costs ordered under Cr. Code, sec. 871, on a conviction for keeping a disorderly

house, made under the summary trials clauses (Code, secs. 773 (*f*), and 774), are to be awarded to the prosecutor and not to the clerk of the police court where he is not the prosecutor. Where the conviction appealed from under Code, sec. 754, awards imprisonment in default of paying a fine and costs, the defendant is subject to have the costs of the appeal included in a new order for conditional imprisonment, made by the district Court on the appeal on entering a substituted conviction against him. [R. v. Hawbolt, 4 Can. Cr. Cas. 229, followed.] R. v. Miller, 25 Can. Cr. Cas. 151.

[Followed in R. v. Willson, 29 Can. Cr. Cas. 42.]

COSTS; CRIMINAL LIBEL; TAXATION AGAINST PRIVATE PROSECUTOR.

The trial Judge may himself tax the costs payable to defendant under Cr. Code, sec. 1045, by the private prosecutor on dismissal of a criminal prosecution for defamatory libel. R. v. Fournier; Martin v. Fournier, 25 Can. Cr. Cas. 430, 28 D.L.R. 379.

CERTIORARI; SECURITY FOR COSTS.

Under Sask. Crown Practice Rules 2 and 5 leave to proceed without furnishing security may be given on the return of a certiorari motion. R. v. Adamson, 25 Can. Cr. Cas. 440.

QUASHING SUMMARY CONVICTION.

Under the British Columbia practice, the Court on quashing a summary conviction has jurisdiction to award costs against the prosecutor. [Re Narain Singh, 13 B.C.R. 477 applied; R. v. Bennett (1902), 5 Can. Cr. Cas. 456, 4 O.L.R. 205, not followed.] R. v. Ferguson, 26 Can. Cr. Cas. 220, 33 D.L.R. 42.

OF APPEAL FROM SUMMARY CONVICTION.

While Cr. Code, sec. 751, gives the Court hearing an appeal from a summary conviction a discretionary power to allow costs, this is to be interpreted as giving the power to allow only such costs as are strictly just and reasonable. Ex parte Cronkhite; R. v. Wilson, 26 Can. Cr. Cas. 224.

ON CONVICTION UPON SUMMARY TRIAL.

It is for the magistrate or other official holding a summary trial under Part XVI. of the Code to fix the costs imposed upon a conviction, the tariff of costs provided for summary conviction proceedings under Part XV. being excluded from operation under Part XVI. by virtue of Code, sec. 798; and the Court will not interfere on certiorari with the amount awarded if they are fixed within reason and are not shewn to include anything which ought not to have been included. R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556.

[See also Ex parte Cronkhite (1916), 26 Can. Cr. Cas. 224, 44 N.B.R. 70.]

CERTIORARI; SECURITY FOR COSTS; DEPOSIT OF FINE.

To obtain a certiorari in respect of a summary conviction under the Quebec License Law for illegal sale of liquors without a license, the defendant must within eight days after the conviction deposit with the Clerk of the Peace the amount of the fine and costs and a further sum of $50 as security for future costs (R.S.Q. 1909, art. 1166), and, in default, his petition for certiorari will be dismissed. Gelinas v. Jolin, 27 Can. Cr. Cas. 392, 34 D.L.R. 700.

CERTIORARI; MOTION TO QUASH SUMMARY CONVICTION.

The fact that a defect in the first conviction was cured by an amended conviction made out and returned to a certiorari before the launching of the motion to quash, is not a ground for depriving the prosecutor of his costs of such motion. [R. v. McAnn, 3 Can. Cr. Cas. 110, 4 B.C.R. 587, distinguished.] R. v. Shatford, 28 Can. Cr. Cas. 284, 38 D.L.R. 366.

ON QUASHING SUMMARY CONVICTION; MAGISTRATE AND PROSECUTOR.

Where the prosecution was wholly inexcusable, unfounded and unlawful, and the summary conviction purported to be made under an order-in-council, which any reasonable man must see did not cover the case of the accused, the court, on quashing the conviction, will not only refuse an order of protection, but order costs against both the magistrate and the prosecutor. R. v. Hackam, 30 Can. Cr. Cas. 414.

COUNTERFEITING.

Purchase of counterfeits not in esse. 1 Can. Cr. Cas. 168.

What constitutes a counterfeit token. 3 Can. Cr. Cas. 574.

COUNTERFEIT COIN OF A FOREIGN STATE.

Section 18 of Consol. Stat. C., ch. 90, makes it an offence to have possession of any coin counterfeited to resemble, or any dies for the purpose of imitating any foreign gold or silver coin described in the 16th section of the Act. The gold or silver coin there described are any coin of coarse gold or silver resembling any coin made by the authority of any foreign state and then actually current there, though not current by law in this province. An indictment under this section alleged that there was a certain silver coin known as half a dollar struck by and current in the United States, though not current by law in this

province, and that the defendants had in their possession counterfeited coin, each piece resembling a piece of the current coin of the United States of the value of fifty cents, and called therein half a dollar, and also dies used to counterfeit the current silver coin of the United States called half a dollar, etc.:—Held, on demurrer, that the indictment was bad, for not alleging that the counterfeit coin which the defendants had resembled some gold or silver coin of the United States; but that the allegation as to the dies was sufficient, without alleging that the silver coin was not current in this province. The judgment given was that the indictment be quashed, so that another indictment might be preferred, not that defendants be discharged. Regina v. Tierney et al. (1869), 29 U.C.Q.B. 181.

PURCHASE OF RESIGNED BANK NOTES BELIEVING TO BE COUNTERFEIT.

A person indicted for offering to purchase counterfeit tokens of value cannot be convicted on evidence shewing that the notes which he offered to purchase were not counterfeit, but genuine bank notes unsigned, though he believed them to be counterfeit and offered to purchase under such belief (Galt, C.J., dissenting). R. v. Attwood (1891), 20 O.R. 574.

COUNTERFEIT TOKENS; OFFENCE OF SELLING.

A paper which is a spurious imitation of a Government treasury note is a counterfeit, or what purports to be a counterfeit token of value under Cr. Code, sec. 479, although there is no original of its description. The Queen v. Corey, 1 Can. Cr. Cas. 161.

COUNTERFEIT COIN; GUILTY KNOWLEDGE.

On a charge of having counterfeit coins in possession, proof that the accused has also in his possession, "trade dollars," which, although genuine, were not worth their stamped value, and that he had attempted to put them off as worth their stamped value, is not admissible as shewing intent to put off the counterfeit coin. R. v. Benham, 4 Can. Cr. Cas. 63.

COUNTY JUDGE'S CRIMINAL COURT.

A Court of record, review by writ of error. 1 Can. Cr. Cas. 452, 455.

Constitution of, in Nova Scotia. 1 Can. Cr. Cas. 546.

Constitution of, in Ontario. 1 Can. Cr. Cas. 455.

Powers as of a Superior Court, no review on habeas corpus. 1 Can. Cr. Cas. 539.

CONSTITUTION AND POWER.

The Judge of the County Judge's Criminal Court is invested as to proceedings within the jurisdiction of that Court with the like powers as belong to a Superior Court Judge. R. v. Burke, 1 Can. Cr. Cas. 539.

HABEAS CORPUS.

Habeas corpus proceedings do not lie to inquire into the validity of a conviction made at a County Judge's Criminal Court as the latter is a Court of record. R. v. Murray, 1 Can. Cr. Cas. 452.

[Referred to in Ex parte Goldsberg, 10 Can. Cr. Cas. 392, 397, 27 Que. S.C. 434.]

COURT OF RECORD; IMPRISONMENT LONGER THAN IS AUTHORIZED; HABEAS CORPUS IMPROPER; PROCEDURE BY APPEAL.

Habeas corpus does not lie to correct a sentence of imprisonment passed by a County Judge's Criminal Court alleged to be for a time longer than is authorized. The proper mode of procedure is by case reserved, or by appeal under Part LII. of the Code. The King v. Kavanagh, 5 Can. Cr. Cas. 507.

[Referred to in Ex parte Goldsberg, 10 Can. Cr. Cas. 392, 397, 27 Que. S.C. 434.]

APPOINTMENT PRO TEM. OF JUDGE IN ADJOINING COUNTY BY PROVINCIAL AUTHORITY.

(1) A provincial legislature has power to enact that in case of a vacancy in the office of Judge for a district or county, the Lieutenant-Governor-in-council may designate the Judge of another district or county to act pro tem. during the vacancy. (2) On a vacancy ocurring by death and before the appointment of a new Judge, the Judge so designated by the provincial Lieutenant-Governor-in-council has authority to hold "speedy trials" under the Criminal Code. The King v. Brown, 13 Can. Cr. Cas. 133.

INTERMIXING OF TRIALS; COUNTY COURT JUDGE'S CERTIFICATE AS TO NONINFLUENCE FROM OTHER CASE.

Where a trial had been begun in a County Court Judge's Criminal Court and decision reserved upon a motion to dismiss at the close of the case of the prosecution whereupon the accused elected speedy trial before the same Court on another charge of a similar offence, and the second charge was proceeded with and a conviction made by the County Court Judge before concluding the first trial in which the accused was afterwards acquitted on the ground that it was not safe to convict on the testimony of the complainant therein, the Court of Appeal of British Columbia was equally divided on the question whether such intermixing of the trials invalidated the conviction so made, although the County Court Judge certified that, in convicting on the second charge, he was not influenced by the

evidence previously given on the first. The King v. Iman Din, 18 Can. Cr. Cas. 82.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 50; R. v. Whistnant, 20 Can. Cr. Cas. 322.]

JURISDICTION OF COUNTY JUDGE'S CRIMINAL COURT; DEFENDANT ON BAIL.

The jurisdiction of speedy trial under Part XVIII. at a County Judge's Criminal Court attaches where the defendant had been committed to gaol for trial but was subsequently released on bail to appear at the County Judge's Criminal Court, if he attends and elects speedy trial under Part XVIII., although he may not have been formally taken into custody by the sheriff before the trial commenced. [R. v. Lawrence, 1 Can. Cr. Cas. 295, 5 B.C.R. 160; R. v. Cameron, 1 Can. Cr. Cas. 169; R. v. Komiensky, 7 Can. Cr. Cas. 27; R. v. Day, 20 Can. Cr. Cas. 325, 16 B.C.R. 323, referred to.] R. v. Jun Goon, 25 Can. Cr. Cas. 415, 28 D.L.R. 374.

JURISDICTION OF COUNTY JUDGES CRIMINAL COURT; OFFENCE OUTSIDE COUNTY.

Cr. Code, sec. 577 enables the County Court Judge's Criminal Court before which the accused has elected to be tried without a jury to take the trial of an offence proved to have taken place in another part of the province outside of the county territorial jurisdiction if the accused was arrested on the charge within the county and there committed for trial. This jurisdiction is not displaced by an objection to the jurisdiction taken before plea by the accused. [R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D.L.R. 441, 9 Alta. L.R. 163; R. v. McKeown, 20 Can. Cr. Cas. 492, 8 D.L.R. 611, referred to.] R. v. Nevison, 31 Can. Cr. Cas. 116, 45 D.L.R. 382.

COURTS.

See Jurisdiction; Police Magistrate; County Judge's Criminal Court.

CRIMINAL INFORMATION.

CRIMINAL INFORMATION; LEAVE; PROOF OF CORRUPT MOTIVE; OPPRESSION BY PUBLIC OFFICER; DISQUALIFICATION; RELATIONSHIP TO INFORMANT.

Evidence of corrupt motive must be adduced in order to obtain leave to exhibit a criminal information against a justice of the peace for malfeasance of office. The King v. Currie, 11 Can. Cr. Cas. 343.

CRIMINAL INFORMATION AGAINST MAGISTRATE; DISCRETION; CORRUPT MOTIVE ESSENTIAL.

(1) It is within the discretion of the Manitoba Court of Appeal to order a criminal information to be exhibited against a magistrate for alleged unlawful conduct in the discharge of his duties. (2) Though it appears that a magistrate was guilty of illegal acts in the performance of his duties, a criminal information will not be ordered to be exhibited against him unless it is made to appear that he did such acts from corrupt motives. (3) A magistrate has no right to dispose of a case before the hour set for trial in the absence of the prosecutor, although the accused appears before him and pleads guilty. Re McMicken, 20 Can. Cr. Cas. 334, 8 D.L.R. 550.

[As to proceedings by criminal information generally, see Annotation to this case.]

CRIMINAL LIBEL.

See Libel.

CROSS-EXAMINATION.

See Svidence; Witness.

CROWN.

LIMITATION OF TIME; PROVINCIAL REVENUE TAX LAWS.

A prosecution under the revenue tax laws of a province to enforce payment of the tax is a proceeding for the recovery of a Crown debt, and is not governed by a general statute of limitation, not expressly applying to the Crown, requiring complaints in matters of summary conviction to be made within three months from the time when the matter of the complaint arose. R. v. Lee How, 4 Can. Cr. Cas. 551.

GOVERNMENT RAILWAY; CROWN NOT BOUND BY RESTRICTIONS OF THAT STATUTE: STATION AGENT ACTING AS EMPLOYEE OF CROWN EXEMPT FROM STATUTORY PENALTY.

(1) The restrictions of the Canada Temperance Act as to shipment of liquor to and keeping same for delivery within a county in which that Act has been proclaimed, do not apply to the Crown and therefore not to the Intercolonial Railway of Canada belonging to the Dominion and operated as a public work. (2) A station agent of the Intercolonial Railway who, in that capacity, warehouses and keeps for delivery in a county where the Canada Temperance Act is in force, intoxicating liquors shipped into such county, is not liable for the offence declared by sec. 117 of that Act (amendment of 7-8 Edw. VII. ch. 71). Ex parte Walker, 16 Can. Cr. Cas. 11.

CROWN COUNSEL.

See also Attorney-General; Trial.

Right of reply of Crown counsel; Note. 6 Can. Cr. Cas. 350.

RIGHT OF REPLY; COUNSEL REPRESENTING THE ATTORNEY-GENERAL.

(1) Where no evidence is offered for the defence, the defendant's counsel has the right to the last address to the jury notwithstanding that the prosecution is conducted by counsel acting for the Attorney-General. (2) The "right of reply" permitted by Code, sec. 661, to the Attorney-General, or to counsel acting on his behalf, is the right to again address the jury at the close of the evidence, and before the address of defendant's counsel, when the defence offers no evidence. The Queen v. LeBlanc, 6 Can. Cr. Cas. 348.

ELECTION OF SPEEDY TRIAL; NO RESIDENT COUNTY JUDGE; POWERS OF PROSECUTING OFFICER.

(1) Where there is no Judge of the County Court residing in a county the prosecuting officer or counsel for the county appointed under the provisions of R.S.N.S., 1900, ch. 165, sec. 1, is empowered to take the election of a prisoner to be tried before the Judge of the County Court without a jury in Nova Scotia. (2) The power given to such officers to conduct "all criminal business" on behalf of the Crown includes all process necessary to bring the prisoner to trial, and the prisoner's election for or against a speedy trial is a part of such process. The King v. Jodrey, 9 Can. Cr. Cas. 477.

CRUELTY TO ANIMALS.

See also Animals.

WANTONLY, CRUELLY OR UNNECESSARILY BEATING OR ABUSING; DESCRIBING THE OFFENCE; CR. CODE, SEC. 512.

An information and summons thereon both describing the offence as "unlawfully abusing a mare contrary to the statutes of Canada, sec. 512," etc., sufficiently describe an offence under sec. 512 of the Criminal Code (cruelty to animals), without specific mention of any of the words "wantonly," "cruelly" or "unnecessarily," which are used in that section. The King v. Cornell, 8 Can. Cr. Cas. 416.

CUSTOMS ACT.

See also Smuggling.

Blank invoice with certificate of correctness. 2 Can. Cr. Cas. 593.

GOODS IMPORTED WITHOUT PAYMENT OF LAWFUL DUTIES.

Sec. 197 of the Customs Act of Canada as amended in 1888 is to be construed as making the punishment of fine or imprisonment (therein provided to be "in addition to any other penalty") applicable as well where the goods unlawfully imported into Canada are found and are thereupon liable to be forfeited and seized, as where they are not found, in which latter event the offender forfeits the value thereof. O'Grady v. Wiseman, 3 Can. Cr. Cas. 332.

DEBTOR.

Becoming insolvent and failing to keep books of account.—Cr. Code, 368 (amendment of 1904). 8 Can. Cr. Cas. 509.

DE FACTO OFFICER.

Jurisdiction; Failure to take oath of allegiance and oath of office; Objection by accused. 1 Can. Cr. Cas. 528.

FAILURE TO QUALIFY.

The failure of a judicial officer to take the oath of allegiance and the oath of office where he has acted as the holder of the office and has been acknowledged and accepted as the duly qualified incumbent thereof by the public does not invalidate his judgment in criminal cases where his qualification has not been contested at the time of the trial, and his judgments are valid and binding as having been rendered by a Judge de facto. Ex parte Curry, 1 Can. Cr. Cas. 532.

[Referred to in Ex parte Gaynor v. Greene (No. 4), 9 Can. Cr. Cas. 252; discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 501.]

VALIDITY OF OFFICIAL ACTS.

The acts of a de facto officer, assuming to exercise the functions of an office to which he has no legal title, are, as regards all persons but the holder of the legal title, legal and binding. O'Neil v. Attorney-General, 1 Can. Cr. Cas. 303.

[Note to case referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 252, discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 502.]

DEFAMATORY LIBEL.

See Libel.

DEFECTS.

In certiorari proceedings; when a bar to a renewed application. 1 Can. Cr. Cas. 156.

SUMMARY CONVICTION; DEFECT OF FORM; MOTION TO QUASH.

(1) Where a summary conviction is in the regular course returned to a superior Court of criminal jurisdiction without a writ of certiorari, sec. 896 of the Code will not operate to prevent the conviction being quashed for a defect of form, where there is no evidence to shew that the defendant has not appealed against the con-

viction or that, if he did appeal, the conviction was affirmed upon the appeal. (2) Where a statute imposes a definite penalty for an offence, a summary conviction awarding a lesser fine, and, in default of payment, a lesser term of imprisonment than that specified, is bad and must be quashed in a case to which Code, secs. 889 and 890 do not apply. The King v. Hostyn, 9 Can. Cr. Cas. 138.

HABEAS CORPUS; WARRANT OF COMMITMENT NOT ALLEGING A CONVICTION; RECORD OF CONVICTION NOT ADMISSIBLE TO SUSTAIN.

(1) A prisoner detained under a warrant which is in form one of committal for trial but which charges an offence punishable only on summary conviction, will be discharged on habeas corpus. (2)) Although there may in fact have been a summary hearing and summary conviction thereon, if the warrant of commitment returned as the cause of detention is bad on its face in not alleging that the defendant has been convicted, a formal conviction cannot be received to remedy the defect as Code, sec. 886 applies only to cases in which the warrant alleges a conviction. The Queen v. Lalonde, 9 Can. Cr. Cas. 501.

DEFENCE.

Summary jurisdiction; Note on right to make "full answer and defence." 2 Can. Cr. Cas. 414.

"FULL ANSWER AND DEFENCE."

The accused is not denied the right to make "full answer and defence" to the charge (Cr. Code, sec. 850), by reason of the magistrate having stated, after hearing the evidence for the prosecution, that a denial on oath by the accused would not alter his opinion as to her guilt. R. v. McGregor, 2 Can. Cr. Cas. 410.

REFUSAL OF MAGISTRATE TO GIVE EVIDENCE FOR THE DEFENCE.

Where the presiding magistrate is called as a witness for the defence, but refuses to be sworn, a summary conviction made without his evidence should not be quashed unless it is shewn that the request to have the magistrate called as a witness was made in good faith by the defence, that the magistrate could give material evidence, and that the accused was therefore prejudiced. Ex parte Flanagan, 2 Can. Cr. Cas. 513.

THEFT; WHEN JUS TERTII DEFENCE.

For the purposes of theft, the person entitled to the possession of the goods is the owner as against the taker, and the latter cannot set up jus tertii against such owner unless the taking was effected either with the authority of the third person having the superior title or under the belief on the part of the taker that he had the authority of such third person. The King v. Bebonging, 13 Can. Cr. Cas. 405.

INSANITY; UNCONTROLLABLE IMPULSE; KNOWLEDGE OF NATURE AND QUALITY OF THE CRIMINAL ACT.

The fact that the accused was so mentally defective that he was seized with an uncontrollable impulse to do the criminal act, although cognizant of its nature and quality and that the act was wrong, does not constitute a defence in law. The King v. Creighton, 14 Can. Cr. Cas. 349.

SELLING LIQUOR TO RAILWAY EMPLOYEE ON DUTY; WANT OF KNOWLEDGE NO DEFENCE.

Semble, the fact of the railway employee not being in uniform, and not being known to the bartender to be a railway employee, or to be on duty, does not constitute a defence to a prosecution for selling intoxicating liquor to a railway employee on duty, under either the Dominion or Ontario Railway Acts. The King v. Treanor, 14 Can. Cr. Cas. 443.

LEGISLATIVE AUTHORITY; MENS REA; NEGATIVING CRIMINAL INTENT.

Semble, the existence of a statutory permission, even if ultra vires, to do the act complained of, would operate as a defence to a criminal prosecution as it negatives the criminal intent required to constitute a criminal offence. Kennedy v. Couillard, 17 Can. Cr. Cas. 239.

FULL ANSWER AND DEFENCE.

The words "full answer and defence" used in Code, secs. 715, 786 and 942, mean that the accused can invoke every means both in law and in fact to meet the charge; the word "answer" being specially applicable to a defence on the facts and the word "defence" applying both to matters of testimony and matters of law. R. v. Romer et al., 23 Can. Cr. Cas. 235.

OPPORTUNITY FOR DEFENCE.

Where the accused has appeared in person to defend the charge an opportunity must be given him to put in his own evidence and that of other witnesses, and he should be distinctly asked by the magistrate whether he desires to give evidence. R. v. Curry, 24 Can. Cr. Cas. 340.

OPPORTUNITY FOR DEFENCE; CR. CODE, SEC. 715.

An accused person is not deprived of the opportunity of defence by the magistrate inadvertently assuming that the case was closed when the evidence for the prosecution was concluded and thereupon announcing the sentence, if before recording the conviction an opportunity to proceed with the defence was offered to counsel for the accused and he declined. R. v. Cyr, 20 Can.

Cr. Cas. 77, 38 D.L.R. 601, affirming 12 A.L.R. 320.

DEFILEMENT.

See also Carnal Knowledge.

Householders inducing or permitting on premises. 3 Can. Cr. Cas. 187.

Of idiots. 3 Can. Cr. Cas. 189.

DEFILING CHILD UNDER FOURTEEN; OMISSION OF WORDS "NOT BEING HIS WIFE;" OBJECTION TOO LATE AFTER PLEA AND CONVICTION.

The words "not being his wife" in Code, sec. 269, providing for the offence of defiling children under fourteen, is an exception, the failure to negative which in the indictment will not invalidate a conviction thereon where no objection was taken before pleading. The King v. Wright, 11 Can. Cr. Cas. 221.

DELIVERANCE.

Warrant of, on bail being given for a prisoner already committed. 3 Can. Cr. Cas. 603.

DENTISTRY.

CONTROL OF PRACTICE OF DENTAL SURGERY; BY-LAW TO PROHIBIT LICENSEE FROM WORKING FOR PECUNIARY BENEFIT OF UNLICENSED PERSON.

(1) A statutory power to pass by-laws carries with it the implied power to impose reasonable penalties for their infraction. (2) Statutory power given to a licensing authority, such as the Board of a Dental College, to pass by-laws for the Government, discipline and regulation of the dental profession, will include power to prohibit a licensed dentist from working on salary for an unlicensed dentist or in such a way as to permit an unqualified person to make a profit from his practice. (3) Although the statute does not expressly confer power to impose penalties or other punishment for infraction of a by-law, the licensing board may legally provide for the suspension or cancellation of the license of a dentist who carries on business for the benefit of an unlicensed person or for a corporation. Gordon v. Dental College, 18 Can. Cr. Cas. 224.

UNLAWFUL PRACTICE; LICENSE.

Taking impressions of the gums and filling teeth as a business constitutes a practice of dentistry which, in Alberta, can be done for hire and gain only by a licentiate under the Dental Association Act, Alta. 1906, ch. 22. While a single act does not constitute a "practice" of a profession or trade, the practice of the profession of dentistry is shewn by services for only one customer on different dates, ex. gr. the taking impressions of the gums and fitting the plates for artificial teeth. R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536.

[As to proving more than a single act in infringement of licensing statutes against "practising" a profession, see also R. v. Lee, 4 Can. Cr. Cas. 416; R. v. Whelan, 4 Can. Cr. Cas. 277; R. v. Raffenberg, 15 Can. Cr. Cas. 297; R. v. Armstrong, 18 Can. Cr. Cas. 72. As to separate liquor sales at the one time and place, see Mahoney v. Leschinski, 19 Can. Cr. Cas. 169, 1 D.L.R. 535.]

PRACTISING WITHOUT LICENSE.

That an unqualified person is doing dental practice and is seemingly in full charge of the business carried on under the name of another person resident in a distant city for his own benefit may constitute a prima facie case of practising in contravention of the Dental Profession Act, R.S.S. ch. 108. R. v. Schilling, 23 Can. Cr. Cas. 380, 21 D.L.R. 60.

UNLAWFUL PRACTICE; UNREGISTERED EMPLOYEE.

A salaried employee of a licensed dentist is liable, if not himself registered as a student of dentistry, to summary conviction under the Dental Profession Act, R.S.S., ch. 108 sec. 50, for illegally practising dentistry in doing general dentistry work for his employer's customers although his personal gain is limited to his salary. R. v. Manning, 25 Can. Cr. Cas. 227.

UNLAWFUL PRACTICE; MECHANICAL DENTISTRY.

Taking an impression of the gums and fitting a dental plate constitutes the practise of dentistry, and if done for gain the person doing such work must be registered under the Dental Association Act, R.S.M., 1913, ch. 53, and in default may be summarily convicted under that Act. [Henram v. Duckworth, 20 T.L.R. 436, referred to; and see R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536, 7 A.L.R. 92.] R. v. Austin, 25 Can. Cr. Cas. 446.

DEPOSITIONS.

Manner of taking before a magistrate. 1 Can. Cr. Cas. 160.

Right to a copy of. 1 Can. Cr. Cas. 160.

Failure to have witness sign his depositions; Matter of procedure; Jurisdiction of magistrate. 3 Can. Cr. Cas. 310.

Use of depositions taken before magistrate, in the subsequent trial. 3 Can. Cr. Cas. 583.

Magistrate to transmit depositions. 3 Can. Cr. Cas. 593.

Code amendment of 1901, sec. 801. 4 Can. Cr. Cas. 587.

Depositions taken at a coroner's inquest;

Using on homicide trial. 5 Can. Cr. Cas. 550.

Full opportunity to cross-examine; Cr. Code, sec. 678. 6 Can. Cr. Cas. 129.

Duty of magistrate's clerk in taking down the depositions. 7 Can. Cr. Cas. 342.

ADMISSIBILITY IN EVIDENCE; RESTRICTIONS.

Held, that the depositions and statements admissible in evidence are not restricted to those made in respect of the charge upon which the original warrant issued. Re Weir, 14 O.R 389.

RETURN TO CERTIORARI; CONCLUSIVENESS OF.

In this case the depositions returned to the Court by the convicting magistrate under a certiorari, shewed that there was no evidence of a license produced before him, while the affidavits filed on the application to quash stated that the party had a license in fact and produced evidence of it before the magistrate, who, moreover, himself swore that he believed a license was produced, but it was either not proved or given in evidence:—Held, that the return to the certiorari was conclusive, and that the Court could not go behind it. That although no new by-law had been enacted by the municipality under sec. 6, sub-sec. 6, of the above Act, the applicant was bound to have paid for the license, which he had in fact obtained, the amount due under the by-law then in force, and that the payment, after complaint, but before judgment, of the sum fixed by the latter Act did not enure to make the license valid from its date. (Per Gwynne, J.) Strachan v. Reg. (1870), 20 U.C.C.P. 182.

ABSENCE OF DEPONENT; ADMISSIBILITY OF.

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 his (R.'s) house, where she (S.) had for a time lodged, that he 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 inquiries in some places, and correspondence with the police of other cities. S. had for some time lived with the prisoner as his wife:—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. Reg. v. Nelson (1882), 1 O.R. 500.

ADMISSIBILITY OF DEPOSITIONS MADE BEFORE CORONE'R COURT AGAINST THE DEPONENT.

A Coroner's Court is a criminal Court, and the depositions of a witness before such Court who is subsequently charged with murder cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding privilege was not claimed by him at the inquest. Regina v. Hendershott and Welter (1895), 26 O.R. 678.

PROVING DEPOSITION AT CORONER'S INQUEST; PURPOSE OF DEPOSITIONS.

At a trial for murder the prisoner's counsel proposed to prove by witness his own deposition at the inquest, and to shew by other witnesses that it contained a true statement of his evidence, although the witness alleged it to be incorrect. The learned Judge ruled that the Coroner must be called to prove the depositions. He was afterwards called to prove them, and the evidence before offered was not again tendered. Semble, that the ruling as to proof of the depositions was right, they having been taken before a coroner; but, held, that the point became immaterial when they were afterwards proved in accordance with it; and that it must be assumed that it was not intended to adduce the other evidence. The object of taking depositions is not to afford information to the prisoner, but to secure the testimony. Regina v. Hamilton, 16 U.C.C.P. 340.

IN CIVIL PROCEEDING; ADMISSIBILITY.

The Canada Evidence Act, sec. 5, does not apply to exclude evidence given by the accused in a civil proceeding under the jurisdiction of a Provincial Legislature from being used in evidence against him in a subsequent criminal proceeding, and the same rule will apply although the examination in the civil proceeding was compulsory. R. v. Douglas, 1 Can. Cr. Cas. 221.

SUMMARY OF; ADMISSIBILITY.

Notes of evidence taken by the coroner at an inquest which do not contain the precise expressions of the witness, but a summary only of the evidence, are not admissible in contradiction of the witness's testimony in a subsequent proceeding unless signed by the witness, or unless read over to and acquiesced in by him; but the witness may in such case be cross-examined as to any material statements made by him at the inquest, and witnesses may be called to shew that he then made a different and contradictory statement. R. v. Ciarlo, 1 Can. Cr. Cas. 157.

STENOGRAPHER RECORDING, IN MAGISTRATE'S ABSENCE.

Where on a preliminary inquiry before a magistrate the witnesses were sworn by him and were then taken into another room and their evidence in chief taken by a stenographer and not in the presence of the magistrate, such depositions are illegally taken, although the prisoner's counsel had the opportunity of afterwards cross-examin-

ing the witnesses before the magistrate. The objection to the irregularity is not waived by the cross-examination of the witnesses on the prisoner's behalf on their return to the magistrate's presence, if the objection is taken by the prisoner's counsel before he proceeds to cross-examine. Both the commitment for trial and the indictment founded on such illegal depositions are invalid and should be set aside. R. v. Traynor, 4 Can. Cr. Cas. 410.

[Distinguished in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 234; questioned in R. v. Jodney, 9 Can. Cr. Cas. 477, 481, 38 N.S.R. 142, 25 C.L.J. 109; referred to in R. v. Janneau, 2 Can. Cr. Cas. 360, R. v. Poirier, 31 Que. S.C. 69, R. v. Weir, 8 Que. P.R. 400; relied on in R. v. Hannay, 11 Can. Cr. Cas. 24; referred to in R. v. L'Heureux, 14 Can. Cr. Cas. 103; distinguished in R. v. Prasiloski (No. 2), 16 Can. Cr. Cas. 148; specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.]

MANNER OF TAKING.

The expressions "entitled to cross-examine" and "full opportunity to cross-examine" as used in Criminal Code, secs. 590 and 687, imply for the accused the right to hear the evidence delivered in his presence, to catch the words as they fall from the lips of the witness, and to mark his expression and demeanor while testifying. When depositions in a preliminary enquiry, to which the accused was not a party, and, consequently, taken in his absence, are read to the same witness in a case against the accused, and the witness, after being sworn in the presence of the accused, either affirms that his former deposition contains the truth, or makes corrections, as the case may be, and then affirms its truth as corrected, the prosecutor, being then given permission to ask further questions, and the accused to cross-examine, such proceeding does not afford the accused the full and complete opportunity to cross-examine contemplated by law. Where the depositions before the magistrate have not been taken according to law, and a material provision of the law has not been complied with, the indictment may be quashed under Criminal Code, sec. 641, upon motion at any time before the accused is given in charge to the jury. R. v. Lepine, 4 Can. Cr. Cas. 145.

[Distinguished in R. v. Faulkner, 19 Can. Cr. Cas. 49; R. v. Prasiloski (No. 2), 16 Can. Cr. Cas. 148, 15 Can. Cr. Cas. 465; R. v. Eliasoph, 16 Can. Cr. Cas. 139, 19 Que. K.B. 234; considered in R. v. Duff, 2 S.L.R. 397; relied on in R. v. Hannay, 11 Can. Cr. Cas. 24; specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.]

DEPOSITION TAKEN AT PRELIMINARY ENQUIRY; READING OF, IN EVIDENCE AT TRIAL; EVIDENCE OF ABSENCE OF DEPONENT FROM CANADA.

Evidence that a witness at the preliminary enquiry was a corporal in the N.W. Mounted Police, that he had been sworn in as a member of "Strathcona's Horse," for active service in the South African war, that he had left the post at which he had been stationed to join the latter force, and that, in the opinion of the deponent, of he had left the latter force he would have returned to such post, as in fact it would have been his duty to do, which fact would thereupon have become known to the deponent, was sufficient evidence of the absence of such witness from Canada to justify the admission as evidence at the trial of such witness taken at the preliminary enquiry. In reviewing the evidence of absence from Canada given for the purpose of admitting a deposition in evidence, the Appellate Court should only consider whether such evidence was such as should reasonably satisfy a trial Judge in finding the fact of absence. The Queen v. Forsythe, 5 Can. Cr. Cas. 475.

DEPOSITIONS BEFORE CORONER; IRREGULAR RETURN OF; USE OF IN CROSS-EXAMINATION.

Depositions signed by a witness at a coroner's inquest may be used on the cross-examination of that witness at the trial for the purpose of contradicting his testimony, or of testing his memory, although they were irregularly returned by the coroner to the clerk of the Crown instead of to the magistrate. (Code, sec. 568.) The King v. Laurin (No. 2), 5 Can. Cr. Cas. 545.

CONTRADICTING WITNESS WITH HIS FORMER DEPOSITION; STATEMENT NOT PURPORTING TO BE COMPLETE.

The signed deposition of a witness at a coroner's inquest may be used on the cross-examination of the witness at a homicide trial for the purpose of contradicting the witness' testimony, although it is not certified to have been read over to the deponent, and although it does not appear thereby that the deponent has no further testimony to add. The King v. Edouard C. Laurin (No. 3), 5 Can. Cr. Cas. 548.

FULL OPPORTUNITY TO CROSS-EXAMINE; CROSS-EXAMINATION NOT FINISHED THROUGH ILLNESS OF WITNESS.

(1) Where the cross-examination of a witness for the prosecution upon a preliminary enquiry is interrupted by the illness of the witness, and the magistrate, in the absence of the accused and of his counsel, afterwards obtains the witness' signature to the depositions, but neither the witness nor the prisoner's counsel reattends the enquiry to complete the cross-examination,

there has been no full opportunity to cross-examine so as to admit such depositions in evidence at the trial upon proof of the continued illness of the witness. (2) There was no waiver of the right to continue the cross-examination by the failure of prisoner's counsel to attend on the adjourned inquiry when the witness was not present or by the prisoner himself stating thereat that he had nothing to say. (3) A magistrate should not obtain a witness' signature to a deposition in the absence of the accused. The King v. Trevane, 6 Can. Cr. Cas. 124.

[Referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 133.]

MAGISTRATE'S SIGNATURE; IRREGULARITY; CR. CODE, SEC. 590.

Depositions to which the magistrate had affixed his signature, although such signature was not placed at the foot or end thereof (Code, sec. 590) are sufficiently signed for the purposes of a "charge" brought thereunder under the Speedy Trial clauses. The King v. Jodrey, 9 Can. Cr. Cas. 477.

[Specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.]

CERTIFIED COPY OF EVIDENCE AT CRIMINAL TRIAL; COURT STENOGRAPHER A PUBLIC OFFICER; DUTY TO TRANSCRIBE ADMISSIONS AND RULINGS.

A Court stenographer is a public official against whom a mandamus may issue for nonperformance of his official duty to furnish an applicant with a copy of evidence taken at a criminal trial. Where upon an application for a mandamus it appears that the Court stenographer has furnished a complete copy of his record of the evidence, the application must be dismissed although the transcript furnished be shewn to be inaccurate by reason of the omission of rulings made by the trial Judge or of counsel's admissions taken in lieu of evidence. The King v. Campbell, 10 Can. Cr. Cas. 326.

DEPOSITIONS AS EVIDENCE; PRELIMINARY ENQUIRY; DEATH OF DEPONENT BEFORE TRIAL OF CASE; ACCUSED NOT REPRESENTED BY COUNSEL ON PRELIMINARY ENQUIRY.

(1) A deposition upon a preliminary enquiry cannot be read as evidence in the event of the deponent's death unless the accused was represented by counsel or solicitor when the deposition was taken. (2) The Criminal Code supercedes the common-law procedure as to the conditions upon which a deposition upon a preliminary examination can be used upon the trial in case of the deponent's death. The King v. Snelgrove, 12 Can. Cr. Cas. 189.

TAKING DEPOSITIONS; SHORTHAND NOTES VERIFIED BY STENOGRAPHER; OMISSION TO FIRST SWEAR STENOGRAPHER; DEPOSITIONS IRREGULAR.

(1) Where the evidence in summary proceeding is certified as having been taken in shorthand by a stenographer, and is accompanied by an affidavit of the stenographer that it is a true report of the evidence, a summary conviction based thereon may be attacked by proof that the stenographer had not been duly sworn under Code, sec. 683 (1). (2) The omission to swear the stenographer before taking the evidence is a matter of substance, and not a mere defect of form. The King v. L'Heureux, 14 Can. Cr. Cas. 100.

[Referred to in R. v. Harris, 18 Can. Cr. Cas. 395; R. v. Bond, 19 Can. Cr. Cas. 97; followed in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; R. v. Johnson, 20 Can. Cr. Cas. 9, 5 D.L.R. 523.]

UNSWORN STENOGRAPHER.

The petitioner's affidavit in support of an application for habeas corpus that the stenographer who transcribed the evidence at the preliminary enquiry had not been sworn will not be credited as against the certificate of oath signed by the magistrate and filed in the record. Dick v. The King, 19 Can. Cr. Cas. 44.

STENOGRAPHER TAKING DEPOSITIONS.

By analogy to the powers of superior Courts on the trials of indictments, the depositions taken on the trial before a magistrate of the indictable offences specified in Code, sec. 773, may be taken in shorthand by a stenographer under the direction of the magistrate. The King v. Bond, 19 Can. Cr. Cas. 96.

[Referred to in R. v. Montminy, 20 Can. Cr. Cas. 67, 3 D.L.R. 483.]

USE OF ON CRIMINAL APPEAL.

A deposition taken before a magistrate on a summary trial for keeping a bawdy-house is admissible on the hearing of an appeal from the conviction taken under Code, sec. 797, only in case the personal presence of the witness cannot be obtained by any reasonable efforts and in case the deposition is certified by the magistrate; the magistrate cannot be called as a witness to give viva voce proof of the regularity of the deposition in lieu of the certificate. The King v. Hornstein, 19 Can. Cr. Cas. 127.

DEPOSITIONS IN SHORTHAND BY UNSWORN STENOGRAPHER.

(1) The omission to swear the stenographer appointed to take down the evidence at the hearing of a prosecution under the Summary Conviction clauses of the Criminal Code (1906), as required by Code sec. 683, is a matter of jurisdiction and not a mere defect of form, and the depos-

tions taken by the unsworn stenographer are invalid. [The King v. L'Heureux, 14 Can. Cr. Cas. 100, followed.] (2) It is a good ground for quashing a summary conviction that the stenographer who took down the depositions was not sworn as required by Code, sec. 683. The King v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548.

RIGHT TO APPOINTMENT OF A COMMISSIONER TO TAKE FOREIGN COMMISSION.

(1) A person is entitled as a matter of absolute right to the appointment of a commissioner to take depositions of witnesses in another country for use in Canada in a summary proceeding under Part XV., Crim. Code, 1906. (2) Security cannot be required of an applicant for a commission to take depositions of witnesses in another country for use in Canada in a summary proceeding, in the absence of a formal text of law authorizing it, under Part XV., Crim. Code, 1906. (3) An open commission under art. 385a, Civil Procedure, Quebec, will issue to take the depositions of witnesses in a foreign country for use in a summary proceeding under Part XV., Crim. Code, 1906, where the parties to the application agreed there should be but one commissioner appointed, but did not agree in the first instance that they would not furnish interrogatories and cross-interrogatories, and it was alleged that the petitioner had caused the departure of the witnesses from Canada in order to prevent their testifying. Barsky v. Serling et al., 19 Can. Cr. Cas. 468, 5 D.L.R. 638.

NECESSITY OF READING OVER TO, AND HAVING WITNESSES SIGN DEPOSITION.

The requirement of sub-sec. 4 of sec. 682 of the Criminal Code, R.S.C. 1906, ch. 146, that the depositions of a witness shall be read over to him by the magistrate, and signed by him, is directory only, and the omission to comply with this requirement does not involve loss of jurisdiction. The King v. Woodroof, 20 Can. Cr. Cas. 17, 6 D.L.R. 300.

PRELIMINARY ENQUIRY; LEAVE TO USE AS EVIDENCE.

The depositions taken before justices on a preliminary inquiry are not part of the trial proceedings, though in certain circumstances the Court may give leave to have them read as evidence at the trial. The King v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.

RESERVING RULING AS TO; DEFENCE.

On a criminal trial it is not reversible error for the trial judge to reserve until after the hearing of the witnesses in the case an objection to the placing in evidence of the prior deposition of an absent witness taken on the preliminary enquiry and compelling the accused to proceed with his defence without a ruling on the objection, where the accused had available all that he was required to answer in his defence including the questioned deposition which was finally admitted. R. v. Frank, 22 Can. Cr. Cas. 100, 14 D.L.R. 382.

DEPOSITIONS OF ABSENT WITNESS.

The deposition of a witness taken on the preliminary enquiry upon the same charge may be read against the accused where the witness, a foreigner, had been summoned but had left for parts unknown. R. v. Frank, 22 Can. Cr. Cas. 100, 14 D.L.R. 382.

[See also R. v. Pescaro, 1 B.C.R., pt. 2, 144; R. v. McCullough, 8 Can. Cr. Cas. 278; R. v. Forsyth, 5 Can. Cr. Cas. 475; R. v. Deloe, 11 Can. Cr. Cas. 224.

FOREIGN COMMISSION.

The same particularity is not required as to the proof to be adduced on an application for a foreign commission in a criminal case under Cr. Code (1906), sec. 716, which authorizes the making of the order in aid of a preliminary enquiry to take the deposition of a witness out of Canada who is "stated to be" able to give material information relating to the offence as would be required upon an application under Code, sec. 997, to take evidence for use at the trial, in which case it must be "made to appear" that the evidence of the absent witness is material. R. v. Murray, 22 Can Cr. Cas. 119, 2 D.L.R. 113.

CAPTION TO DEPOSITIONS; PRELIMINARY INQUIRY.

It is not an objection that depositions taken in a preliminary inquiry have no formal caption to indicate the case in which they were taken if such depositions returned into the superior Court are physically attached to a document called the "statement of accused," which sets forth the charge and date of hearing and that the charge was read to the accused and that on being given the statutory warning he made no statement, and it further appears from the depositions themselves that they refer to the charge so recited in the "statement of accused." R. v. McClain, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

DE BENE ESSE; OBJECTIONS.

It is the duty of the trial Judge at a criminal trial to allow only admissible evidence to go to the jury, and he may exclude testimony taken de bene esse before a commissioner for use at the trial subject to all proper exceptions, if the testimony be not properly admissible although no exception was taken before the commissioner and the objection was first raised on the tender of the depositions at the trial. R. v. Jennie Hawkes, 25 Can. Cr. Cas. 29, 25 D.L.R. 631.

AUTHENTICATION; SUMMARY CONVICTION; SEAL.

The provision of Cr. Code, sec. 682 (4), that the justice shall sign the depositions is directory only and not mandatory. [Ex parte Doherty, 3 Can. Cr. Cas. 310, 32 N. B.R. 479, followed.] Where depositions in a summary conviction matter returned on certiorari contained no caption (Code form 16) nor were they annexed to the information or otherwise identified as pertaining thereto, the Court may decline to peruse them for the purpose of supporting under Cr. Code, sec. 1124, a conviction irregular on its face because not under seal. [Bond v. Conmee, 15 Ont. R. 716 and 16 A.R. 398, approved.] R. v. Dicery (Dickey), 25 Can. Cr. Cas. 55.

DEPOSITIONS; FOREIGN COMMISSION IN CRIMINAL CASE.

R. v. Rispa, 26 Can. Cr. Cas. 94.

FOREIGN COMMISSION.

A commission to take evidence ex juris in a criminal case may be ordered in respect of an expert witness if the Court is satisfied that his evidence is material and that it is improbable that he would voluntarily attend within the jurisdiction. R. v. Roblin, 26 Can. Cr. Cas. 222, 31 D.L.R. 724.

DEPOSITIONS; UNSWORN STENOGRAPHER; LIQUOR ACT.

The fact that the stenographer who took down the evidence at the trial before a magistrate under the Ontario Liquor License Act was not sworn in conformity with R.S.O. 1914, ch. 215, sec. 87 (2) will not affect the validity of the conviction, if the magistrate himself made full notes of the depositions and there was no evidence to prove that either these or the stenographer's extended notes were incorrect. R. v. Bosak, 26 Can. Cr. Cas. 374.

AUTHENTICATION; PRELIMINARY ENQUIRY.

It is not necessary that the deposition of each witness on a preliminary enquiry should be separately certified; all may be included in one certificate. The fact that the stenographer appointed by the justice to take down the depositions on a preliminary enquiry was duly sworn (Cr. Code, sec. 683, as amended 1913), may be proved by the justice's certificate, although the stenographer did not sign the oath. The reading of the depositions on the part of the prosecution to the accused on the preliminary enquiry in conformity with Cr. Code, sec. 684, may be proceeded with from the shorthand notes without the delay incident to transcribing them. McDonald v. The King, 26 Can. Cr. Cas. 175, 30 D.L.R. 738.

[Applied in R. v. Beaulieu, 28 Can. Cr. Cas. 336.]

SUMMARY CONVICTION; MAGISTRATE'S CLERK TAKING DOWN DEPOSITIONS; VALIDITY.

The magistrate's clerk taking down the depositions of a witness in longhand need not be sworn under Code, sec. 683, and if it be a trial of a summary matter under Part XV. of the Code the depositions need not be signed by the witness and are properly authenticated by the signature of the magistrate. R. v. McKinley, 28 Can. Cr. Cas. 294.

DEPOSITIONS OF ABSENT WITNESS AT PRELIMINARY ENQUIRY; USED AT TRIAL.

The admission in evidence for the Crown of the depositions of an absent witness taken on the preliminary enquiry without the proof of absence required by Cr. Code, sec. 978 will not entitle the accused to a new trial where he, through his counsel, expressly requested at the trial that such depositions should be put in. [R. v. Brooks, 11 Can. Cr. Cas. 188, 11 O.L.R. 525, cited.] R. v. Hogue, 28 Can. Cr. Cas. 419, 39 D.L.R. 99.

CERTIORARI; DEPOSITIONS OF WITNESS IN ANOTHER CASE; MAGISTRATE'S CERTIFICATE.

Where the magistrate wrongly admitted in evidence the depositions of a witness in another case, the court on certiorari may conclude that he was influenced by such depositions and quash the conviction on that ground notwithstanding the certificate of the magistrate that he was not so influenced. [R. v. Melvin (1916), 27 Can. Cr. Cas. 350, 34 D.L.R. 382, 38 O.L.R. 231, applied.] R. v. Bracei, 29 Can. Cr. Cas. 351.

FOREIGN COMMISSION TO TAKE EVIDENCE FOR CROWN.

Where the Crown is granted an order under Cr. Code, sec. 997 to take depositions in the United States in rebuttal of the testimony given by the accused in his own behalf, and it appears that such testimony cannot well be taken on interrogatories, there should be a recommendation with such order that the Crown pay the fees and expenses of defendant's counsel in attending on the foreign commission. R. v. Guilmette, 30 Can. Cr. Cas. 276.

DESCRIBING THE OFFENCE.

See also Indictment; Information.

In indictment, effect of particulars as an amendment. 1 Can. Cr. Cas. 486.

Of offence of attempted theft. 5 Can. Cr. Cas. 63, 89.

Note on describing the offence. 7 Can. Cr. Cas. 137.

Describing the offence in the words of the creating statute. 11 Can. Cr. Cas. 46.

OF OFFENCE IN INFORMATION.

An information should give a concise and legal description of the offence charged, and should contain the same certainty as an indictment, and the description of the charge must include every ingredient required by the statute to constitute the offence. R. v. France, 1 Can. Cr. Cas. 321.

[Followed in R. v. Gill, 14 Can. Cr. Cas. 302, 1 O.L.R. 234; R. v. Paquin, 7 Que. Q.B. 322; discussed in R. v. Phillipp, 11 Can. Cr. Cas. 19, 11 O.L.R. 478; referred to in Campbell v. Walsh, 18 Can. Cr. Cas. 314; Dufresne v. R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

FORM OF INDICTMENT; DESCRIPTION OF OFFENCE.

It is not necessary that an indictment which sufficiently describes that which is by statute an indictable offence should conclude with the words "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." R. v. Doyle, 2 Can. Cr. Cas. 335.

SUFFICIENCY OF COUNT; REASONABLE INFORMATION OF THE CHARGE.

A count charging the accused with having committed perjury at an inquest before a coroner is not invalid by reason of the fact that the tribunal was a coroner and a jury, and the act charged was sufficiently identified in the count, without mention of the jury, to cure the defect under Code, sec. 611. R. v. Thompson, 4 Can. Cr. Cas. 265.

DESERTION.

See also Shipping; Seamen; Military Law.

HARBOURING DESERTERS FROM FOREIGN SHIP; OFFENCE UNDER SEAMEN'S ACT (CAN.); JURISDICTION.

(1) Sec. 104 of the Seamen's Act, R.S.C. 1886, ch. 74, which makes it an offence to wilfully harbour a deserting seaman, knowing him to be a deserter, is intra vires of the Parliament of Canada. (2) A prosecution for harbouring a deserting seaman is authorized without the consent of the consular officer of the ship's nationality in respect of a desertion from a foreign ship in a Canadian port, if both the prosecutor and the accused are British subjects resident in Canada, neither of whom are shewn to be in any way connected with the ship. (3) The provisions of the Seamen's Act (Can.) as to the harbouring of deserters are within the terms of sec. 127 as "relating to desertion of seamen" so as to extend to ships in the merchant service of foreign countries. The King v. Martin, 8 Can. Cr. Cas. 148.

DESERTION OF WIFE OR HUSBAND.

See Husband and Wife.

DIES NON.

Judicial proceedings on Sunday, when invalid. 1 Can. Cr. Cas. 134, 140.

Preliminary enquiry held on statutory holiday. 1 Can. Cr. Cas. 452.

Verdict, etc., on holiday. 3 Can. Cr. Cas. 586.

DIRECTOR.

See Company.

DISCHARGE.

See Habeas Corpus.

Form of order for, on habeas corpus. 1 Can. Cr. Cas. 242.

Return of amended conviction to be before discharge from custody. 1 Can. Cr. Cas. 219.

Unauthorized conditions of, in commitment. 1 Can. Cr. Cas. 120.

FROM IMPRISONMENT; UNAUTHORIZED CONDITIONS OF.

When the authorizing statute states that a person who is condemned to a term of imprisonment in default of the payment of a fine and costs, can obtain his discharge before the expiration of such term upon the payment of the fine, it is illegal to require in addition the payment of the costs of the prosecution and of the charges of his conveyance to prison. Ex parte Lon Kai Long, 1 Can. Cr. Cas. 120.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289.]

DISOBEYING STATUTE.

WILFUL VIOLATION OF PROVINCIAL STATUTE.

Code, sec. 164, does not make indictable the wilful violation of a Provincial statute which in itself provides a penalty and mode of punishment. The King v. McMurrer, McMurrer v. Jenkins, 18 Can. Cr. Cas. 385.

DISORDERLY CONDUCT.

See Vagrancy.

DISORDERLY HOUSE.

Keeping house of ill-fame; Evidence. 4 Can. Cr. Cas. 216.

Bawdy house cases; Keeper, inmate or frequenter. 4 Can. Cr. Cas. 498.

Keeping a disorderly or bawdy house; Cr. Code, secs. 195, 198, 786. 6 Can. Cr. Cas. 467.

Certain offenders in New Brunswick; Sentence to reformatory. 7 Can. Cr. Cas. 589.

Keeping bawdy house or house of ill-fame; Cr. Code, secs. 195, 198, 207 (j). 9 Can. Cr. Cas. 183.

Summary trial for keeping a gaming house; Jurisdiction without consent; Cr. Code, secs. 783, 784. 9 Can. Cr. Cas. 553.

Bawdy house cases; Summary conviction or summary trial. 10 Can. Cr. Cas. 59.

KEEPING HOUSE OF ILL-FAME; UNCERTAINTY; FAILURE TO NAME PLACE OF OFFENCE; FORFEITURE OF PENALTY.

Upon a motion on the return of a habeas corpus to discharge the prisoner, who was convicted of keeping a house of ill-fame, it was held, that the conviction was bad on its face for uncertainty in not naming a place where the offence was committed. Held, also, that it was defective because it did not contain an adjudication of forfeiture of the fine imposed. The act 32 and 33 Vict. ch. 31, sec. 17, provides that the magistrate may condemn the party accused to pay a fine not exceeding, with the costs in the case, $100. Held, that the meaning of this is, that the amount of the costs in the case shall be deducted from $100, and that the balance or difference shall be the utmost limit of the fine; and that the conviction in this case, being to pay the sum of $100 without costs, was therefore bad. Regina v. Cyr (1887), 12 P.R. (Ont.) 24.

OFFENCE COMMITTED WITHIN POLICE LIMITS; POLICE COURT; NOTICE.

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," and committed to gaol at hard labour for six months. On application for her discharge under a habeas corpus:—Held, no objection that the commitment did not shew that the offence was committed within the "police limits" of the city, the words used in C.S.C. ch. 105, sec. 14, for there was no ground for supposing any difference between these and the ordinary city limits; nor that no notice had been put up as required by sec. 25 of the same Act, to shew that the Court was that of the police magistrate, not of an ordinary justice of the peace, for the jurisdiction, in the absence of express enactment, could not be made to depend on the omission of the clerk to post up such notice. Reg. v. Munro, 24 U.C.Q.B. 44.

CONVICTION OF BEING AN INMATE OF.

Upon a charge against an inmate of a house of ill-fame under sub-sec. (j) of sec. 8 of R.S.C. ch. 157, it is not necessary to shew that the accused was called upon to account for her presence in the house before arrest; the concluding words of the sub-section, "not giving a satisfactory account of themselves," are to be read as applying only to frequenters, and not to keepers or inmates. [Regina v. Leveeque, 30 U.C.R. 509, distinguished.] Regina v. Remon, 16 O.R. 560.

HOUSE OF ILL-FAME; DESCRIPTION OF THE OFFENCE; INDEFINITENESS AS TO PLACE.

A conviction for keeping a house of ill-fame on the 11th of October, and on other days and times before that day:—Held, sufficiently certain as to the time. The information described the parties as of the township of East Whitby, and had "county of Ontario" in the margin. It charged that they kept a house of ill-fame, but did not expressly allege that they did so in that township or county. The evidence, however, shewed that their place, at which such house was kept, was in East Whitby, in which the justices had jurisdiction:—Held, sufficient. A certiorari to remove the conviction was therefore refused. Regina v. Williams et al. (1876), 37 U.C.Q.B. 540.

JOINT CONVICTION OF HUSBAND AND WIFE FOR KEEPING.

There may be a joint conviction against husband and wife for keeping a house of ill-fame; the keeping has nothing to do with the ownership of the house, but with the management of it. [Regina v. Williams, 10 Mod. 63, and Rex. v. Dixon, ib. 335, followed.] Regina v. Warren et ux. (1888), 16 O.R. 590.

OFFENCE OF KEEPING; IMPRISONMENT FOR NONPAYMENT OF FINE; LIMIT OF.

Upon conviction and fine for keeping a bawdy house the powers of a magistrate for enforcing payment of the fine are limited to directing imprisonment for a period not exceeding three months under Cr. Code, sec. 872 (b), although he might impose imprisonment for six months in the first instance instead of a fine. The Queen v. Stafford, 1 Can. Cr. Cas. 239.

[Considered in R. v. Ames, 19 Can. Cr. Cas. 57, 5 Terr. L.R. 497; referred to in Brunet v. Montreal, 17 Que. K.B. 85, R. v. Sovereen, 20 Can. Cr. Cas. 111, 4 D.L.R. 356; distinguished in R. v. Laura Carter, 5 Can. Cr. Cas. 404.]

ASSOCIATED WORDS; RULE OF INTERPRETATION.

(1) The meaning of the words "disorderly house" in Cr. Code, sec. 783 (f) and sec. 784, is governed by the rule noscitur a sociis, and is therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy house. (2) It is immaterial whether the generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning, and be presumed to embrace only things or persons of the kind

designated in the specific words. The Queen v. France, 1 Can. Cr. Cas. 321.

[Disapproved in R. v. Flynn, 9 Can. Cr. Cas. 550; approved and followed in R. v. Lee Guey, 13 Can. Cr. Cas. 84, 15 O.L.R. 235, 10 O.W.R. 1060; referred to in R. v. Four Chinamen, 13 B.C.R. 217, R. v. Ah Sam, 12 Can. Cr. Cas. 538; followed in R. v. Paquin, 7 Que. Q.B. 322.]

EVIDENCE IN PRIOR TRIAL OF ANOTHER PERSON AS KEEPER.

On a charge of being an inmate of a bawdy house it is competent for the accused or her counsel to consent that the evidence which had been given before the magistrate upon a concluded trial of another person for keeping the bawdy house, should be read as evidence in the case. R. v. St. Clair, 3 Can. Cr. Cas. 551.

EVIDENCE OF REPUTATION AND DISORDERLY CONDUCT.

A conviction should not be made upon a charge of keeping, or being an inmate of, a bawdy house upon evidence of general reputation only, and the prosecution should be required to produce proof of acts or conduct from which the character of the house may be inferred. The conduct and statements of the inmates of an alleged bawdy house at the time of their arrest therein may properly be proved in support of the charge. R. v. St. Clair, 3 Can. Cr. Cas. 551.

[Applied in R. v. Weir, 8 Que. P.R. 402; followed in R. v. Osberg, 9 Can. Cr. Cas. 180, 15 Man. L.R. 149; R. v. Fox, 9 Can. Cr. Cas. 458; R. v. Marcinko, 19 Can. Cr. Cas. 388, 4 D.L.R. 687; discussed in R. v. Brooks, 11 Can. Cr. Cas. 192, 11 O.L.R. 525; referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 236; R. v. Demetrio, 20 Can. Cr. Cas. 316; relied on in R. v. Pourier, 31 Que. S.C. 69; R. v. Janneau, 12 Can. Cr. Cas. 361.]

GAMING HOUSE; DISCRETION TO REFUSE SUMMARY TRIAL.

The term "disorderly house" in Cr. Code, 783 (f) applies only to those cases which fall within the statutory definition of that term given in Cr. Code, sec. 198. Upon a charge under Cr. Code, sec. 783 and 784 of keeping a disorderly house in that the accused is alleged to be keeping a gaming house, the police magistrate has jurisdiction to hear and determine the charge summarily without the consent of the accused, but the exercise of that jurisdiction is discretionary with the magistrate, and he may instead proceed as with a preliminary inquiry, and commit the accused for trial. Ex parte John Cook, 3 Can. Cr. Cas. 72.

[See R. v. Flynn, 9 Can. Cr. Cas. 553; approved in R. v. Ah Sam, 12 Can. Cr. Cas. 538.]

OFFENCE OF KEEPING; AIDING AND ABETTING.

The owner of a house who leases it to another person knowing and assenting when the lease was made to the purpose of the latter to maintain it as a common bawdy house, thereby does an act for the purpose of aiding the lessee to commit the indictable offence of keeping a disorderly house, and he may be indicted and convicted as a principal under Cr. Code sec. 61 (b). R. v. Roy, 3 Can. Cr. Cas. 472.

SUMMARY TRIAL; JURISDICTION.

The recorder of the city of Montreal may, as a "magistrate" under Cr. Code, sec. 782, summarily try and condemn a person keeping a disorderly house in a manner constituting a nuisance, to a period of imprisonment of six months and to a fine of $100, or, in default of payment of this fine, to six other months. R. v. Bougie, 3 Can. Cr. Cas. 487.

[Referred to in R. v. Pourier, 31 Que. S. C. 68; R. v. Janneau, 12 Can. Cr. Cas. 361; relied on in R. v. Weir, 8 Que. P.R. 400.]

UNLAWFULLY "APPEARING THE KEEPER."

A plea of guilty to a charge heard before a city police magistrate, that the accused did "unlawfully appear the keeper of a house of ill-fame" is sufficient to justify a conviction for the offence of keeping a house of ill-fame, because by Cr. Code, sec. 198 (2), any one who appears mistress or as the person having the care or management of any disorderly house, shall be deemed to be the keeper thereof, and is punishable as such, although not the real owner or keeper thereof. Semble, upon indictment under Cr. Code, sec. 198, the offence of keeping a common bawdy house is punishable in Ontario by a sentence to the "Mercer Reformatory" for any term less than two years, under sec. 34 of the Public Prisons Act, R.S.C. ch. 183, which section remains unrepealed by the Code. R. v. Spooner, 4 Can. Cr. Cas. 209.

[Discussed in R. v. Ames, 10 Can. Cr. Cas. 52 and 57, 5 Terr. L.R. 498; followed in R. v. Mercier, 13 Can. Cr. Cas. 483.]

FORM OF INFORMATION; CONSENT TO SUMMARY TRIAL.

An information charging the accused, for that she was "the keeper of a disorderly house, that is to say, a common bawdy house," must be taken to be a charge under Code, sec. 198, for the indictable offence of keeping a common bawdy house, and is not cognizable under the special jurisdiction given to magistrate by Code, sec. 783 (f), because not laid in the exact language of the latter section. Such charge could not be summarily tried by a city stipending magistrate without the consent of the accused under Code, sec. 785 (amendment of 1900). To give jurisdiction to a justice

to punish on summary conviction the keeper of a disorderly house under the vagrancy clause of the Code (secs. 207 and 208), the information must charge that the accused is a loose, idle or disorderly person or vagrant (sec. 208), and it is not sufficient to charge simply that the person is a keeper of a disorderly house, although that fact constitutes the person a loose, idle or disorderly person or vagrant, by virtue of Code, sec. 207. A conviction for that the accused was on April 21, "and on divers other days and times during the month of April" the keeper of a disorderly house, based upon an information in like terms laid on April 29, is bad, because it may be read as inclusive of an offence committed subsequently to the laying of the information, and including the date of the conviction, as to which the prisoner was not charged on her trial before the convicting magistrate. R. v. Keeping, 4 Can. Cr. Cas. 494.

[Discussed in R. v. Laconte, 11 O.L.R. 408; not followed in R. v. Code, 13 Can. Cr. Cas. 376, 1 S.L.R. 299; R. v. Demetrio, 20 Can. Cr. Cas. 316; referred to in R. v. Ames, 10 Can. Cr. Cas. 57; R. v. Young, 12 Can. Cr. Cas. 111.]

INMATE; FORM OF CONVICTION; SUMMARY CONVICTION OR "SUMMARY TRIAL;" DISTINCTION IN PROCEDURE.

Where a conviction is made by a city police or stipendiary magistrate for being an inmate of a disorderly house follows the Code from WW., and does not recite that the accused was "charged" before him in the words of form QQ., the inference is that the prosecution is brought under the vagrancy clauses (207 (j) and 208) and not under the summary trials procedure, secs. 783 (f) and 788. (Per Townshend, J.) Where the proceedings are taken under the "summary convictions" procedure, a conviction inflicting a punishment in excess of that authorized on summary conviction cannot be supported in habeas corpus proceedings as a conviction on "summary trial" under which the punishment inflicted is authorized, notwithstanding that the magistrate was one authorized to hold a summary trial, and that the offence was of the class for which the consent to such trial is dispensed with by statute. (Per Townshend, J.) As there is an appeal from a summary conviction on such a charge, and none from a conviction on summary trial, a strict construction of the proceedings is required in favour of the preservation of the right of appeal. (Per Townshend, J.) An application for the prisoner's discharge on the return of a writ of habeas corpus may after refusal by one Judge in chambers be renewed before another Judge in chambers, and the latter may grant a discharge notwithstanding its refusal by a Judge of co-ordinate jurisdiction. (Per Townshend, J.) The King v. Laura Carter, 5 Can Cr. Cas. 401.

[Considered in R. v. Ames, 10 Can. Cr. Cas. 52 and 57, 5 Terr. L.R. 493; referred to in R. v. Burke (No. 2), 20 Can. Cr. Cas. 162, 7 D.L.R. 75.]

BAWDY HOUSE; OCCUPATION BY OR RESORT TO BY MORE THAN ONE FEMALE.

A female cannot be convicted of unlawfully keeping a bawdy house, unless it is shewn that the house or room in question is occupied or resorted to by more than one female for purposes of prostitution. The King v. Young, 6 Can. Cr. Cas. 42.

[Followed in R. v. Mannix, 10 Can. Cr. Cas. 150, 10 O.L.R. 303, R. v. Osberg, 9 Can. Cr. Cas. 181, 15 Man. L.R. 148, 1 O.L.R. 121; referred to in R. v. Pepper, 15 Can. Cr. Cas. 315, 19 Man. L.R. 210, and R. v. Mercier, 13 Can. Cr. Cas. 481.]

ALLOWING GIRL UNDER 18 TO BE ON PREMISES FOR IMMORAL PURPOSES; CR. CODE, SECS. 187, 684.

On a charge of allowing a girl under 18 to be upon premises for immoral purposes, the evidence of the girl proving that she shared with the proprietor the money she obtained by prostitution there carried on, is sufficiently corroborated under Code, sec. 684, by the evidence of another witness tending to shew that the place was a bawdy house. The King v. Brindley, 6 Can. Cr. Cas. 196.

KEEPING BAWDY HOUSE; DESCRIBING THE OFFENCE; UNCERTAINTY; OMISSION OF MAGISTRATE TO STATE OPTION OF JURY TRIAL.

(1) After the accused consents to summary trial before a magistrate under Code, sec. 786, it is not necessary for the magistrate to again "reduce the charge of writing" if that had been done before the consent was given, and it is sufficient for the magistrate to read to the accused the charge already written. (Per Townshend, J.) (2) A conviction by a magistrate on a summary trial for keeping a common bawdy house need not specify the location of the house further than to shew that it was at a place within the jurisdiction of the Court. (Per Townshend, J.) (3) A conviction for keeping a common bawdy house is sufficient without the addition of particulars shewing what part of the statutory definition given by the Code, sec. 195, is the basis for the adjudication. (Per Townshend, J.) (4) Sec. 195 charges the meaning of the term "common bawdy house," and it is necessary that a conviction for keeping "a disorderly house, that is to say, a bawdy house," should shew further particulars of the offence by specifying what was the subject of the keeping for purposes of prostitution, i. e., whether a "house" "room,"

"set of rooms" or other "place," so as to come within the definition of sec. 195 referred to in sec. 198. (Per Weatherbe, J.) (5) A consent to "summary trial" under Code, sec. 786, given to the magistrate without the option of a jury trial being expressly stated to the accused, is invalid and a prisoner held upon a conviction based upon such consent must be discharged upon habeas corpus. (Per Weatherbe, J.) The King v. Shepherd, 6 Can. Cr. Cas. 463.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 199, 19 O.L.R. 238; referred to in R. v. Baird, 13 Can. Cr. Cas. 243.]

INDUCING TO COME FROM ABROAD TO BECOME INMATE OF BROTHEL; EXTRATERRITORIAL OFFENCE.

Upon a charge of procuring a girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada, the acts of inducement must be shewn to have been committed in Canada to give jurisdiction to a Canadian Court, unless the accused is a British subject. Re Gertie Johnson, 8 Can. Cr. Cas. 243.

KEEPING; AUTREFOIS CONVICT; PREVIOUS CONVICTION UPON SUMMARY TRIAL; PRESUMPTION OF IDENTITY.

(1) A conviction upon a summary trial by two justices under Code, secs. 782 and 783, for keeping a disorderly house at a specified address from the 3rd day of May to the 3rd day of November, is a bar under a plea of autrefois convict, to a conviction under Code, sec. 198, upon a speedy trial for the like offence charged for the 3rd day of November only. (2) Where the name of the accused, the place of the offence and the character of the offence are the same in the certificate of conviction produced in proof of a plea of autrefois convict and in the charge then being tried, it will be presumed that the accused is the party named in such certificate without parol evidence of identity. The King v. Clark, 9 Can. Cr. Cas. 125.

BAWDY HOUSE; WHAT CONSTITUTES THE OFFENCE OF KEEPING; USE OF HOUSE BY MORE THAN ONE PROSTITUTE.

(1) The statutory definition of a "common bawdy house" contained in Code, sec. 195, is intended merely to define the nature of the premises within which a bawdy house may be kept, and not as stating what acts constitute such keeping. (2) A woman reputed to be a prostitute living alone in a house and receiving men for the purpose of acts of prostitution with herself alone, but not allowing other women to resort there for a similar purpose, is not thereby guilty of keeping a bawdy house. The King v. Osberg, 9 Can. Cr. Cas. 180.

[Followed in R. v. Mannix, 10 Can. Cr. Cas. 150, 10 O.L.R. 303; referred to in R. v. Pepper, 15 Can. Cr. Cas. 315, 19 Man. L.R. 210; discussed in R. v. Mercier, 13 Can. Cr. Cas. 481.]

KEEPING A GAMING HOUSE; PROOF OF GAIN TO PROPRIETOR; RESORTING FOR THE PURPOSE OF GAMBLING.

(1) Proof that a game with cards, dice and "chips" was being played by several people seated at tables, each player procuring the "chips" from the accused, the proprietor of the place, and handing over to him the money therefor and that the accused said that the game was "fan tan," and that he was "doing well out of it," is evidence that the game was a game of chance and that the place was being kept by the accused "for gain" under Code, secs. 196 and 198. (2) Proof that persons other than those resident at or belonging to the house, room or place at which the proprietor operates for gain a game of chance or a mixed game of chance and skill, were in attendance there and participated in such game, is evidence that such persons "resorted" to such place for the purpose of playing such game, and of the place being a common gaming house under secs. 196 and 198 of the Criminal Code. The King v. Mah Kee, 9 Can. Cr. Cas. 47.

[Distinguished in R. v. Lee Woo, 16 Can. Cr. Cas. 215.]

KEEPING; INDICTMENT, SUMMARY TRIAL OR SUMMARY CONVCTION; ALTERNATIVE PROCEDURE AND PENALTIES.

(1) A prosecution against the keeper of a common bawdy house may be brought either by indictment or under the summary trials procedure, or the keeper may be charged as a vagrant under the summay convictions procedure, and neither the provision for summary trial nor that for summary conviction abrogates the right of the Crown to bring an indictment. (2) The different methods of procedure with the varying penalties dependent upon the class of tribunal selected are not inconsistent but are alternative. The King v. Sarah Smith, 9 Can. Cr. Cas. 338.

JURISDICTION; SUMMARY TRIAL; KEEPING COMMON GAMING HOUSE.

(1) Code, sec. 738 (f) which confers the power of summary trial for the offence of keeping "any disorderly house, house of ill-fame or bawdy house," includes as a "disorderly house" a common gaming house. (2) The definition of the term "disorderly house" contained in Code, sec. 198 (Part XIV. "Nuisances") applies to the same term in Code sec. 783 (Part LV. "Summary Trials") and the rule "noscitur a sociis" does not apply to the interpretation of sub-sec. (f) of sec. 783. [R. v. France, 1 Can. Cr. Cas. 321 (Que.) disapproved.] The King v. Flynn, 9 Can. Cr. Cas. 550.

INMATE OF BAWDY HOUSE; CONVICTION BY POLICE MAGISTRATE; FINE OVER $50 AND LESS THAN $100; NONCONFORMITY WITH CODE FORM QQ; OMISSION OF WORDS "CHARGED BEFORE ME," FROM CONVICTION.

A conviction by a police magistrate for being an inmate of a bawdy house and imposing a fine of over $50 but which with costs is less than $100, will be considered as a conviction upon summary trial under Part LV. of the Code if the record of proceedings shews that the charge was reduced to writing and pleaded to by the accused although the conviction itself omits the words "being charged before me" provided in Form QQ. The King v. Ames, 10 Can. Cr. Cas. 52.

BAWDY HOUSE; WHAT CONSTITUTES THE OFFENCE OF KEEPING; USE OF HOUSE BY MORE THAN ONE PROSTITUTE, ESSENTIAL TO OFFENCE.

(1) The statutory definition of a "common bawdy house" contained in Code, sec. 195 is intended merely to define the nature of the premises within which a bawdy house may be kept, and not as stating what acts constitute such keeping. (2) A woman reputed to be a prostitute living alone in a house and receiving men for the purpose of acts of prostitution with herself alone, but not allowing other women to resort there for a similar purpose, is not thereby guilty of keeping a bawdy house. [R. v. Young, 6 Can. Cr. Cas. 42, and R. v. Osberg, 9 Can. Cr. Cas. 180; The King v. Mannix, 10 Can. Cr. Cas. 150, followed.] R. v. Mercier, 13 Can. Cr. Cas. 475.

KEEPING DISORDERLY HOUSE; DESCRIBING THE OFFENCE; "DISORDERLY HOUSE, BAWDY HOUSE OR HOUSE OF ILL-FAME;" DUPLICITY OR UNCERTAINTY.

(1) A summary conviction under Code, sec. 207 (j) is not void for duplicity or uncertainty and is for one offence only if it states that the accused is convicted of being the keeper of a "disorderly house, bawdy house or house of ill-fame or house for the resort of prostitutes." (2) The conviction in that form is validated under Code, sec. 846 because it describes the offence in the words of the statute creating the offence. The King v. Leconte, 11 Can. Cr. Cas. 41.

[Applied in R. v. Riddell, 19 Can. Cr. Cas. 400, 4 D.L.R. 662; not followed in R. v. Demetrio, 20 Can. Cr. Cas. 316; followed in R. v. Irving, 14 Can. Cr. Cas. 489; distinguished in R. v. Mah Sam, 19 Can. Cr. Cas. 4; referred to in R. v. Harris, 13 Can. Cr. Cas. 398; specially referred to in R. v. Sarah Smith, 19 Can. Cr. Cas. 254.]

BEING INMATE OF BAWDY HOUSE; VAGRANCY; SUMMARY TRIAL ON SUMMARY CONVICTION.

A conviction by a city stipendiary magistrate for the offence of being an inmate of a bawdy house need not expressly state on its face that the accused is a vagrant. The King v. Young, 12 Can. Cr. Cas. 109.

[Discussed in R. v. Code, 13 Can. Cr. Cas. 377; referred to in R. v. Harris, 13 Can. Cr. Cas. 398.]

ROOM IN HOTEL; HABITUAL RESORTING BY PROSTITUTE AND PARAMOUR.

(1) Under sec. 225 of the Criminal Code, as amended in 1907, a room in a hotel habitually resorted to by only one prostitute and her paramour for purposes of prostitution is a "common bawdy house;" and the hotelkeeper who with knowledge of the facts permits the continuance of such use of the room is properly convicted as a keeper. (2) The offence of keeping is made out under such circumstances although the hotelkeeper received only the ordinary room rent, and apart therefrom made no direct gain from the use of the room for the purposes of prostitution. The King v. Mercier, 13 Can. Cr. Cas. 475.

[Referred to in R. v. Misse, 13 Can. Cr. Cas. 486.]

FREQUENTING HOUSE OF ILL-FAME; NECESSITY OF CHARGING ACCUSED AS AN HABITUAL FREQUENTER.

(1) Code, sec. 773, deals with procedure only and has not the effect of creating any new offence. (2) The offence of being an habitual frequenter of a bawdy house which is referred to in sub-sec. (f) of Code, sec. 773, is the offence declared by the vagrancy clause, Code, sec. 238 (k), and it is essential to the offence that the accused should be an habitual frequenter and that he did not give a satisfactory account of himself regarding his visits to the house. (3) A conviction on summary trial for being "a frequenter of a house of ill-fame" upon an information similarly worded and an alleged plea of guilty thereto is bad for not charging that the accused was an habitual frequenter. (4) Where before sentence on a plea of guilty it appears that the accused disputed that he had so pleaded and claimed a justification or excuse for the act charged against him, the magistrate should have allowed the plea to be changed to one of not guilty and proceeded to a trial on the evidence. The King v. Lamothe, 15 Can. Cr. Cas. 61.

WHAT IS; BAD REPUTATION; CONVICTION BY MAGISTRATE.

In a prosecution for keeping a disorderly house where there was no evidence of disorderly conduct except on one single occasion but there was evidence of the bad reputation of the house, there was evidence

upon which the magistrate could convict and as he was the judge of the weight to be attached to it, his conviction will not be disturbed. [R. v. St. Clair, 3 Can. Cr. Cas. 551, 27 O.A.R. 308, at p. 310, followed.] The King v. Marcinko, 19 Can. Cr. Cas. 388.

INMATE OF; MAN AS.

A man cannot be convicted, under secs. 225, 228 and 238 of the Criminal Code, of being an inmate of a bawdy house, since such sections apply to female inmates only. R. v. Knowles, 21 Can. Cr. Cas. 321, 12 D.L.R. 639. See also 22 Can. Cr. Cas. 66, 13 D.L.R. 773

PERSONS CHARGED; HUSBAND AND WIFE.

A husband and wife may be charged jointly with keeping a house of ill-fame. [R. v. Williams, 10 Mod. 63; R. v. Dixon, 10 Mod. 335; R. v. Warren, 16 O.R. 590, referred to.] Several persons may be convicted of the one offence of keeping a house of ill-fame, and that either jointly or severally. (Dictum per Beck, J.) On a joint information for keeping a house of ill-fame separate convictions may be made. (Dictum per Beck, J.) R. v. Bloom, 22 Can. Cr. Cas. 205, 15 D.L.R. 484.

OFFENCE OF KEEPING; EVIDENCE.

A charge of keeping a bawdy house is cumulative, and evidence of particular acts and the particular time of doing them is admissible, although the charge is in general terms only. [R. v. St. Clair, 3 Can. Cr. Cas. 551; R. v. Mercier, 13 Can. Cr. Cas. 475, referred to.] R. v. Johnson, 23 Can. Cr. Cas. 136, 19 D.L.R. 301.

STATING PLACE OF OFFENCE.

A conviction made by a magistrate for keeping a bawdy house will not be quashed because it is not expressly shewn in the depositions that the street address referred to in the depositions was in fact in the city which was named as the place of the offence in both the information and the formal conviction, although the magistrate's jurisdiction was limited to that city. [R. v. C.P.R., 14 Can. Cr. Cas. 1, 1 A.L.R. 341, applied.] R. v. Marceau, 23 Can. Cr. Cas. 456, 22 D.L.R. 336.

[Considered in R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D.L.R. 441.]

DESCRIPTION OF OFFENCE; BAWDY HOUSE.

An information in a summary proceeding charging the keeping of "a bawdy house" and omitting to describe such as a "common" bawdy house is bad as not disclosing a legal offence, and the charge thereon should be dismissed; that it is a "common bawdy house" is an essential ingredient of the offence under Cr. Code, sec. 228 which declares a "common bawdy house" to be a disorderly house the keeping of which is punishable thereunder, and the omission of the description in that particular is not cured by a plea to the charge nor is there power in the magistrate to amend such a defect of substance. R. v. Jousseau, 24 Can. Cr. Cas. 417.

HOUSE OF ILL-FAME; EVIDENCE; "SPOTTER."

Evidence of the general reputation of a house as being a house of ill-fame is not alone sufficient to convict the person whose residence it is of keeping a common bawdy house without proof that the people who go there are of ill-fame or that prostitution is there carried on. [R. v. St. Clair, 3 Can. Cr. Cas. 551, 27 A.R. 308, and R. v. McNamara, 20 Ont. R. 489, referred to; State v. Anderson, 72 Atl. Rep. 648, distinguished.] Pretended negotiations by persons in the pay of the police made merely for the purpose of getting evidence against the accused woman and with no intent of returning at the time appointed by her for purposes of prostitution will not support a charge against her of keeping a common bawdy house. R. v. Sands (No. 2), 25 Can. Cr. Cas. 120, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 116.

OFFENCE OF KEEPING; EVIDENCE.

Evidence that the woman keeping the house and another woman living with her had together offered to have illicit sexual intercourse with two men for a consideration will support a magistrate's conviction against the former for keeping a bawdy house, although there was no other evidence of bad repute. R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556, 33 D.L.R. 556.

BAWDY HOUSE; AMENDMENT ON CERTIORARI.

A conviction made by a magistrate under the Summary trials clauses of the Code (Part XVI.) for "keeping a house of ill-fame" will be amended, when brought up on certiorari, to include in terms the statutory phrase "disorderly house" used in Code, secs. 228 and 774, which include a common bawdy house or house of ill-fame; such an amendment is authorized by Cr. Code, sec. 1124. [R. v. Hayes, 6 Can. Cr. Cas. 357, 5 O.L.R. 198, distinguished.] R. v. Darroch, 27 Can. Cr. Cas. 402, 32 D.L.R. 793.

KEEPING BAWDY HOUSE WITHOUT GAIN.

A man who knowingly permits prostitutes to resort to his house for the purpose of prostitution may be convicted of keeping a bawdy house although he made no charge for the use of his rooms. [See Annotation on Prostitute Vagrancy, 26 Can. Cr. Cas. 111.] R. v. Fabri, 28 Can. Cr. Cas. 6.

OFFENCE OF KEEPING; EVIDENCE.

The intention of Code, sec. 225 in defining a common bawdy house as applied to the letting of rooms in a hotel is that it should appear that rooms were habitually let with knowledge that they would be used for purposes of prostitution; the fact of such ha-

bitual letting may be proved by direct evidence or may be inferred where the circumstances surrounding the letting on a single occasion for use by a known prostitute would prima facie show the existence of a habit or custom in that regard and no attempt is made at explanation or excuse on the part of the accused. [R. v. Mercier, 13 Can. Cr. Cas. 475, referred to.] R. v. Davidson (No. 1), 28 Can. Cr. Cas. 44, 35 D.L.R. 82. See 28 Can. Cr. Cas. 56, 35 D.L.R. 94.

KEEPING NOT SHOWN BY EVIDENCE; QUASHING CONVICTION.

The court on certiorari will look at the evidence given at a summary trial before a police magistrate for keeping a disorderly house, and if there is no evidence of the offence will quash the conviction. R. v. Cross, 29 Can. Cr. Cas. 349.

RIGHT TO SEARCH; SUSPICION; ARREST; EXAMINATION OF PERSONS ARRESTED.

Section 641 of the Criminal Code, as amended in 1913 (Dom. stats. 1913, c. 13, s. 21) gives authority to search, in the case of suspicion of the existence of a "disorderly house" as defined in s. 228. The arrest of all persons found in such house is consequently authorized, but no change having been made in s. 642, such persons cannot be required to make disclosure under sec. 642 for evidence that the place was being kept as a bawdy house, but may be held pending the laying of a charge against them. R. v. Shaak, 30 Can. Cr. Cas. 295, 43 D.L.R. 608.

GAMING HOUSE; PAY FOR REFRESHMENTS.

A conviction for keeping a common gaming house is justified against the proprietor of a pool-room where he and others played poker for money in the room although only after the pool-room was closed, if a part of the money contributed in the course of the game was to pay the proprietor for refreshments. [See Code Amendment Act, 1918, Can., ch. 16, adding a new clause (*b i (a)*) to Code, sec. 226, subsequent to above decision.] R. v. Bertrand, 31 Can. Cr. Cas. 2.

DISQUALIFICATION OF JUSTICE.

See Disqualification of magistrate.

DISQUALIFICATION OF MAGISTRATE.

Connection with temperance society as affecting liquor license prosecution. 1 Can. Cr. Cas. 517.

Pecuniary interest as ground of. 1 Can Cr. Cas. 410, 411.

Relationship to prosecutor. 1 Can. Cr. Cas. 513.

Note on disqualification of magistrate for bias. 2 Can. Cr. Cas. 442.

Pecuniary interest. 4 Can. Cr. Cas. 322.

AFFINITY.

Where the defendant's wife was the widow of the committing magistrate's deceased son, it was held that there was no relationship by affinity between the magistrate and the defendant to disqualify the magistrate from hearing the case. Ex parte William Wallace (1887), 26 N.B.R. 593.

ACTION AGAINST JUSTICE BY DEFENDANT; WHEN TO DISQUALIFY.

An action against a justice of the peace by a party against whom an information is laid, does not necessarily disqualify the justice. The Court will inquire into the circumstances and ascertain if they reasonably lead to the inference of bias. Where the bias arises out of the wrong of the party, he cannot object to it. Ex parte Scribner, 32 N.B.R. 175.

CALLING MAGISTRATE AS WITNESS.

The calling of a magistrate, sitting on a case as a witness, does not of itself disqualify him from further acting in the case. Regina v. Sproule (1887), 14 O.R. 375.

DISQUALIFICATION BY REASON OF INTEREST.

Two of the four convicting justices were licensed auctioneers for the county, and persisted in sitting after objection taken on account of interest, though the case might have been disposed of by one justice:—Held, that they were disqualified, and in quashing the conviction on that ground the Court ordered them to pay the costs. Regina v. Chapman (1882), 1 O.R. 582.

INTEREST OR BIAS; AFFINITY OF ACCUSED TO MAGISTRATE.

A magistrate is disqualified from hearing an information under the Summary Convictions Act, where the defendant is the widow of a deceased son of the magistrate. Ex parte Margaret Wallace, 27 N.B.R. 174.

NOT RAISED UNTIL APPLICATION FOR CERTIORARI.

The justice of the peace before whom the information was laid and who issued the summons was claimed to be interested. The hearing, however, took place before, and the adjudication and conviction were made by another justice, whose qualification was not attacked, while the defendant pleaded to the charge and raised no objection to the validity of the proceedings until the application for a certiorari:—Held, that the conviction could not be impugned. Reg. v. Stone (1892), 23 O.R. 46.

BIAS OR INTEREST.

It was alleged that the prosecutions for offences against the 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:—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. The cases relating to disqualification by reason of favour or interest in a Judge or magistrate discussed. Regina v. Klemp (1885), 10 O.R. 143.

CALLING MAGISTRATE AS A WITNESS.

The calling of a magistrate, sitting on a case, as a witness does not of itself disqualify him from further acting in the case. Regina v. Sproule, 14 O.R. 375.

INTEREST OR BIAS.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act, it was contended that the magistrate had a disqualifying interest in the prosecution, because he had employed and paid agents to secure convictions under the Act, and because he was a strong temperance advocate, with an alleged bias in favor of the prosecution in cases under the Act. It was not shewn that the magistrate was interested or engaged in promoting or directing the prosecution of the offence or defraying the expenses of it, or paying agents for evidence to be given upon it:—Held, that it was not to be inferred from anything alleged to have been done by the magistrate in other prosecutions, that the same was done by him in this; and that the statements were of too loose and vague a character to support a finding that the magistrate was disqualified from sitting. Regina v. Brown (1888), 16 O.R. 41.

Held, that the fact of one of the convicting magistrates being a chemist and druggist, and in such capacity filling medical prescriptions containing small quantities of spirituous liquors, did not incapacitate him from acting as a magistrate and adjudicating upon the case. Regina v. Richardson (1891), 20 O.R. 514.

INTEREST; MAGISTRATE A RATEPAYER.

The police magistrate of St. John is not disqualified from trying complaints for violations of the Act by reason of his being a ratepayer. Ex parte Driscoll, 27 N.B.R. 216.

INTEREST IN PROSECUTION; APPOINTMENT OF MAGISTRATE.

The fact that the fines imposed by a police magistrate appointed by a municipal corporation are paid into the Consolidated Municipal Fund, and that he holds another office under the corporation, the salary of which is drawn from such fund, does not incapacitate him as magistrate by reason of interest in the prosecution. A provincial statute authorized an appointment to be made by a municipal corporation, subject to the consent of the Lieutenant-Governor-in-Council:—Held (1) Such appointment was well made by resolution under the corporate seal, and a by-law was unnecessary. (2) It is immaterial whether the assent of the Lieutenant-Governor-in-Council is obtained before or after the resolution. Regina v. Hart (1887), 2 B.C.R. 264.

RELATIONSHIP.

A certiorari was granted to remove a conviction under the Summary Convictions Act where the grandfather of the magistrate was a brother of the defendant's great-grandmother. Ex parte Jones, 27 N.B.R. 552.

Motion to quash a conviction made by the stipendiary magistrate of the city of Halifax, against defendant for a violation of the N. S. Liquor License Act of 1886. The main ground upon which the conviction was attacked was relationship existing between the magistrate making the conviction and the chief inspector of licenses, who was the informant and prosecutor in the proceedings in which the conviction was made, they having married sisters:—Held, that the affinity existing between the magistrate and the inspector, under the circumstances disclosed by the affidavits, did not disqualify the magistrate from hearing the case, or render the conviction void. "In no case instituted for breach of the Liquor License Act of 1886. . . . shall a writ of certiorari issue unless the party applying therefor shall make affidavit that he did not . . . sell the liquor contrary to law, as charged in the information, etc." Acts of 1889, ch. 17, sec. 7. Held, that an objection on the part of the prosecution to the absence of the affidavit was not available after the certiorari had been issued and returned. Held, also, that objection to the form of the conviction was not sufficient ground for quashing it. The Queen v. Major (1897), 29 N.S.R. 373; 33 C.L.J. 162.

INTEREST OR BIAS.

The connection of the magistrate with a society, which supplied funds part of which were used to make the purchase upon which the prosecution of illegal sale of liquor was based, because of his being an honorary member of the society but not entitled to take any part in its affairs, is not a ground of disqualification. R. v. Herrell, 1 Can. Cr. Cas. 510.

JUDICIAL OFFICER; FAILURE TO SUBSCRIBE OATHS.

The failure of a judicial officer to take

the oath of allegiance and the oath of office where he has acted as the holder of the office and has been acknowledged and accepted as the duly qualified incumbent thereof by the public does not invalidate his judgments in criminal cases where his qualification has not been contested at the time of the trial, and such judgments are valid and binding as having been rendered by a Judge de facto. Ex parte Curry, 1 Can. Cr. Cas. 532.

[Referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 252, discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 501.]

OBJECTION TO JURISDICTION.

If the accused takes objection at the trial to the qualification of the magistrate to act in the case because of his failure to take such oaths, public acquiescence in his exercise of judicial functions will not avail to make his adjudication binding, and he cannot claim to be in the position of a Judge de facto, and the accused convicted under Cr. Code, sec. 783, under such circumstances is entitled to be released from custody upon habeas corpus. Ex parte Mainville, 1 Can. Cr. Cas. 528.

[Referred to in Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 252; R. v. Mackay, 1 D.L.R. 481; distinguished in Ex parte Thos. Curry, 1 Can. Cr. Cas. 532.]

BIAS; RELATIONSHIP TO PROSECUTOR; SHARING FINE.

(1) To invalidate a conviction on the ground of bias in the convicting magistrate, it is not necessary that actual bias should be proved, and a conviction will be quashed if the facts justify a reasonable apprehension of bias. (2) If the accused is aware of the disqualifying circumstances at the time of the hearing before the magistrate, he should take objection then to the magistrate acting. (3) Where the prosecutor in summary proceedings is the magistrate's father, and the statute under which the prosecution is brought entitles the prosecutor to a share of any fine imposed, the justice is disqualified from adjudicating upon the case. (4) A conviction made under such circumstances will be quashed, although there was no conflicting evidence on the summary trial. R. v. Steele, 2 Can. Cr. Cas. 433.

BIAS; RELATIONSHIP; RATEPAYER.

(1) A magistrate is not disqualified from trying a charge laid by a chief license inspector of unlawfully selling liquors, because of the assistant license inspector's wife being a niece of the magistrate, if the assistant inspector has in fact nothing to do with the laying of the charge, and took no part in the prosecution. (2) A magistrate is not disqualified from adjudicating upon an information by reason of his being a ratepayer of a municipality into whose treasury any fine imposed in the case would be payable when realized. Ex parte Flannagan, 2 Can. Cr. Cas. 513.

DISQUALIFICATION OF, FOR BIAS.

The disqualification of a justice arising from an action pending against him ceases when he has recovered judgment, though an execution has issued which is unsatisfied. Ex parte Ryan, 4 Can. Cr. Cas. 485.

PECUNIARY INTEREST; SALARY FUND.

A magistrate is not disqualified from trying a case by reason of the fact that his salary is paid out of a municipal fund largely made up of fines imposed for the infraction of the statute under which the charge is laid. A magistrate is not disqualified from trying a case because of his being a ratepayer of the municipality to which, in case of conviction, the fine would be payable. Ex parte Gorman, 4 Can. Cr. Cas. 305.

BIAS; INTEREST; ACTION PENDING.

A magistrate is disqualified from trying an information for an offence punishable on summary conviction where there is a bona fide action pending against him brought by the husband of the accused for alleged malicious conduct as a judicial officer and for assault. If the action against the justice is not bona fide but a mere sham to attempt to disqualify him, its pendency will not operate as a disqualification. The principles which govern the challenge of a juryman for favour are applicable to the disqualification of a justice on the ground of bias. Ex parte Gallagher, 4 Can. Cr. Cas. 486.

BIAS; LIQUOR LICENSE INSPECTOR.

The fact that a convicting justice for an offence against the provisions of the Liquor License Act, 1896, is an inspector under the Act, but not for the district where the offence is alleged to have been committed, is not such an interest as to disqualify him. Ex parte Michaud, 4 Can. Cr. Cas. 569.

DISQUALIFICATION OF JUSTICE; BIAS; TRANSIENT TRADER'S LICENSE BY-LAW; RIVAL BUSINESS.

A magistrate who is engaged in the same kind of business as a trader prosecuted under a transient trader's license law is thereby disqualified from adjudicating upon the charge. The King v. Leeson, 5 Can. Cr. Cas. 184.

JUSTICE OF THE PEACE; INTEREST; MEMBERSHIP IN TEMPERANCE ALLIANCE; CANADA TEMPERANCE ACT.

Justices of the peace, who belong to an association (a temperance alliance) of which the president is the party prosecuting, and to which association any fine to be imposed upon the accused for the of-

fence against the liquor law with which he is charged, would be paid under resolution of the municipal council, are disqualified from trying the charge, and will be prevented by a writ of prohibition from so doing. The fact that between the time when the information was received by such justices and the hearing of the charge, the justices had withdrawn from the association, does not validate the proceedings. Daigneault v. Emerson, 5 Can. Cr. Cas. 534.

BIAS OF CONVICTING JUSTICE.

A civil action brought by the accused against the magistrate for alleged misconduct as a judicial officer but in which the magistrate had not been served with process at the time the conviction was made, is not a cause of disqualification. The King v. O. A. Batson, 12 Can. Cr. Cas. 62.

[Referred to in R. v. Leach, 17 O.L.R. 643.]

DISQUALIFICATION OF JUSTICE; RELATIONSHIP; WANT OF KNOWLEDGE OF; FAILURE TO OBJECT AT HEARING.

A summary conviction made by two justices of the peace will not be quashed on the ground that one of them was related to the defendant, within the ninth degree of consanguinity, if the justice was not aware of the relationship, and no objection was taken at the hearing. Ex parte McEwen, 12 Can. Cr. Cas. 97.

MAGISTRATE A PETITIONER AGAINST GRANTING LICENSE TO ACCUSED.

Signing a petition against the granting of a liquor license to the accused, is not a ground of disqualification of the magistrate subsequently trying the accused for an offence under the liquor license law. Ex parte Van Buskirk, 13 Can. Cr. Cas. 234.

[Referred to in R. v. Grafton, 17 Can. Cr. Cas. 327.]

BIAS; ACTION BROUGHT BY HUSBAND OF ACCUSED AGAINST MAGISTRATE.

The fact that an action was brought by the deceased husband of the accused against the same magistrate for damages in respect of the execution of a search warrant under a liquor law and that the case has not been disposed of, will not disqualify the magistrate from trying a charge laid against the widow for infraction of a liquor law, if the husband's action has not been revived and there has been a long delay in which no proceedings were taken in the action. Ex parte McCleave, 14 Can. Cr. Cas. 18.

DISQUALIFICATION OF MAGISTRATE; BIAS.

Service upon the magistrate of a notice of action by the accused in respect of the enforcement of a prior summary conviction against him made by the same magistrate is not alone a ground of disqualification. Ex parte Gallagher et al., 14 Can. Cr. Cas. 38.

[Referred to in Ex parte McCleave, 14 Can. Cr. Cas. 19; R. v. Lorrimer, 14 Can. Cr. Cas. 434; followed in R. v. Wells, 15 Can. Cr. Cas. 224; R. v. Dubuc, 15 Can. Cr. Cas. 358; Ex parte Budd, 17 Can. Cr. Cas. 236.]

SUMMARY CONVICTION; NOTICE OF ACTION AGAINST MAGISTRATE.

Where a preliminary notice of action against the magistrate is required before the issue of the writ, and the magistrate has been served with notice in good faith by the accused, it is inexpedient that he should try a subsequent charge against the accused while the civil proceedings are pending, whether or not the notice operates as a legal disqualification. The King v. Lorrimer, 14 Can. Cr. Cas. 430.

JURISDICTION; DISQUALIFICATION OF JUSTICE; BIAS; SUMMARY PROCEEDINGS AGAINST POLICE MAGISTRATE BEFORE A JUSTICE WHO WAS FORMERLY POLICE MAGISTRATE; COMMITTAL OF THE JUSTICE FOR TRIAL ORDERED BY POLICE MAGISTRATE NOW ACCUSED BEFORE THE JUSTICE; PRESUMPTION THAT OFFICERS DISCHARGED PUBLIC DUTY; PROHIBITION REFUSED; CR. CODE (1906), SEC. 705.

(1) Where the accused was himself a police magistrate, and the justice before whom he had been summoned had formerly held that office until the appointment of the accused in his place, that circumstance does not disqualify the justice on the ground of bias from trying a summary proceeding against the police magistrate if the change in the office is not shewn to have been brought about at the instance of the accused. (2) The fact that the accused as police magistrate had recently committed the justice for trial on a criminal charge, does not raise any presumption of bias on the part of the justice which would disqualify him on the ground of bias from summarily trying a charge of assault laid by a third party against the police magistrate who made such committal order. Ex parte Peck, 15 Can. Cr. Cas. 133.

[Referred to in Ex parte Peck (No. 2), 16 Can. Cr. Cas. 51.]

BIAS; INFORMANT A CONSTABLE APPOINTED BY BOARD OF POLICE COMMISSIONERS; MAGISTRATE A MEMBER OF BOARD.

(1) A magistrate is not disqualified on the ground of bias from adjudicating upon a charge because the informant is a police constable receiving his appointment from and subject to dismissal by a Board of Police Commissioners of which the magistrate is a member. (2) A Board of Police Commissioners discharges a function of government in the appointment of constables, but as the duties of the latter are fixed by the law and not by the order of the Board, the commissioners are not responsible for the acts of the constables appointed by them if done in the ordinary course of their duty

as constables and not under any special direction of the commissioners. Ex parte Wilson, 15 Can. Cr. Cas. 264.

[Referred to in Ex parte Horsman, 15 Can. Cr. Cas. 281.]

SUMMARY CONVICTION; BIAS; PENDING LITIGATION BETWEEN MAGISTRATE AND ACCUSED.

(1) A magistrate is disqualified on the ground of bias from trying a case if he has himself prosecuted the same defendant before another magistrate for an offence under the same statute, if the certiorari proceedings upon the conviction which he then obtained are still pending and undisposed of in a Superior Court. (2) Litigation bona fide pending between the accused and the magistrate, constitutes bias which will disqualify the magistrate from acting judicially upon an information laid before him against the accused until the litigation is terminated. Ex parte Daigle, 18 Can. Cr. Cas. 211.

MAGISTRATE A MEMBER OF THE BOARD OF POLICE COMMISSIONERS; RESOLUTION OF COMMISSIONERS INSTRUCTING PROSECUTION OF THAT CLASS OF OFFENCES.

(1) A police magistrate who is also by statute a member of the Board of Police Commissioners, is not disqualified from trying a charge of selling liquor without license by reason of having, at a meeting of the commissioners previously held, moved a resolution instructing a particular member of the police force to take active steps for the prosecution of offences against the Liquor License Act in unlicensed places, but without naming any individual or class of persons to be prosecuted, although the charge in question had been laid by that officer. (2) The police magistrate of a city is not disqualifed to hear and dispose of such a charge by reason of his being a ratepayer of the city and so benefiting to a small extent by any fine which might be imposed, part of which would be received by the city, or by reason of his being paid a salary by the city. [Ex parte McCoy (1896), 1 Can. Cr. Cas. 410, followed.] (3) An application for an order to prohibit a magistrate from hearing a criminal charge on the ground of disqualification through bias is itself a civil and not a criminal proceeding, and the practice to be followed is that laid down in the King's Bench Act, R.S.M. 1902, ch. 40, and the rules thereunder, instead of by rule nisi as in criminal proceedings. The King v. Suck Sin, 18 Can. Cr. Cas. 266.

JUSTICE OF THE PEACE; RELATIONSHIP.

A justice is not disqualified from taking an information because the informant is his second cousin. Campbell v. Walsh, 18 Can. Cr. Cas. 304.

QUO WARRANTO; LEAVE FOR INFORMATION.

A motion for leave to file an information in the nature of a quo warranto against a stipendiary magistrate on the ground that he had not taken the oath of allegiance will be dismissed if the oath of allegiance has been since taken by him, although he had acted as a magistrate in the meantime; and the motion is properly refused without considering whether or not the oath is essential. The King v. MacKay, 19 Can. Cr. Cas. 229, 1 D.L.R. 481.

[Referred to in R. v. Sweeney, 19 Can. Cr. Cas. 227, 1 D.L.R. 476.]

SUSPICION OF INTEREST OR BIAS.

(1) In the administration of justice, whether by a recognized legal Court or by persons who, although not a legal Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, no person who is to take part in it should be in such a position that he might be suspected of being biased. [Allinson v. General Medical Council, [1894] 1 Q.B. 750, followed.] (2) In order to disqualify a magistrate from acting, on the ground of bias, it is not necessary to shew that he is in fact biased, but only that he is in such a position that he might be biased. [Reg. v. Gaisford, [1892] 1 Q.B. 383; and Reg. v. Huggins (No. 2), [1895] 1 Q.B. 563, followed.] (3) One who is appointed stipendiary magistrate by a municipality at an annual salary, on the condition that he shall try all cases under the Canada Temperance Act, and shall make monthly reports, returns and payments to and for the use of the municipality of all fines, penalties and forfeitures collected by him as such magistrate on account of such cases, is disqualified from hearing a prosecution under the Act, inasmuch as there is a reasonable apprehension that he may be biased. The King v. Woodroof, 20 Can. Cr. Cas. 17, 6 D.L.R. 300.

DISTRESS.

See Summary conviction; Imprisonment; Punishment; Search warrant.

DISTURBANCE.

Impeding passengers on street, see Vagrancy.

Public meetings; Preserving the peace 6 Can. Cr. Cas. 41.

OF PUBLIC MEETING.

Sec. 173 of the Criminal Code, which declares it an offence to disturb, interrupt or disquiet any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise, does not apply to a

meeting of electors called by one of the candidates during a municipal election. The King v. Lavoie, 6 Can. Cr. Cas. 39.

DIVINE SERVICE.

OBSTRUCTING DIVINE SERVICE; STATUS OF CLERGYMAN; CONTINUING SERVICE AFTER SESESSION FROM THE CHURCH; WANT OF LAWFUL AUTHORITY.

(1) The offence of unlawfully obstructing divine service under Code, sec. 171, is not made out where the clergyman obstructed had no legal claim to the possession of or use of the church premises and was in point of law himself a trespasser thereon. (2) An indictment for obstructing a clergyman in celebrating divine service will not be quashed for failure to allege therein that the clergyman was in lawful charge of the church or place of worship. The King v. Wasyl Kapij, 9 Can. Cr. Cas. 186.

DIVISION COURTS.

In Ontario; Jurisdiction in appeals from justices in certain cases. 9 Can. Cr. Cas. 569.

DOMICILE.

Note on domicile and jurisdiction. 7 Can. Cr. Cas. 235.

JURISDICTION; EXTRA-TERRITORIAL ACT; CONSTITUTIONAL LAW.

A British subject domiciled in Canada, and only temporarily absent, continues to owe to Her Majesty in relation to her government of Canada an obligation to refrain from the completion, whilst absent without any animus manendi, of a prohibited act, a material part of which is committed by him in Canada. Re Bigamy Sections of Code, 1 Can. Cr. Cas. 172.

[Followed in R. v. Brinkley, 12 Can. Cr. Cas. 457.]

DRUGGIST.

ONTARIO MEDICAL ACT.

A druggist is liable under R.S.O. 1897, ch. 176; R.S.O. 1887, ch. 148, for practising medicine without license if he assumes to discover the nature of the disease by enquiry from the purchaser as to the symptoms and advises the remedy he supplies. R. v. Howarth, 1 Can. Cr. Cas. 14.

[Referred to in R. v. Valleau, 3 Can. Cr. Cas. 437.]

ONTARIO MEDICAL ACT.

If the purchaser tells the druggist his complaint, taking upon himself the determination of the symptoms, the druggist may legally inform him what remedies he has and advise as to the best remedy. Ibid., 1 Can. Cr. Cas. 14.

PRACTISING MEDICINE.

The fact that no additional charge was made above the ordinary price of the remedy by the druggist who diagnosed the case and prescribed a remedy, does not make the transaction any the less a practising for gain, nor lead to the inference that the consideration should apply wholly to the price of the medicine, and not to the advice given in diagnosing the disease. Ibid., 1 Can. Cr. Cas. 14.

KEEPING SHOP WITHOUT CERTIFICATE; SEPARATING CHARGES.

Where a statute provides penalties for keeping open a drug store without a qualifying certificate, only one penalty is incurred up to the time when proceedings are commenced for the infraction of the statute unless there be express provision for a separate penalty for separate periods. [Garrett v. Messenger, L.R. 2 C.P. 583 and Marks v. Benjamin, 5 M. & W. 565, applied; Apothecaries Co. v. Jones, [1893] 1 Q.B. 89, 67 L.T. 677, 17 Cox C.C. 583, referred to.] Nova Scotia Pharmaceutical Society v. Riordan, 28 Can. Cr. Cas. 194, 36 D.L.R. 652.

DRUGS.

OPIUM AND DRUG ACT; SEPARATE PENALTIES.

The Opium and Drug Act (1-2 Geo. V. 1911, Can., c. 17, s. 3) contemplates that a penalty shall be imposed on each person offending; a conviction against two or more persons jointly and imposing a single fine is invalid, and will be quashed. R. v. James, 29 Can. Cr. Cas. 204, 39 D.L.R. 377.

DUELLING.

Illegality of. 1 Can. Cr. Cas. 450.

DUPLICITY.

See Summary Conviction; Indictment; Information.

TWO OFFENCES IN ONE CHARGE.

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":—Held, nevertheless, that there was but one offence charged and that the commitment was good. Regina v. McKenzie (1885), 2 Man. L.R., 168.

SUMMARY CONVICTIONS; ONE MATTER OF COMPLAINT ONLY; MAGISTRATE'S DUTY TO STRIKE OUT ALL BUT ONE CHARGE.

(1) Upon a summary hearing of a charge punishable on summary conviction, if the information charges more than one offence all but one should be struck out upon objection taken. (2) Where the objection so taken by the defendant was overruled and evidence was taken upon the several charges until the conclusion of the prosecutors' case, when all but one were abandoned, a conviction upon that one is invalid and should be quashed on appeal. The King v. Austin, 10 Can. Cr. Cas. 34.

DYING DECLARATION.

See also Evidence.

Impeachment and contradiction of. 1 Can. Cr. Cas. 363.

Limitations and requisites on admissibility in evidence. 1 Can. Cr. Cas. 362.

Dying declaration as evidence on a homicide charge; Note on. 5 Can. Cr. Cas. 328.

Rejection of dying declarations; Statements shewing declarant's hope of recovery. 6 Can. Cr. Cas. 111.

Mode of taking. 7 Can. Cr. Cas. 356.

ADMISSIBILITY; DEATH BY ABORTION; EXPECTATION OF DEATH.

The prisoners were charged with the murder of one B., caused by attempting, by the use of an instrument, to procure abortion. The deceased died on the 28th December, 1874. On the 24th she made a statement commencing: "I am very ill; I have no hope whatever of recovery; I expect to die." she then narrated the facts, and added: "If I die in this sickness, I believe it will have been caused by the operation performed on me by Dr. Sparham, at the instigation of William Greaves. . . . I make these statements in all truth, with the fear of God before my eyes, for I firmly believe that I am dying." On the 26th she was again examined, and the previous statement read over to her. She confirmed its truth in every respect, and added that she then felt she was in the presence of God, and had no hope of recovery of any kind at the time; and her attention being called to the expression, "If I die," she said, "I had no doubt whatever that I was dying, and felt that I was dying, and did not by the form of the expression mean to doubt in any way that I was dying," etc.:—Held, that both statements were admissible; that the mere use of the words, "If I die," would not alone defeat the emphatic declaration of abandonment of all hope made on the same occasion; and that the second declaration was receivable in order to explain the first. The theory of the defence was, that the death was caused by the communication of small-pox virus by Dr. M., who attended the deceased; and one of the witnesses for the defence explained how the contagion could be guarded against. Dr. M. had not in his examination-in-chief or cross-examination been asked anything on this subject:—Held, that he was properly allowed to be called in reply, to state what precautions had been taken by him to guard against the infection. The Queen v. Sparham and Greaves (1875), 25 U.C.C.P. 143.

ADMISSIBILITY.

On an indictment for murder a dying declaration of the deceased that he was shot in the body and was "going fast," indicates a settled and hopeless consciousness that he was in a dying state and his declaration is admissible in evidence. R. v. Davidson, 1 Can. Cr. Cas. 351.

In deciding the preliminary question as to whether the deceased was under a sense of impending death, so as to allow evidence of his dying declaration to be admitted, the trial Judge must have regard to the whole of the surrounding circumstances including the nature and extent of the gun charge and the immediate result of the wound. Ibid., 1 Can. Cr. Cas. 351.

A dying declaration is not admissible if there existed in the mind of the party making it a hope of recovery or a hope of escape from almost immediate death; but if there is a firm, settled expectation by deceased of impending death and no hope of recovery remaining in his mind, the declaration is admissible, although such belief was the result of panic and not well founded. Ibid., 1 Can. Cr. Cas. 351.

EXPECTATION OF DEATH.

The question as to whether there was a settled hopeless expectation of death, so as to justify the admission of a dying declaration in evidence, is for the presiding Judge at the trial. R. v. Woods, 2 Can. Cr. Cas. 159.

INFORMAL DEPOSITIONS AS A DYING DECLARATION.

A deposition read over to and signed by the deponent may be admissible in evidence as a dying declaration, although irregular as a deposition under Cr. Code, sec. 687, because taken in the absence of the accused. R. v. Woods, 2 Can. Cr. Cas. 159.

WHEN ADMISSIBLE IN EVIDENCE; SENSE OF IMPENDING DEATH; SCOPE OF DECLARATION.

Proof of a dying declaration in a homicide case must be restricted to the transaction from which the death ensued but may include all facts immediately connected therewith, and a statement of the circumstances which immediately preceded the fatal injury. That part of a dying declaration which states a distinct transaction not immediately connected with the homicide is not admissible in evidence. A dying decla-

ration is admissible in evidence either for the prosecution or for the prisoner in a homicide case. To admit a dying declaration in a homicide case it is requisite that the declarant must have been not only in actual danger of death, but must have had a sense or conviction that his death was impending. The King v. Laurin (No. 1), 5 Can. Cr. Cas. 324.

REQUISITES; DECLARANT'S BELIEF IN IMPENDING DEATH; WANT OF HOPE OF RECOVERY.

To admit a dying declaration as evidence in a homicide case, the declarant must be under the solemn conviction that his death will within a proximately short time follow as the result of the wound, and he must have no hope whatever of recovery therefrom. The King v. Laurin (No. 4), 6 Can. Cr. Cas. 104.

ANTE-MORTEM STATEMENT; ANSWERS IN NARRATIVE FORM.

(1) The answers given to an interpreter and translated by him in narrative form to the person writing them down in the presence of the declarant, may be admitted in evidence of a dying declaration, although the exact form of the questions was not proved. (2) A dying declaration made by a person who cannot speak the language of the country, and proved only through an interpreter, is admissible if shewn to contain the actual purport of the statement without proof of the exact language of the declarant. The King v. Louie, 7 Can. Cr. Cas. 347.

[Referred to in R. v. Sylvester et al., 1 D.L.R. 196; R. v. Walker, 16 Can. Cr. Cas. 98.]

STATEMENT EXCLUDED AS DYING DECLARATION; ENQUIRY AS TO ADMISSIBILITY IN PRESENCE OF JURY.

The trial Judge is not bound to exclude the jury during any part of a criminal examination; and the fact that an application to exclude an alleged dying declaration was made in their presence, and that on the cross-examination of a witness in reference to it, parts of the declaration were read by counsel cross-examining, is not a ground for a new trial when the declaration was ruled out and explicitly withdrawn from the jury. The King v. Aho, 8 Can. Cr. Cas. 453.

MURDER; BELIEF OF DECLARANT THAT HE WILL NOT RECOVER; DECLARATION SIGNED AND SWORN IN NARRATIVE FORM; ADMISSIBILITY.

(1) The essential element of a dying declaration is the abandonment of hope of recovery, and evidence tending to shew a belief that death was impending is not displaced by a statement of deceased to his physician and members of the family that he did not think he could recover, but he knew they would do all they could for him. (2) A written statement signed and sworn to by deceased before a justice of the peace after being read over to him may be admitted as a dying declaration in a homicide case, although in narrative form not embodying the exact words of the declarant. The King v. Magyar, 12 Can. Cr. Cas. 114.

MURDER; EXPECTATION OF DEATH SHEWN BY WORDS FOLLOWING THE INCRIMINATING DECLARATION.

(1) The circumstance that the incriminating portion of a dying declaration was made before the declarant's statement in the same interview of belief that he was dying, will not prevent the declaration being admissible in evidence. (2) A conviction on indictment is not to be set aside or a new trial ordered by reason of certain evidence being improperly admitted, unless the Appellate Court on considering the probable effect of such evidence upon the jury is of opinion that a substantial wrong or miscarriage was thereby occasioned. The King v. Sunfield, 13 Can. Cr. Cas. 1.

[Referred to in R. v. Allen, 18 Can. Cr. Cas. 17.]

EAVESDROPPING.

AS OFFENCE IN QUEBEC.

Eavesdropping is not a common law offence in the Province of Quebec nor an offence under the Criminal Code; and where it is not an incident of some other offence, such as trespass, the charge must be dismissed. R. v. Mason, 29 Can. Cr. Cas. 210, 39 D.L.R. 54.

ELECTION.

Of mode of trial. See Summary trial; Speedy trial.

ELECTION LAW.

See also Conspiracy; Personation.

FRAUDULENT RETURNS; CONSPIRACY; DEGREE OF PROOF.

Upon an indictment for conspiracy to procure by fraud the return of one F. as a member of the Legislative Assembly:—Held, that a conviction upon the evidence of an accomplice not corroborated by other testimony is not illegal, but held that in this case such evidence was clearly confirmed, and that the verdict against all the defendants was warranted. It is clearly unnecessary to prove that all the defendants, or any two of them, actually met together and concerted the proceeding carried out; it is sufficient if the jury are satisfied from their conduct, and from all the circumstances, that they were acting in con-

cert. R. v. Fellowes (1859), 19 U.C.Q.B. 48.

RECOVERY OF PENALTY BY PERSON AGGRIEVED.

In an action against a deputy returning officer by a "person aggrieved," to recover a penalty under sec. 186 of the Ontario Election Act, 55 Vict. ch. 3, for an alleged wilful refusal to allow the plaintiff to vote:—Held, that the word "wilful" in the section means "perverse" or "malicious;" and, although the plaintiff was deprived of his vote by the refusal of the defendant to allow him to deposit a "straight" ballot, and there was thereby a contravention of the Act, yet, as the defendant honestly believed the plaintiff was not qualified, and believed in his own power to withhold the ballot, the action failed. [Lewis v. Great Western R. Co., 3 Q.B.D. 195, followed; Walton v. Apjohn, 5 O.R. 65, distinguished.] Johnson v. Allen, 26 O.R. 550.

SECRECY OF BALLOT; COMPULSORY DISCLOSURE BY WITNESS.

Notwithstanding sec. 71 of the Dominion Elections Act, a voter called as a witness in a trial on an indictment charging a criminal offence may be required to state for whom he voted. The provision of sec. 71 applies only to election petitions or other legal proceedings questioning the election or return, and not to a prosecution of a deputy returning officer for fraudulently putting into a ballot box false ballot papers. The answer of a witness stating for whom he voted is not secondary evidence because the vote was by mark upon a paper not produced, upon which the candidates' names were printed, and on which there was or should be nothing to identify the ballot as that marked by the voter; and such evidence is admissible without production of the ballots. R. v. Saunders, 3 Can. Cr. Cas. 278.

JOINING SEVERAL CHARGES OF CORRUPT PRACTICES.

On a proceeding by summons in the nature of a criminal prosecution under the Ontario Elections Act, sec. 188, all corrupt practices charges as having been committed by the accused in respect of the same election may be tried together and included in the one judgment of conviction. Re A. E. Cross, 4 Can. Cr. Cas. 173.

PERSONATION; BAIL AFTER COMMITTAL.

Where there is danger that accused persons, committed for trial for alleged offences against the election laws, may purposely allow their bail to be forfeited with the view of avoiding scandal, the Court, on an application to admit them to bail, should require the bail to be of a substantial amount. R. v. Stewart; R. v. Stallan; R. v. Taylor, 4 Can. Cr. Cas. 131.

WILFUL MAKING OF ERASURES IN VOTERS' LIST.

When a returning officer, appointed to hold a Dominion election in an electoral district, selects one of the copies of lists of voters sent to him by the Clerk of the Crown in Chancery pursuant to the Dominion Elections Act, as the one which he will certify and forward to the deputy returning officer, for use at one of the polling subdivisions, the copy so selected becomes a voters' list within the meaning of sec. 528, Revised Cr. Code, and it is an indictable offence for the returning officer wilfully to erase names of voters from it either before or after he certifies it and forwards it to the deputy. The King v. Duggan, 12 Can. Cr. Cas. 147.

OFFENCES; MUNICIPAL ELECTIONS.

It is an indictable offence in Ontario by virtue of the Cr. Code (Can.), sec. 164 and the Ontario statute, 3 Edw. VII. ch. 19, sec. 193 for a person to fraudulenty put into any ballot box any paper other than the ballot paper which he is authorized by law to put in, at the taking of a poll under the Consolidated Municipal Act (Ont.) R. v. Durocher, 21 Can. Cr. Cas. 61, 9 D.L.R. 627, affirmed in 21 Can. Cr. Cas. 382, 13 D.L.R. 243.

OFFENCES; MUNICIPAL ELECTIONS.

The effect of the Consolidated Municipal Act, 3 Edw. VII. (Ont.) ch. 19, sec. 193, was to make it an indictable offence in Ontario for a person to fraudulently put into any ballot box at a municipal election any paper other than the ballot paper which he is authorised by law to put in, by reason of the absolute prohibition of such act by the terms of that statute. R. v. Durocher, 21 Can. Cr. Cas. 382, 13 D.L.R. 243, affirming 21 Can. Cr. Cas. 61, 9 D.L.R. 627.

[See, as to ballot box offences in municipal elections, the later Ontario Municipal Act, 3 Geo. V. ch. 43, secs. 138-143, and R.S.O. 1914, ch. 192.]

EMBRACERY.

See Obstructing justice; Jury.

EMBEZZLEMENT.

See Theft; Evidence.

ESCAPE.

PRISONER REMANDED.

One W. was brought before magistrates in the custody of defendant, a constable, to answer a charge of misdemeanour, 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. He said he could get bail if he had time to send for them, and the justices verbally remanded him till the following day, telling defendant to bring him up then to be committed or bailed. On that day defendant negligently permitted him to escape, for which he was convicted:—Held, that W. was in custody under the original warrant, and the matter still pending before the magistrates, until finally disposed of by commitment to custody or discharge on bail; and that the conviction was proper. Reg. v. Shuttleworth, 22 U.C.Q.B. 372.

UNLAWFULLY BEING AT LARGE; PROVING CONVICTION AND SENTENCE; COMPUTATION OF TERM OF IMPRISONMENT.

(1) A signed minute of adjudication by justices endorsed upon the original information is not evidence in a subsequent prosecution for unlawfully being at large, of the sentence of imprisonment imposed by the justices, a formal conviction or a certified copy thereof being essential for that purpose. (2) An amended conviction correcting errors of form in a defective conviction previously transmitted for record under Revised Code, sec. 793, may be filed at any time before the first conviction is attacked, and even pending the trial of a charge of unlawfully remaining at large laid under the defective conviction. (3) Process of execution upon a conviction may be issued after the signing of a minute of adjudication and before the drawing up of a formal conviction. (4) The time during which a person under sentence is improperly at liberty through an erroneous order for bail, is not to be counted as part of the term of imprisonment. The King v. Taylor, 12 Can. Cr. Cas. 244.

[Approved in Robinson v. Morris, 19 O.L.R. 633.]

ILLEGAL ORDER FOR BAIL AFTER CONVICTION; LAWFUL EXCUSE.

Upon a summary conviction of the defendant and the passing of sentence of four months' imprisonment, for breach of a provincial law, the magistrate of his own motion required the defendant to enter into a recognizance to appear when called upon (a procedure not authorized in such cases) and upon doing so the defendant was released. The defendant having been afterward imprisoned under a warrant issued two months after the date of sentence, held that the term of imprisonment is to be counted from the day of passing sentence and that the defendant was not liable as upon an escape to make up the period for which he was so at liberty, as there was no mens rea and the magistrate's action was a "lawful excuse" quoad the defendant. The King v. Robinson, 12 Can. Cr. Cas. 447.

[Overruled in Robinson v. Morris, 19 O.L.R. 633; referred to in Re Bartels, 13 Can. Cr. Cas. 64; R. v. Graves (No. 2), 16 Can. Cr. Cas. 349; R. v. Mitchell, 19 Can. Cr. Cas. 119.]

ESCAPE FROM TOWN LOCK-UP; PRESUMPTION AS TO REGULARITY OF ITS ESTABLISHMENT.

On a charge of prison breach by escaping from a town "lock-up" and proof that the lock-up in question was constantly used as a place for the detention of persons arrested upon charges of criminal offences and that the defendant was a prisoner therein, the regularity of all proceedings necessary to constitute the lock-up a regularly established lock-up or prison is to be presumed. The King v. Brown, 13 Can. Cr. Cas. 133.

ASSISTING ESCAPE OF CRIMINAL INSANE PERSON COMMITTED TO INSANE ASYLUM.

(1) A person acquitted on a criminal charge on the ground of insanity and committed to an insane asylum upon the order of the Provincial Lieutenant-Governor under Code, secs. 966 and 969, remaining in custody as a person who has committed a criminal act, and the asylum is as regards such person a "prison." (2) The detention of the person so committed to an asylum is upon an indeterminate sentence of imprisonment for crime and a person aiding and assisting in his escape from the asylum is criminally liable under Code, sec. 192. The King v. Trapnell, 17 Can. Cr. Cas. 346.

NEGLIGENCE OF OFFICER; RECAPTION UNDER ORIGINAL WARRANT.

If a prisoner, when being taken to jail to serve a sentence imposed on summary conviction, escapes because the constable became intoxicated and permitted him to go, the escape is not a voluntary one and the escaped prisoner may be retaken on the original commitment. R. v. Hall, 27 Can. Cr. Cas. 1, 32 D.L.R. 236.

LEGALITY OF ARREST.

On a charge of escaping from the custody of a police officer after an alleged arrest, the legality of the arrest must be shown. R. v. Stackhouse, 29 Can. Cr. Cas. 151, 41 D.L.R. 420.

RECAPTION; PRISONER TAKEN TO HOSPITAL FOR TREATMENT.

When the period of imprisonment under a warrant of commitment following a summary conviction has begun to run, there can be no rearrest to serve the remainder of the sentence after the period specified has expired by effluxion of time computed from the commencement of the imprisonment, because of the accused having been taken from the gaol to a hospital whence she was allowed to depart without any attempt at recaption during the unexpired period of her sentence. R. v. Peters, 29 Can. Cr. Cas. 298.

ESTREAT.

See also Bail; Recognizance.

Note on recognizance of bail; Form of condition; Estreat. 3 Can. Cr. Cas. 7.

Of recognizance. 7 Can. Cr. Cas. 22.

FORFEITURE OF RECOGNIZANCE; POWER OF THE COURT TO MAKE; NOTICE TO SURETIES; JURISDICTION OF COURT EN BANCO TO HEAR MOTION TO RESCIND ORDER; CROWN RULES.

C. G. C. with two sureties, entered into a recognizance conditioned for the appearance of C. G. C. to answer a charge of conspiracy to defraud, by pleading to such indictment as might be found against him by the grand jury. C. G. C. failed to appear in fulfilment of the condition, and after he had been duly called in open Court, the recognizance was declared to be forfeited. No notice to the sureties was given before forfeiting the recognizance, as contemplated by R.S.C. ch. 179, sec. 12 and Crown rules (1889), Rules 84 and 86:—Held, that the order estreating the recognizance must be set aside and rescinded. (Per McDonald, C.J., Weatherbe and Henry, JJ. Ritchie and Meagher, JJ., dissented.) Per Henry, J., delivering the judgment of the Court: (1) That the Crown Rules 84 and 86 apply to recognizances taken under the Criminal Procedure Act, sec. 81. (2) That such rules are within the powers of the Court under the Dominion Acts of 1889, ch. 40. (3) That the nonobservance of the rules, in a case where a recognizance has been estreated in the absence of the accused, and his bail, renders the estreating of the recognizance and the issuing of execution irregular. (4) That the Supreme Court, sitting en banco, has jurisdiction in such case to rescind and set aside the order. The Queen v. Creelman, 25 N.S.R. 404.

FORFEITURE OF RECOGNIZANCE; PREFERRING INDICTMENT ON DAY OTHER THAN STATED IN RECOGNIZANCE; VALIDITY OF FORFEITURE ORDER.

Where a recognizance entered into before the magistrate committing the prisoner for trial was conditioned for the prisoner to appear at the next Court of competent jurisdiction to be holden at Toronto, and the next Court was the sittings of the Court of Oyer and Terminer for the County of York, commencing on April 30th, 1896, but no indictment against the prisoner was then preferred, but the information, depositions and recognizance were transmitted to the Sessions of the Peace for the County of York, commencing on May 14th, 1895, where an indictment having been preferred and a true bill found, and neither the prisoner nor his bail appearing, the recognizance was on the last day of the sessions forfeited and the surety arrested, the writ of fieri facias having been returned nulla bona:—Held, that the order forfeiting the recognizance, the estreat roll and the writ of fieri facias and capias must be quashed, and all proceedings thereon stayed. Re Cohen's Bail (1896), 32 C.L.J. 412.

BAIL; RECOGNIZANCE TO APPEAR FOR INDICTMENT; FAILURE TO APPEAR.

A recognizance of bail put in on behalf of a prisoner, recited that he had been indicted at the Court of General Session of the Peace for two separate offences, and the condition was, that he should appear at the next sittings of the said Court, and plead to such indictment as might be found against him by the grand jury. At the next of said sittings the accused did not appear, and no new indictment was found against him:—Held, that the recitals sufficiently shewed 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's Bail, 9 P.R. (Ont.) 31.

FORFEITURE OF BAIL; SUBORNATION OF PERJURY; FAILURE TO APPEAR; NO CERTAIN DAY FIXED FOR TRIAL.

In case where a party accused of subornation of perjury has been arraigned and pleaded not guilty, and no day certain has been fixed for his trial, and no forfeiture of his bail has been declared, that the mere failure of the party to answer in the term subsequent to that in which he was arraigned, cannot operate as a forfeiture of such bail. The Attorney-General v. Beaulieu, 3 L.C.J. 117.

FORFEITURE OF RECOGNIZANCE; LIABILITY OF COGNIZORS; SUFFICIENCY OF PROPERTY.

Where a recognizance has been forfeited, and judgment has been entered in favour of the Crown against cognizors who are jointly and severally liable, one of the cognizors is not subject to contrainte pas corps until it is established that sufficient goods and chattels, lands and tenements, cannot be found belonging to his cocognizor to satisfy the judgment. R. v. Ferris, 9 Que. S.C. 376.

ROLL OF; SUFFICIENCY OF THE ROLL.

The provision of R.S.C. ch. 179, secs. 10 and 11, and R.S.O. ch. 88, secs. 7 and 8, requiring the written order of the Judge for the estreating or putting in process of a recognizance, applies only to recognizances to appear to prosecute, or to give evidence, or to answer for any common assault, or to articles of the peace, and does not apply to a recognizance such as the one here in question, whereby the bail became bound for the appearance of their principal to stand his trial upon an indictment for conspiracy. The estreat roll was sufficiently

signed by the clerk when he signed the affidavit at the foot of the roll. It is no part of the duty of the clerk in making up the roll to instruct the sheriff as to what disposition he is to make of the money therein mentioned when collected. And where the clerk in making it up stated it to be made in accordance with a Provincial statute and also with two Dominion statutes, thus leaving it uncertain whether the moneys were to be paid over to the Provincial Treasurer or to the Dominion Minister of Finance:—Held, that the words so used were surplusage, and did not affect the validity of the roll, and should be stricken out. The estreat roll as drawn up stated that it was a roll of fines, issues, amerciaments and forfeited recognizances, set, imposed, lost or forfeited, by or before the Court, etc., commenced, etc., and contained the names of parties, residences, etc., with the amounts for which the bail were bound, filled in under the heading "amount of fine imposed." Held, that the roll sufficiently shewed the recognizance to have been forfeited, and that it was fairly entered and extracted on the roll as a forfeited recognizance. Held, that the proceedings to collect the debt due to the Crown under the recognizance were civil, and not criminal, proceedings, and were to be regulated by R.S.O. ch. 88; and the writ of fieri facias and capias issued in this case, following the form given in the schedule to that Act, was not open to any objection. Held, that, under the circumstances set forth in the affidavits, the Court would not be justified in releasing the bail from their liability. Re Talbot's Bail (1892), 23 O.R. 65.

BAIL; RECOGNIZANCE TO APPEAR FOR "SENTENCE."

Where on a trial upon an indictment a verdict of guilty was returned, but a reserved case was granted upon a question of law, and the accused admitted to bail, the condition of the recognizance taken being that the accused would appear at the next sitting of the Court "to receive sentence," the condition of the recognizance is not broken if the accused fails to appear after judgment is given on the reserved case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called for sentence, and the sureties were not bound for his appearance for any other purpose than to receive sentence. A roll of estreated recognizance and a writ of fieri facias against the sureties thereon will in such a case be set aside on motion to the Full Court. R. v. Hamilton, 3 Can. Cr. Cas. 1.

RECOGNIZANCE OF BAIL; ESTREAT; DISCRETIONARY DISCHARGE.

An order made under Cr. Code, sec. 922, for the discharge of a forfeited recognizance is a civil and not a criminal proceeding. The discretionary order for the discharge of a forfeited recognizance authorized by sec. 922 of the Criminal Code to be made by the Court into which any writ of fieri facias and capias issued under Part LIX. of the Code is returnable, must be made by the Court en banc, and not by a single Judge. Re McArthur's Bail, 3 Can. Cr. Cas. 195.

LOCUS STANDI OF PRIVATE PROSECUTOR.

Where a convicted person, instead of being sentenced is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on it, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. In Ontario, a private prosecutor in a prosecution for defamatory libel has no locus standi to make the application. R. v. Young, 4 Can. Cr. Cas. 580.

[Followed in R. v. Siteman, 6 Can. Cr. Cas. 226.]

OF RECOGNIZANCE TO KEEP THE PEACE; STIPENDIARY EXERCISING "SUMMARY TRIAL" POWERS MUST SHEW JURISDICTION ON FACE OF RECOGNIZANCE.

(1) A recognizance to keep the peace for two years, being beyond the powers conferred upon justices by Code, sec. 959, and only authorized to be taken by a stipendiary magistrate under certain circumstances and when exercising a power of "summary trial," must shew on its face that the magistrate had jurisdiction to require it to be given, or its estreat will be refused. (2) When a stipendiary magistrate taking recognizance to keep the peace follows form XXX. of the Code without reference therein to any pending prosecution or to any obligation to appear in Court, it is to be assumed that he was proceeding in his capacity of a justice of the peace under Code, sec. 959, to which alone that form is applicable, and if the term exceeds twelve months the recognizance is void. Re Sarah Smith's Bail, 6 Can. Cr. Cas. 416.

OF RECOGNIZANCE; NOTICE TO SURETIES OF APPLICATION.

(1) Notwithstanding Nova Scotia Crown Rule No. 86, a recognizance given upon a remand in a preliminary enquiry for the appearance of the accused and for his good behaviour meanwhile, may be estreated in Nova Scotia by the Supreme Court upon the justice's certificate of default in appearance, without previous notice of the application being given to the sureties. (Per Townshend, J., and Meagher, J.) (2) Notice to the sureties is necessary under N. S. Crown Rule 86 before the recognizance can be estreated. (Per McDonald, C.J., and

Graham, E.J.) Re Frederick Barrett's Bail, 7 Can. Cr. Cas. 1.

[Considered in Re Burns' Bail, 17 Can. Cr. Cas. 292.]

PRELIMINARY ENQUIRY; RECOGNIZANCE ON REMAND; ESTREAT; ALLEGED AGREEMENT TO ADJOURN ENQUIRY.

On a motion to vacate an estreat of bail, the Court should not interfere on matters extrinsic to the record as to which the affidavits filed on the motion are conflicting. The King v. Bole, 9 Can. Cr. Cas. 500.

FORFEITED RECOGNIZANCE; ARREST OF SURETY.

An application in Nova Scotia under Code, sec. 1110 to discharge from custody a surety arrested in estreat proceedings, should be made to the Judge presiding at the criminal sittings and not to the Court en banc. Re Pippy, 14 Can. Cr. Cas. 305.

RECOGNIZANCE FOR DEFENDANT'S APPEARANCE; RECORD OF PROPOSED ESTREATS SENT OVER TO NEXT SITTINGS.

(1) Where there has been no election of speedy trial without a jury, a recognizance to appear "at the next Court of competent jurisdiction" for the county, is sufficiently definite to indicate the next Court sittings at which the defendant could be tried other than those of the County Court Judge's Criminal Court. (2) It is not essential to the validity of an estreat of bail given for appearance for trial that the record of proposed estreats should be made and passed upon at the same sittings at which the default occurred; the trial Judge may direct that the estreat record be held over until the following sittings and it may then be dealt with. (3) Relief was granted to the sureties in respect of an estreat of their recognizance for defendant's appearance when the defendant was subsequently taken into custody and so remained at the time of the application, but only upon condition that the sureties pay the Crown's costs of the application. The King v. Bailly, 18 Can. Cr. Cas. 298.

EVIDENCE.

I. In general; Judicial Notice; Canada Evidence Act.
II. Presumptions and Burden of Proof.
III. Best and Secondary Evidence.
IV. Documentary Evidence.
V. Demonstrative Evidence; Articles and Things; View of Jury.
VI. Parol and Extrinsic Evidence Concerning Writings.
VII. Opinions and Conclusions.
VIII. Confessions; Testimony or Evidence Wrongfully Obtained.
IX. Admissions.
X. Hearsay; Declarations; Res Gestæ.
XI. Relevancy and Materiality.
XII. Weight, Effect and Sufficiency.

XIII. Admissibility under pleadings; Variance.

IN EXTRADITION, see Extradition.
PRIVILEGE OF WITNESS; INCRIMINATING ANSWERS, see Witness.
UNDER LIQUOR LAWS, see Liquor License; Canada Temperance Act.
CORROBORATION; SEDUCTION UNDER PROMISE OF MARRIAGE, see Seduction.

ANNOTATIONS.

Presumption of law as to "de facto" officer. 1 Can. Cr. Cas. 315.

Trade mark, proprietor's assent. 1 Can. Cr. Cas. 73, 243.

Trade mark, similarity of. 1 Can. Cr. Cas. 68.

What is evidence "implicating" the accused. 1 Can. Cr. Cas. 6.

"Disorderly house;" Note on meaning of. 3 Can. Cr. Cas. 74.

Depositions taken on the preliminary enquiry; When admissible. 3 Can. Cr. Cas. 583.

Note on taking evidence under commission in a foreign country. 6 Can. Cr. Cas. 329.

Corroboration required under Cr. Code, sec. 684. 6 Can. Cr. Cas. 200.

Depositions of accused in former civil proceedings; Voluntary statements; Canada Evidence Act, sec. 5. 11 Can. Cr. Cas. 330.

Confession; Admissions on interrogation of accused person in custody. 3 Can. Cr. Cas. 99.

Answers not unduly or improperly obtained; Onus upon prosecution. 3 Can. Cr. Cas. 101.

Confessions, admissibility of; Note. 4 Can. Cr. Cas. 529.

Confession to persons not officers of the law. 8 Can. Cr. Cas. 209, 210.

Admissibility of former deposition of accused. 1 Can. Cr. Cas. 221.

Confession; Statement by accused while detained by officer in authority; "Sweatbox" system. 9 Can. Cr. Cas. 356.

Confession as evidence; Preliminary proof that voluntarily made. 9 Can. Cr. Cas. 406.

Admissions to police officer. 1 Can. Cr. Cas. 398.

Incriminating answers; Canada Evidence Act, sec. 5. 11 Can. Cr. Cas. 213.

Rape and similar offences; Evidence of complaint made soon afterwards; Note on admissibility. 3 Can. Cr. Cas. 26.

Of similar criminal acts; False pretences. 7 Can. Cr. Cas. 27.

Of prisoner on his own behalf; Inference of motive; Previous silence on subject of testimony. 7 Can. Cr. Cas. 68.

Rebuttal evidence on collateral fact; Leave to admit cumulative testimony. 7 Can. Cr. Cas. 68.

Of only one sale insufficient to establish "peddling." 7 Can. Cr. Cas. 131.

Communication; Act performed under

direction not exempt as. 7 Can. Cr. Cas. 139.

Dying declaration; Ante-mortem statement; Answers in narrative form. 7 Can. Cr. Cas. 347.

Onus of proof that rent due on charge of resisting distress. 7 Can. Cr. Cas. 543.

Of mitigating circumstances; Rebutting criminal intent. 7 Can. Cr. Cas. 276.

Dying declaration; Enquiry as to admissibility; Presence of jury. 8 Can. Cr. Cas. 453.

Hearsay evidence; Exceptions. 8 Can. Cr. Cas. 422.

Of intent. 1 Can. Cr. Cas. 1.

Of persuasion in abduction case. 1 Can. Cr. Cas. 284.

Of previous conviction. 1 Can. Cr. Cas. 13.

Of prior conviction, identity must be proved apart from certificate. 1 Can. Cr. Cas. 510, 513.

Evidence of similar subsequent acts of accused. 1 Can. Cr. Cas. 9.

Onus of proving want of reasonable and probable cause. 1 Can. Cr. Cas. 48.

Personal knowledge by magistrate of identity of accused with person previously convicted insufficient in charge of second offence. 1 Can. Cr. Cas. 510.

Political offence in extradition cases. 1 Can. Cr. Cas. 74.

Note on cross-examination of accused tendering himself as a witness. 5 Can. Cr. Cas. 413.

Of prisoner's character; Admissibility. 5 Can. Cr. Cas. 493, 503.

Deposition taken at preliminary enquiry; Proof of witness's absence from Canada. R. v. Forsythe, 5 Can. Cr. Cas. 475.

Limitation of number of witnesses giving professional or expert testimony. 5 Can. Cr. Cas. 559.

Depositions as evidence; Absence of witness from Canada; Whether temporary absence sufficient; Cr. Code sec. 687. 8 Can. Cr. Cas. 279, 280.

Depositions as evidence; Proving absence from Canada of witness examined before magistrate; Cr. Code sec. 687. 8 Can. Cr. Cas. 298.

Young children's evidence not under oath; Corroboration; Canada Evidence Act, sec. 25. 9 Can. Cr. Cas. 42.

Evidence of accomplices; Note. 10 Can. Cr. Cas. 128.

Of accused. 10 Can. Cr. Cas. 517.

Cause of death; Proof of abortion committed. 1 Can. Cr. Cas. 246.

Inference where common fund for two business establishments. 1 Can. Cr. Cas. 312.

Objection to answer incriminating questions under Canada Act of 1893. 1 Can. Cr. Cas. 397.

Res gestae; Note on admissibility of declaration as part of. 2 Can. Cr. Cas. 33.

Whether confession a voluntary one; Onus upon prosecution. 2 Can. Cr. Cas. 152.

Recent possession as evidence of stealing. 2 Can. Cr. Cas. 291, 295.

Proof of license in charges against licenses under liquor license laws. 2 Can. Cr. Cas. 364.

Note on corroboration of evidence of forgery. 2 Can. Cr. Cas. 546.

Disorderly house; Keeping house of ill-fame. 4 Can. Cr. Cas. 216.

Incriminating answers; Witness's objection to answer. 4 Can. Cr. Cas. 269.

To prove perjury. 4 Can. Cr. Cas. 334.

Proof of relationship; Registers of marriages, etc., in Quebec province; Note. 4 Can. Cr. Cas. 70.

Receiving stolen goods; Nature of evidence required; Recent possession. 4 Can. Cr. Cas. 104.

Rules of, in indecent assault cases. 4 Can. Cr. Cas. 389.

In mitigation of punishment. 10 Can. Cr. Cas. 381.

Medical Expert witnesses. 28 Can. Cr. Cas. 308.

Canada Evidence Act; Failure of person charged to give evidence; Comment. 1 Can. Cr. Cas. 389.

Amendment of 1898. 2 Can. Cr. Cas. 601.

Incriminating answers; Witness; Objection to answer. 4 Can. Cr. Cas. 269.

Amendment to sec. 5 (1901). 4 Can. Cr. Cas. 588.

Codefendant as a witness. 5 Can. Cr. Cas. 70.

Criminating answers; Sec. 5. 5 Can. Cr. Cas. 235.

Prisoner as a witness. 5 Can. Cr. Cas. 407, 413.

Act of 1902 further amending the Canada Evidence Act of 1893. 5 Can. Cr. Cas. 559.

Expert testimony; Limitation of number of witnesses. 5 Can. Cr. Cas. 559.

Competent witness is also a compellable one. 7 Can. Cr. Cas. 139.

Application of Provincial laws of evidence under sec. 21. 7 Can. Cr. Cas. 170.

Incriminating answers; Canada Evidence Act, sec. 5. 11 Can. Cr. Cas. 207, 214.

Depositions of accused in former civil proceedings; Voluntary statements; Canada Evidence Act, sec. 5. 11 Can. Cr. Cas. 330.

Questioning accused person in custody. 22 Can. Cr. Cas. 480.

I. In general; Judicial Notice; Canada Evidence Act.

JUDICIAL NOTICE WITHOUT REQUEST BY PARTY ABSOLVED FROM PROVING.

(1) Where a statute declares that judicial notice shall be taken of certain official proclamations, the latter must be taken as

proved, although there was no formal request for such judicial notice. (2) Where a proclamation bringing into force the second part of the Canada Temperance Act in any county was issued several years prior to the offence charged thereunder and remains unrevoked, it is not necessary to prove the date of liquor license expiry on which the proclamation would take effect, as none of such licenses could legally be in force for more than one year. Ex parte Edwards, 16 Can. Cr. Cas. 522.

JUDICIAL NOTICE OF EXTRADITION TREATIES; WHAT EVIDENCE JUSTIFIES COMMITTAL FOR TRIAL.

(1) Judicial notice is to be taken under sec. 3 of the Extradition Act, R.S.C. 1906, ch. 155, of extradition treaties and extradition Orders-in-Council published in the "Canada Gazette," the official paper of the Government of Canada, without production in evidence of a copy of the "Gazette" (2) In determining whether the evidence upon a demand for extradition is sufficient for a commitment in extradition, the Judge or commissioner may order extradition if the evidence makes out a probable case of guilt by shewing circumstances which raise a presumption against the prisoner; but if, from the slender nature of the evidence, the unworthiness of the witness or the conclusive proof of innocence produced in answer, the Judge or commissioner is satisfied that the charge is not sustained and that if the trial were within this jurisdiction, the accused must be acquitted, an order for extradition should be refused. [Girvin v. The King (1911), 45 Can. S.C.R. 167, applied; 14 Halsbury's Laws of England 412, approved.] Republic of France v. Peugnet, 19 Can. Cr. Cas. 179, 1 D.L.R. 204.

[See also sec. 1128 of the Criminal Code.]

JUDICIAL NOTICE OF BY-LAWS; SUMMARY CONVICTION ACT.

A municipal by-law need not be set out in a conviction before a magistrate for its violation, since, by sec. 68 of the summary Conviction Act, judicial notice must be taken of such by-law. The King v. Elderman, 19 Can. Cr. Cas. 445.

DEPOSITIONS AT CORONER'S INQUEST; ADMISSIBILITY AGAINST DEPONENT.

Under the Canada Evidence Act 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding subsequently instituted against him. Regina v. Viau, 7 Que. K.B. 362.

[See also R. v. Lalonde, 7 R. 204.]

ACTIONS BY OR AGAINST EXECUTORS AND ADMINISTRATORS; "MATERIAL EVIDENCE" IN CORROBORATION; INFERENCES AND PROBABILITIES.

The "material evidence" in corroboration, required by the Evidence Act, R.S.O. ch. 61, in an action by or against the heirs, executors, administrators or assigns of a deceased person, may be direct or may consist of inferences or probabilities arising from other facts and circumstances tending to support the truth of the witness's statement. In an action by an administratrix to recover moneys alleged to have been received on behalf of the deceased, the defendant's statement that the moneys in question were paid in due course to the deceased is sufficiently corroborated by shewing that the deceased, a close, careful, intelligent man, who lived for over a year after the transactions in question, and during that time saw and conversed with many persons; continued to entrust her with his business, and made no complaint of the nonreceipt of the money. Judgment of Armour, C.J., affirmed. Green v. McLeod (1896), 23 O.A.R. 676.

CORONER'S INQUEST; DEPOSITIONS; SUBSEQUENT CHARGE OF MURDER.

A Coroner's Court is a criminal Court, and the depositions of a witness before such Court who is subsequently charged with murder cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding privilege was not claimed by him at the inquest. Regina v. Hendershott and Weiter (1895), 26 O.R. 678.

CIVIL ACTION; CONFISCATION PROCEEDINGS.

In an action to recover from the constable and the clerk of the peace moneys seized in a common gaming house under confiscation proceedings the rules of evidence in force in the province in Civil matters will apply, and not the Canada Evidence Act. O'Neil v. Attorney-General, 1 Can. Cr. Cas. 303.

COMMENT ON FAILURE TO TESTIFY.

(1) Comment by the prosecuting counsel before the jury in respect of the failure of prisoner's wife to testify, which is prohibited by the Canada Evidence Act, sec. 4, is error entitling the prisoner to a new trial. (2) Objection to comment by the prosecuting counsel upon the failure of the prisoner's wife to testify is not waived because not taken at the time, and it is sufficient if drawn to the attention of the trial Judge after the jury have retired to deliberate. R. v. Corby, 1 Can. Cr. Cas. 457.

[Applied in R. v. King, 9 Can. Cr. Cas. 426, 6 Terr. L.R. 149; discussed in R. v. Maclean, 39 N.S.R. 147; applied in R. v. Coleman, 2 Can. Cr. Cas. 358; distinguished in R. v. Weir (No. 3), 3 Can. Cr. Cas. 270;

referred to in R. v. Hill, 7 Can. Cr. Cas. 41; R. v. MacLean, 11 Can. Cr. Cas. 296.]

FORMER DEPOSITION IN CIVIL PROCEEDING.

The Canada Evidence Act, sec. 5, does not apply to exclude evidence given by the accused in a civil proceeding under the jurisdiction of a Provincial Legislature from being used in evidence against him in a subsequent criminal proceeding, and the same rule will apply although the examination in the civil proceeding was compulsory. R. v. Douglas, 1 Can. Cr. Cas. 221.

COMMENT ON PRISONER'S FAILURE TO TESTIFY; EFFECT OF WITHDRAWAL.

An accused person has the right to have his case submitted to the jury without any comment on his failure to testify being made by the trial Judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof. R. v. Coleman, 2 Can. Cr. Cas. 523.

[Referred to in R. v. Lew, 1 D.L.R. 104; Dickinson v. The "World," 19 Can. Cr. Cas. 384, 5 D.L.R. 148.]

COMMENT ON FAILURE OF ACCUSED TO TESTIFY.

Where, during the address to the jury by the prisoner's counsel, the counsel for the Crown interjects a remark, in the hearing of the jury, intimating that the prisoner could have given evidence as to an alleged occurrence then being referred to, and it appears that the ascertainment of whether or not such occurrence took place is not in fact material to the issue, such comment is not a ground for ordering a new trial. R. v. Weir (No. 3), 3 Can. Cr. Cas. 262.

[Referred to in R. v. King, 9 Can. Cr. Cas. 440; R. v. Brindamour, 11 Can. Cr. Cas. 328.]

EXTRACT FROM REGISTERS: SEC. 21.

Oral evidence is not admissible to prove relationship on a charge of incest in the Province of Quebec, and the relationship must be established by the production of extracts from the registers of civil status, as required by the Provincial laws of evidence made applicable to criminal proceedings by the Canada Evidence Act, sec. 21, unless the absence of such registers is proved. R. v. Garneau, 4 Can. Cr. Cas. 69.

[Commented on in R. v. Farrell, 15 Can. Cr. Cas. 289.]

COMMUNICATION MADE DURING MARRIAGE; CANADA EVIDENCE ACT 1893, SEC. 4.

A wife, called as a witness against her husband, is incompetent under the Canada Evidence Act to disclose a communication made by her husband in the presence or hearing of herself and a third party which she will not undertake to say was not intended for her to hear. The King v. Wallace, 6 Can. Cr. Cas. 323.

COMMENT ON FAILURE TO CALL PRISONER'S WIFE AS WITNESS.

The statutory rule prohibiting comment by the prosecuting counsel upon the failure of the accused to call his wife as a witness is an absolute one; and a new trial must be given to the accused upon its infraction, although the prisoner's counsel himself first commented thereon by way of explanation of the wife's absence in his address to the jury, and the prosecuting counsel's comment was made in contradiction of and reply to such explanation. The King v. Hill, 7 Can. Cr. Cas. 38.

[Applied in R. v. King, 9 Can. Cr. Cas. 426, 436, 6 Terr. L.R. 150; distinguished in R. v. McLean, 39 N.S.R. 166.]

ONUS OF PROOF UPON ACCUSED; FAILURE OF PRISONER TO GIVE AN ACCOUNT; COMMENT UPON IN CHARGING THE JURY.

A direction to the jury upon a criminal trial that the accused has failed to account for a particular occurrence when the onus is upon him to do so, is not a comment on the failure of the accused to testify within sec. 4 of the Canada Evidence Act, nor a ground for a new trial. The King v. Aho, 8 Can. Cr. Cas. 453.

[Referred to in R. v. King, 9 Can. Cr. Cas. 426, 436, 6 Terr. L.R. 150.]

COMMENT ON FAILURE OF ACCUSED TO TESTIFY; SUBSTANTIAL WRONG; NEW TRIAL; CANADA EVIDENCE ACT 1893, SEC. 4 (2).

(1) A statement by the Crown counsel in his address to the jury that the prisoner's counsel "took the very best and wisest course in not having the prisoner go on the witness stand," and that he, the Crown counsel, thinks it was wise for the prisoner himself, is a comment unfavourable to the accused on his failure to testify on his own behalf and is within the prohibition of sec. 4 (2) of the Canada Evidence Act 1893. (2) Where comment has been made in contravention of the Canada Evidence Act upon the failure of the accused to testify, the same is a substantial wrong to the prisoner (Cr. Code, sec. 746), and entitles him to a new trial. The King v. Charles King, 9 Can. Cr. Cas. 426.

FAILURE OF PRISONER TO TESTIFY; COMMENT BY JUDGE; NEW TRIAL.

Where the trial Judge, in his charge to the jury, called attention to the fact that the prisoner charged with theft was not called to testify on his own behalf, and warned the jury that they were not to take that fact to his prejudice, but stated that if the accused were innocent he could have proved that he was not in the locality at the time, this is a prohibited "comment" within the meaning of sec. 4 (2) of the Canada Evidence Act 1893, entitling the

accused to a new trial. The King v. McGuire, 9 Can. Cr. Cas. 554.

ACCUSED TESTIFYING ON HIS OWN BEHALF NOT BOUND TO WRITE; CANADA EVIDENCE ACT, SEC. 4.

(1) An accused person does not, by offering himself as a witness on his own behalf, become bound to write in the witness box at the direction of the Judge a specimen of his handwriting for comparison with a document in evidence. (2) Where the accused had furnished a specimen of his handwriting by direction of the Court at a previous trial, but under protest from his counsel, the specimen so obtained should be excluded on the subsequent trial. The King v. Grinder, 10 Can. Cr. Cas. 333.

[Referred to in R. v. Henderson, 18 Can. Cr. Cas. 247.]

COMMENT ON FAILURE OF PRINCIPAL TO CALL THE ALLEGED ABETTOR; "PERSON CHARGED," MEANING OF; CANADA EVIDENCE ACT, SECS. 4 AND 5.

(1) Where two prisoners are jointly indicted but an order is made for their separate trial, the one is an admissible witness for the other and is bound to testify although he may prevent his evidence being used against himself at his subsequent trial. (2) Only the person then on trial is a "person charged" within the meaning of the Canada Evidence Act, sec. 4, and comment is not prohibited as to the failure of the accused to call as a witness the person jointly indicted with him but whose trial has been ordered to be separate. The King v. Blais, 10 Can. Cr. Cas. 354.

COMMENT ON PRISONER'S FAILURE TO TESTIFY; CANADA EVIDENCE ACT, SEC. 4.

On a charge of theft, where the circumstances were such as to warrant the jury in drawing an inference of guilt from the prisoner's possession of one of the stolen articles, the Judge's comment in his charge that, if the defendant's witness is disbelieved, the prisoner has not given a "satisfactory account" of how he came into possession of the article is not comment on the failure of the accused to give evidence prohibited by the Canada Evidence Act. The King v. Burdell, 10 Can. Cr. Cas. 365.

INSTRUCTION OF LAW TO JURY; ACCUSED ENTITLED TO KEEP SILENT; COMMENT ON FAILURE TO TESTIFY.

Notwithstanding sec. 4 (2) of the Canada Evidence Act prohibiting comment upon the prisoner's failure to testify, the Court may instruct the jury that the prisoner is entitled under the law to remain silent in the trial. The King v. MacLean, 11 Can. Cr. Cas. 283.

EVIDENCE IN REBUTTAL; IMPROPER ADMISSION.

On a charge of forcible entry, evidence relating to the title of the occupant is not admissible; and a statement in the cross-examination of the accused denying that he had previously stated that he had sold the land to complainant is not one "relative to the subject-matter of the case" (Revised Evidence Act, sec. 11, formerly Cr. Code sec. 701), but as to a collateral matter, and evidence to contradict his denial was improperly received in reply. The King v. Walker, 12 Can. Cr. Cas. 197.

MODE OF ADMINISTERING OR TAKING THE DECLARATION; QUESTION OF OFFICIAL AND ANSWER AS TO TRUTH OF CONTENTS INSUFFICIENT TO CONSTITUTE A "SOLEMN DECLARATION."

(1) A person is "authorized by law" to make a statutory declaration if the declaration is such as can legally be made under the Canada Evidence Act. (2) Where a form of statutory declaration was made up by a magistrate from information given by the accused, and after the latter's signature had been obtained, the magistrate addressed the accused with the words: "Do you declare it is true?" to which the accused replied, "I do," the declaration has not been legally made in the terms of the Canada Evidence Act and a conviction is not authorized under Code, sec. 175, although the allegations in the document are shewn to be wilfully false. The King v. Philips, 14 Can. Cr. Cas. 239.

COMMENT OF JUDGE ON FAILURE OF ACCUSED TO TESTIFY; CANADA EVIDENCE ACT.

A statement made by a Judge, in charging the jury in a criminal case, that the evidence of a witness for the Crown is wholly uncontradicted, is not a comment on the failure of a person charged to testify, within the prohibition of the Canada Evidence Act, sec. 4 (5). The King v. Guerin, 14 Can. Cr. Cas. 424.

II. Presumptions and Burden of Proof.

BIGAMY; BURDEN OF PROOF.

In an indictment for bigamy it is incumbent upon the Crown to prove that a person marrying a second time, whose husband or wife has been continually absent from such person for seven years then previous, knew that the other consort was living within that time. Regina v. Fontaine, 15 L.C. Jur. 141.

BIGAMY; SEVEN YEARS' ABSENCE OF FIRST WIFE: BURDEN OF PROOF.

On a trial for bigamy, the Crown having proved the second marriage of the prisoner while his first wife was living, it is for the prisoner to prove the absence of the first wife during 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. Druyer, 27 L.C. Jur. 201.

PRESUMPTION OF MARRIAGE; BIGAMY.

In bigamy cases, strict proof of marriage is required; a different rule prevails in legitimacy cases, where strict proof of the marriage of the parents is not required, but may be presumed from cohabitation and repute; but where the evidence shews the actual terms upon which the parents were cohabiting and the facts relied upon as constituting the marriage no such presumption can arise. Re Sheran, 4 Terr. L.R. 83.

TRADE MARK OFFENCE; ONUS.

On a charge of falsely applying a trade mark the onus of proving that the assent of the proprietor of the trade mark has not been given is upon the prosecution. R. v. S. Howarth, 1 Can. Cr. Cas. 243.

MEANING OF "CONCLUSIVE" EVIDENCE.

Proof of consumption of liquor in the premises occupied by a society, association or club within the provisions of sec. 53 of the Ontario Liquor License Act, by any member thereof, constitutes incontrovertible evidence of the sale or keeping for sale of such liquor, and the effect of sec. 53, subsec. 3, which declares that such proof shall be "conclusive evidence" of sale, and that "any member of the club, etc., shall be taken conclusively to be the person who keeps such liquors for sale," is to debar any member of the club against whom the charge is laid, from shewing the contrary. R. v. Lightburne, 4 Can. Cr. Cas. 358.

[Referred to in R. v. Cahoon, 17 Can. Cr. Cas. 65, 17 O.W.R. 467.]

EVIDENCE AT TRIAL; DEPOSITIONS ON PRELIMINARY ENQUIRY; WITNESS ABSENT FROM CANADA; ABSENCE MUST BE OF A PERMANENT CHARACTER; ONUS OF PROOF.

(1) The absence from Canada required by Code sec. 687 to be shewn in respect of a witness before his depositions on the preliminary enquiry can be used as evidence for the prosecution at the trial, must be of a permanent nature, and a mere temporary absence is insufficient. (2) The onus of shewing that the witness' absence from Canada is not merely temporary is upon the prosecution. The King v. McCullough, 8 Can. Cr. Cas. 278.

[Considered in R. v. Deloe, 11 Can. Cr. Cas. 226.]

SHIFTING ONUS OF PROOF UPON ACCUSED; WOUND INFLICTED UPON DECEASED WHILE IN PRISONER'S COMPANY; FAILURE OF PRISONER TO GIVE AN ACCOUNT.

A direction to the jury upon a criminal trial that the accused has failed to account for a particular occurrence when the onus is upon him to do so, is not a comment on the failure of the accused to testify within sec. 4 of the Canada Evidence Act, nor a ground for a new trial. The King v. Aho, 8 Can. Cr. Cas. 453.

[Referred to in R. v. King, 9 Can. Cr. Cas. 426, 436, 6 Terr. L.R. 150.]

MAGISTRATE'S DUTY TO HEAR EX PARTE EVIDENCE OF SUSPICION ON APPLICATION FOR WARRANT.

(1) An information to lead a warrant for the apprehension and trial of a person charged with an offence punishable on summary conviction must disclose reasonable or probable grounds for believing that the accused committed the offence. (2) An information stating that the deponent has just cause to suspect and believe, and does suspect and believe, that the accused committed the offence, but stating no grounds of suspicion, does not justify the issue of a warrant, unless supplemented by the examination upon oath of the informant, or of his witnesses, to prove the causes of suspicion. The King v. Lizotte, 10 Can. Cr. Cas. 316.

POSSESSION OF STOLEN PROPERTY; PRESUMPTION; COMMENT.

On a charge of theft, where the circumstances were such as to warrant the jury in drawing an inference of guilt from the prisoner's possession of one of the stolen articles, the Judge's comment in his charge that, if the defendant's witness is disbelieved, the prisoner has not given a "satisfactory account" of how he came into possession of the article is not comment on the failure of the accused to give evidence prohibited by the Canada Evidence Act. The King v. Burdell, 10 Can. Cr. Cas. 365.

VAGRANCY; ESSENTIAL INGREDIENT OF OFFENCE; ONUS ON PROSECUTION TO PROVE.

A conviction for vagrancy against a prostitute for wandering in the public streets and not giving a satisfactory account of herself is bad if it is an essential ingredient of the offence that a request for an explanation should have first been made, and the onus is on the prosecution to prove both the request and the failure to give a satisfactory explanation. The King v. Harris, 13 Can. Cr. Cas. 393.

[Followed in Rex v. Pepper, 19 Man. L.R. 209, 15 Can. Cr. Cas. 314.]

SUMMARY CONVICTION; NONCOMPLIANCE TO BE PROVED ON HABEAS CORPUS.

The onus is upon the defendant attacking a summary conviction in habeas corpus proceedings to prove the alleged neglect to comply with Code sec. 655 (1). The King v. Lorrimer, 14 Can. Cr. Cas. 430.

PROVING PUBLICATION "KNOWINGLY" BY PROPRIETOR OF PAPER; ONUS OF PROOF.

The onus is upon the Crown to shew that the accused as editor and proprietor of a paper had "knowingly" published the ob-

scene matter but knowledge may be inferred, in the absence of evidence to the contrary, from proof that he had full control as to what should be published or not published, and that he published the paper under an assumed name. The King v. Macdougall, 15 Can. Cr. Cas. 466.

AUTOMOBILE SPEED REGULATIONS; ONUS TO PROVE REGISTERATION IS ON THE PROSECUTION.

The onus is upon the prosecution to prove the fact of registration of the automobile on a charge against the owner for an offence committed by some one else while operating his motor car. The King v. Labbe, 17 Can. Cr. Cas. 417.

OBSTRUCTING A PEACE OFFICER; PRESUMPTION OF LEGALITY OF PRISONER'S CUSTODY ON QUESTION OF OFFICER'S DUTY.

(1) A charge of wilfully obstructing a police officer in the execution of his duty may be shewn by proof of incitement of a mob to rescue a prisoner and following the officer and his prisoner in a menacing attitude, although without actual physical conflict. (2) On a charge of wilfully obstructing a police officer, the evidence of the officer that he was at the time of the offence engaged in taking to the police station a man whom he had arrested, raises a presumption that the arrest was legally made; and where such presumption is not rebutted a conviction will not be set aside for want of evidence to prove that the officer was justified in making the arrest and was therefore acting in the execution of his duty. The King v. McDonald, 18 Can. Cr. Cas. 251.

ELECTING MODE OF TRIAL; PRESUMPTION.

When the prisoner consents to be tried summarily by a magistrate under the Summary Trials clauses of the Criminal Code and an entry of this appears on the record, it will be presumed on a habeas corpus motion, unless the contrary is shewn, that the consent of the prisoner to be tried summarily was regularly obtained and that his option to elect summary trial was exercised only after the magistrate had stated his right of election in the manner prescribed by Criminal Code, sec. 778, and it is not essential that the magistrate's statement to the accused of the option in the statutory form should also be recited in the conviction or in the commitment. [Rex v. Howell, 19 Man. L.R. 317; Rex v. Walsh, 7 O.L.R. 149; Rex v. Crooks, 17 W.L.R. 560, distinguished.] The King v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256.

FALSE IMPRISONMENT AND MALICIOUS PROSECUTION; BURDEN OF PROOF; PARTY'S OWN DECLARATION AND ADMISSION.

(1) In an action for damages resulting from false arrest the onus of proving that the complainant acted imprudently and without reasonable and probable cause in procuring such arrest, lies upon the plaintiff. (2) Evidence of an alleged incriminating admission said to have been made by the plaintiff, after his acquittal, is not admissible for the defence in an action for malicious prosecution in proof of reasonable and probable cause where the question of guilt is not in issue. Canadian Pacific Railway Co. v. Waller, 19 Can. Cr. Cas. 190, 1 D.L.R. 147.

[Compare Watt v. Clark, 18 O.R. 602.]

PRESUMPTION FROM WITHHOLDING OR DESTROYING EVIDENCE; APPLICATION IN INTERNATIONAL LAW.

A presumption is raised against a spoliator who destroys or conceals the things, the finding of which would be evidence against him, and such presumption is applicable in matters of international law. (Per Irving, J.A.) The King v. Chlopek, 19 Can. Cr. Cas. 277, 1 D.L.R. 96.

[For other cases see Odgers' Law of Evidence, Canadian edition, 1911, pages 408-410.]

PRESUMPTION IN FAVOUR OF JUDICIAL ACTS; COURT OFFICIAL.

Where there is any conflict or discrepancy as to the action of a Judge or Court officer in any matter of routine, the presumption that all was done rightly should prevail. Rex v. Hamlink, 19 Can. Cr. Cas. 493, 5 D.L.R. 733.

CHARACTER; SALE OF OBSCENE BOOK; PRESUMPTION AS TO KNOWLEDGE.

(1) While neither the character, reputation or extent of one's business constitutes a reason why he should not be convicted of a criminal offence, or punished if guilty, yet they all have weight in considering the probability of the truth of the charge, and a bearing upon the question whether there was reasonable evidence of guilt, as well as upon the fact whether he was guilty or innocent. (2) Knowledge of a dealer in books, who had a stock of 150,000 to 250,000 volumes, of the obscene character of a book, cannot be inferred from the fact that a clerk had, without his employer's knowledge, ordered a few of them and sold one, and that the defendant had, about a year before, upon receiving a few copies of such book, without reading one of them, returned them to the publisher because he had heard that the book was immoral. The King v. Britnell, 20 Can. Cr. Cas. 85, 4 D.L.R. 56.

GUILT; PRESUMPTIONS AND INFERENCES; STATEMENT OR ADMISSION OF ACCUSED; EVIDENCE OF A CHILD NOT UNDER OATH; CORROBORATION REQUIRED BY STATUTE.

(1) The statement or admission of the accused in the words, "I won't do it again," may constitute an implied admission of guilt of the particular crime of which he is charged, by inferences drawn from the cir-

cumstances under which the statement was made to identify what it was that his promise had reference to and to shew, in the absence of direct evidence, that the person to whom the exclamation was addressed must have charged accused with the crime immediately prior to the making of such statement. (2) As sec. 1003 of the Criminal Code (1906) specifically requires that the "testimony admitted by virtue of this section," i.e., a statement taken in Court from a child of tender years not understanding the nature of an oath upon the trial of certain sexual crimes, must be corroborated by "some other material evidence in support thereof implicating the accused," the testimony so taken from one child of tender years cannot constitute the kind of corroboration required by the Code of the testimony similarly taken from another child of tender years. (Dictum per Harvey, C.J.) [R. v. Pailleur, 15 Can. Cr. Cas. 339; R. v. Daun, 11 Can. Cr. Cas. 244, 12 O.L.R. 227; R. v. Iman Din, 18 Can. Cr. Cas. 82, referered to.] Rex v. Whistnant, 20 Can. Cr. Cas. 322, 8 D.L.R. 468.

THEFT; POSSESSION; PRESUMPTION.

On a charge of theft the presumption arising from recent possession of the stolen goods may be applied against the accused in conjunction with direct evidence. R. v. McClain, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

BURDEN OF PROOF.

There is an onus on the Crown in every criminal case to establish such a case as will not leave it so that it can be said there is room for any theory that is not unreasonable and improbable other than that the accused is guilty. (Per Beck, J.) R. v. O'Neil, 25 Can. Cr. Cas. 323.

BURDEN OF PROOF.

The Crown must prove affirmatively, either by direct evidence or fair inference, a case against the accused which excludes any reasonable hypothesis upon which he may be innocent. [Rex v. Schama (1914), 11 Cr. App. R. 45, 84 L.J.K.B. 396, applied.] R. v. Jennings; R. v. Hamilton, 26 Can. Cr. Cas. 270, 29 D.L.R. 604. See 28 Can. Cr. Cas. 164.

III. Best and Secondary Evidence.

PROVINCIAL LAWS OF EVIDENCE.

Oral evidence is not admissible to prove relationship on a charge of incest in the Province of Quebec, and the relationship must be established by the production of extracts from the registers of civil status, as required by the provincial laws of evidence made applicable to criminal proceedings by the Canada Evidence Act, sec. 21, unless the absence of such registers is proved. It is not too late for the accused to object that oral evidence is insufficient proof after the case for the prosecution has been closed. R. v. Garneau, 4 Can. Cr. Cas. 69.

[Considered in R. v. Farrell, 20 O.L.R. 182.]

PERJURY; RECOGNIZANCE TO KEEP THE PEACE; PROVING PART OF DEPOSITION NOT TAKEN DOWN BY MAGISTRATE.

Upon a charge of perjury in respect of evidence taken by a magistrate on requiring sureties to keep the peace (Revised Code, sec. 748 (2)) the false statement may be proved by oral testimony, although not recorded in the minutes of evidence then made by the magistrate. The King v. Doyle, 12 Can. Cr. Cas. 69.

PERJURY; ORIGINAL INFORMATION AS BASIS OF MAGISTRATE'S JURISDICTION; EXTRINSIC EVIDENCE INSUFFICIENT WITHOUT PROOF OF LOSS.

(1) In the absence of proof that the original information had been lost or destroyed so as to admit secondary evidence thereof, the oral testimony of the magistrate as to the nature of the proceedings before him, although received without objection, is insufficient to prove that the enquiry in which the alleged perjury was committed was held in respect of an indictable offence and was a "judicial proceeding." (2) In a criminal case extrinsic evidence is not admissible in substitution for judicial documents, without preliminary proof of loss sufficient to admit secondary evidence, and extrinsic evidence received without such preliminary proof may be objected to at the close of the case for the prosecution, although no exception was taken at the time when the evidence was adduced. The King v. Farrell, 15 Can. Cr. Cas. 283.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 336.]

CHILD EXHIBITED TO JURY AS EVIDENCE OF PATERNITY.

A child born to the girl as a result of the criminal intercourse with the accused may be exhibited to the jury at the trial, and its likeness to the accused pointed out in proof of the latter's paternity, but it is preferable that witnesses should also be called to testify to the points of likeness. The King v. Hughes, 17 Can. Cr. Cas. 450.

IV. Documentary Evidence.

DEPOSITIONS AT INQUEST PROCEEDINGS; CONTRADICTING EVIDENCE; ADMISSIBILITY.

Depositions made and signed by a party at an inquest may be received in evidence to contradict him, whether the inquest was illegally taken or not, as being statements of the witness made on a previous occasion. Regina v. Chasson, 16 N.B.R. 546.

EXHIBITS IN CIVIL ACTION TO PROVE FORGERY.

Documents filed as exhibits in a civil

suit may be impounded on application of the Attorney General pro Regina, in a charge of forgery laid in respect thereof. Couture v. Fortier, 7 Que. S.C. 197.

MALICIOUS PROSECUTION; ORIGINAL RECORD OF ACQUITTAL OR ITS COPY.

In an action for malicious prosecution, the plaintiff sought but was not permitted to prove his acquittal before the County Judge's Criminal Court of a charge of misdemeanour, by means of the production of the original record signed by the County Judge under the Speedy Trials Act, R.S.C., ch. 175, and produced and verified by the clerk of the peace in whose custody it was, or else by being allowed to put in a copy thereof, certified by that officer:—Held, that the evidence should have been admitted in either of the above two forms, and judgment dismissing the action was set aside and a new trial ordered. Decision of MacMahon, J., at the trial reversed. O'Hara v. Dougherty, 25 O.R. 347.

SHORTHAND DEPOSITIONS; SIGNATURE OF WITNESSES; DIRECTORY PROVISIONS OF STATUTE.

The provision as to the witnesses signing their evidence when not taken in shorthand, sec. 683, is not imperative but directory merely. Regina v. Scott, 26 O.R. 646.

BY-LAW; PROOF OF.

Proof of a municipal by-law cannot be made by affidavit on a prosecution for an offence thereunder. R. v. Banks, 1 Can. Cr. Cas. 370.

SUMMARIZED STATEMENT; ADMISSIBILITY.

Notes of evidence taken by the coroner at an inquest which do not contain the precise expressions of the witness, but a summary only of the evidence, are not admissible in contradiction of the witness' testimony in a subsequent proceeding unless signed by the witness, or unless read over to and acquiesced in by him. R. v. Ciarlo, 1 Can. Cr. Cas. 157.

DEPOSITION OF WITNESS AT CORONER'S INQUEST; ADMISSIBILITY AT TRIAL; NECESSITY OF VERBATIM RECORD OF EVIDENCE.

A coroner is not "a justice" within the meaning of Cr. Code, sec. 687, which provides for using upon a trial the depositions "taken by a justice in the preliminary or other investigation of any charge," of a witness absent from Canada. A deposition to be admissible under Cr. Code 687 must be a verbatim record of the witness' evidence. The evidence of a constable searching for a witness to serve him with a subpœna for the trial, that he had been informed by a person named that the witness was absent from Canada, is not sufficient evidence of such absence to render the witness' deposition admissible under Cr. Code sec. 687. R. v. Graham, 1 Can. Cr. Cas. 388.

DEPOSITIONS ON PRELIMINARY ENQUIRY, OF WITNESS SINCE DECEASED.

(1) In order that sec. 687 of the Criminal Code should apply to make admissible as evidence at the trial the deposition of a witness, since deceased, taken on a preliminary enquiry or other investigation of a charge against the accused before a justice of the peace, the document containing the deposition is alone to be looked at to ascertain if the deposition "purports to be signed by the justice," as is required by that section. (2) Where the deposition sought to be used had been signed by both the witness and the magistrate, and was attached at the end of depositions taken by the magistrate on a previous date named, but did not itself contain a new "caption," or the date when taken, or any record by the magistrate certifying that such added deposition had been taken by him, and the first depositions formed in themselves a complete document concluding with the magistrate's note of the remand of the case, it is not to be presumed that the informal deposition following the formal document is a continuation of the first deposition (in which appeared no reference to the added depositions), or that it relates to the same charge, and it was held that such added deposition did not "purport to be signed by the justice by or before whom the same purports to have been taken." (Cr. Code sec. 687.) (3) A deposition, the caption of which sets out the name of the justice and describes him as one of the justices of the peace for a named county, "purports to be signed by the justice by or before whom the same purports to have been taken," if the same is signed by the justice with his name only, without adding to it, as in form S. of the Code, the initials "J.P." and the name of the county for which he is a justice; and such a deposition is prima facie admissible in evidence. (Cr. Code, sec. 687.) (4) The deposition of a deceased witness may be used in evidence apart from sec. 687, Cr. Code, although it does not "purport to be signed by the justices by or before whom the same purports to have been taken," but, where it is not admissible by virtue of sec. 687, it must be affirmatively shewn that all the formalities required to be observed in taking depositions (Cr. Code sec. 590) have been complied with. (Per Killam, J.) R. v. Hamilton, 2 Can. Cr. Cas. 390.

[Referred to in R. v. L'Heureux, 14 Can. Cr. Cas. 103; R. v. Leach, 14 Can. Cr. Cas. 386; R. v. May, 9 Can. Cr. Cas. 530.]

EVIDENCE UNDER COMMISSION; WITNESS RESIDENT OUT OF CANADA, BUT TEMPORARILY THEREIN.

An order may be made under Code, sec. 683 for taking in Canada, under commission, the evidence of a material witness who ordinarily resides out of Canada, but who is

temporarily within the jurisdiction and about to return to his own country. The King v. Baskett, 6 Can. Cr. Cas. 61.

FOREIGN COMMISSION; ORDER FOR WHILE PRELIMINARY ENQUIRY PENDING; PRACTICE.

(1) A commission to take evidence in a foreign country for use upon a prosecution for an indictable offence may be ordered under Code, sec. 683 while the preliminary enquiry is pending. (2) The evidence taken under commission is admissible as well at the preliminary enquiry as before the grand jury and at the trial of the indictment when found. (3) The order should provide for the return of the commission into the Court from which it issues and should not direct a transmission of the evidence by the commissioner to the magistrate holding the preliminary enquiry. The Queen v. Verral, 6 Can. Cr. Cas. 325.

CERTIFIED COPY OF EVIDENCE AT CRIMINAL TRIAL; DUTY TO TRANSCRIBE ADMISSIONS AND RULINGS.

(1) A Court stenographer is a public official against whom a mandamus may issue for nonperformance of his official duty to furnish an applicant with a copy of evidence taken at a criminal trial. (2) Where upon an application for a mandamus it appears that the Court stenographer has furnished a complete copy of his record of the evidence, the application must be dismissed although the transcript furnished be shewn to be inaccurate by reason of the omission of rulings made by the trial Judge or of counsel's admissions taken in lieu of evidence. The King v. Campbell, 10 Can. Cr. Cas. 326.

PERJURY; PROOF OF FORMER TRIAL; MATTER OF RECORD; TESTIMONY OF CLERK OF ASSIZE AND COURT STENOGRAPHER.

(1) On a charge of perjury committed at the trial of an indictment, such trial and the indictment, verdict, and judgment therein must be proved as matters of record. (2) Such proof may be given either by the production of the original record or of an exemplification thereof, or by a certificate under Code, sec. 691 of the substance and effect of the indictment and trial. (3) The viva voce testimony of the clerk of assize and of the official stenographer with the production of the official book of entry in which the clerk recorded his memoranda of the proceedings and of the stenographer's notes of the evidence, are insufficient as legal proof of the fact of the former trial. The King v. Drummond, 10 Can. Cr. Cas. 340.

[Referred to in R. v. Henderson, 18 Can. Cr. Cas. 247; R. v. Graves (No. 2), 16 Can. Cr. Cas. 336; R. v. Sunfield, 13 Can. Cr. Cas. 8; followed in R. v. Farrell, 15 Can. Cr. Cas. 84, 20 O.L.R. 182; R. v. Legros, 14 Can. Cr. Cas. 161; referred to in R. v. Yaldon, 10 Can. Cr. Cas. 493, 17 O.L.R. 179; distinguished in R. v. Yaldon, 13 Can. Cr. Cas. 493.]

PROSECUTION OFFERING NO EVIDENCE OF PREVIOUS CONVICTION; POWER OF MAGISTRATE TO MAKE ENQUIRY OF HIS OWN MOTION.

The proper time for taking evidence of a previous conviction to exclude a magistrate's jurisdiction to release on suspended sentence is after the finding of guilty on the present charge and not during the hearing of the charge. If the Crown does not adduce evidence of a previous conviction, the magistrate may, on his own initiative, call for the records under his own control and custody and hold an enquiry upon the question whether the defendant had been previously convicted before him and on the questions of identity, age and antecedents of the defendant for the purpose of considering the appropriate punishment or a release on suspended sentence where the latter is permissible. Semble, if the magistrate recollects that the person convicted before him was previously convicted before him he should proceed with such an enquiry, although the Crown counsel was content to allow the accused to go on suspended sentence. The King v. Bonnevie, 10 Can. Cr. Cas. 376.

DEPOSITIONS OF ABSENT WITNESS TAKEN ON PRELIMINARY ENQUIRY; "ABSENT FROM CANADA," MEANING OF; SAILOR.

(1) In order that the depositions of a witness taken on the preliminary enquiry should be admissible as evidence on the trial in the event of the witness being out of Canada, it is sufficient if the ordinary employment of the witness necessitates his continued absence for such a period as would involve an obstruction of justice if the trial were delayed until his expected return. (2) A finding that the witness is "absent from Canada" within the meaning of the Code is justified if it be proved that he shipped as a sailor on a sealing voyage, which would ordinarily last six months, and that he was seen on the vessel just before its departure three weeks before the trial. The King v. DeLoe, 11 Can. Cr. Cas. 224.

SUMMARY CONVICTION; STATUTE REQUIRING EVIDENCE TO BE REDUCED TO WRITING AND TO BE READ OVER AND SIGNED.

A statutory provision that the justices shall read over to each witness his deposition and that the witness shall sign the same is one of procedure only, and is waived by the express consent of the accused to the depositions being taken in shorthand by a stenographer. [The King v. Janneau (1907), 12 Can. Cr. Cas. 360, approved.] The King v. Warilow, 14 Can. Cr. Cas. 117.

[Considered in The King v. Coote, 17 Can. Cr. Cas. 211, 231.]

PROOF OF BY-LAW; COPY PUT IN WITHOUT OBJECTION.

The uncertified copy was good evidence if not objected to. (Per Barker, C.J.) Ex parte Steeves, 15 Can. Cr. Cas. 160.

SUMMARY TRIAL; JURISDICTION; JUDICIAL NOTICE OF DOMINION CENSUS.

Judicial notice will be taken of census returns taken under a Dominion statute for the purpose of ascertaining the jurisdiction of a magistrate holding a summary trial under Code, sec. 777 (amendment of 1909) as the police magistrate of a city of not less than 2,500 inhabitants according to the last parliamentary census. The King v. Rahamat Ali (No. 1), 16 Can. Cr. Cas. 193.

CONSIDERATION OF EVIDENCE BEFORE CORONER.

On an indictment of a railroad company for omission to take reasonable care of a consignment of dynamite whereby life and property was endangered and fatalities resulted from an explosion, the trial Judge on a plea of guilty may consider the evidence taken at the coroner's inquest held concerning the resultant deaths at which the railroad company was represented by counsel and fix the appropriate fine with reference to the seriousness of the case as so appearing. The King v. Michigan Central Railroad Company, 17 Can. Cr. Cas. 483.

APPLICATION TO CHANGE VENUE; COPY OF CROSS-EXAMINATION AT TRIAL.

As the question of the guilt or innocence of an accused person cannot be considered upon an application to change the place of trial, a copy of his cross-examination on a trial which resulted in a disagreement, will not be referred to, although filed with such application. [Regina v. Palmer, 5 A. & E. 1023, specially referred to.] The King v. Stauffer, 19 Can. Cr. Cas. 205.

FOREIGN MARRIAGE LICENSE; AUTHENTICATION.

A copy of a marriage license and of a return shewing the performance of a ceremony thereunder, is admissible in evidence without further proof, under sec. 23 of the Canada Evidence Act, when certified under the seal of a Court of record of a state of the United States. R. v. Hutchins, 22 Can. Cr. Cas. 27, 12 D.L.R. 648.

FORMER TESTIMONY; ABSENT WITNESS; DEPOSITION AT PRELIMINARY ENQUIRY.

A court of criminal appeal will not interfere with a preliminary finding by the trial judge under Cr. Code, sec. 999 (amendment of 1913), on admitting in evidence the prior deposition of an absent witness for the Crown taken on the preliminary enquiry, that such witness was absent from Canada, where such finding was based on proof that the absent witness was a police officer who had obtained a short leave of absence and having thereafter failed to report for duty had been heard from in the United States under circumstances tending to shew that he had gone there to avoid giving evidence at the trial in question; it is not a prerequisite to the admission of the prior deposition that there should be absolute proof of absence from Canada, but only that such facts should be proved from which such absence "can be reasonably inferred" (Cr. Code 999, as amended 1913). R. v. Angelo, 22 Can. Cr. Cas. 304, 16 D.L.R. 126.

JUDGMENT; BREACH OF RECOGNIZANCE.

While the general rule is that a conviction in a criminal case is not proof, in civil proceedings, of the acts upon which the conviction may be grounded, it is still evidence of the particular fact which it recites; and, where it is for an assault, the conviction is admissible as proof on application before another tribunal for forfeiture and estreat of a recognizance thereto given by the defendant to keep the peace and be of good behaviour. [Re Crippen (1911), 27 Times L.R. 258, referred to.] R. v. Walker, 23 Can. Cr. Cas. 179, 18 D.L.R. 541.

RECORD OF SPEEDY TRIAL; RECITAL OF FACTS AFFIRMING JURISDICTION.

If the record of a County or district Judge's Criminal Court (or in Quebec a Judge of Sessions or district magistrate) on a prosecution under the speedy trials clauses (Part XVIII. of the Cr. Code) produced on a habeas corpus motion in pursuance of an ancillary writ of certiorari contains the recital of facts requisite to confer jurisdiction, it is conclusive and cannot be contradicted by extrinsic evidence, the proceedings of such Court under Cr. Code sec. 834 having to be considered as those of a Court of record. [Re Sproule 12 Can. S.C.R. 140, followed; R. v. Murray, 1 Can. Cr. Cas. 452, and Ex parte Goldsberry, 10 Can. Cr. Cas. 392, referred to.] R. v. Guay, 23 Can. Cr. Cas. 243, 19 D.L.R. 820.

JUDICIAL RECORDS; TERMINATION OF CRIMINAL PROSECUTION.

The termination of a prosecution by withdrawal of the charge before the justice may be proved without any formal record or certificate as a basis for an action for malicious prosecution. [Atty. Gen. v. Scully, 6 Can. Cr. Cas. 167, 4 O.L.R. 394; Fancourt v. Heaven, 18 O.L.R. 492; Beemer v. Beemer, 9 O.L.R. 69; Baxter v. Gordon, etc., Co., 13 O.L.R. 598; and Mortimer v. Fisher, 11 D.L.R. 77, discussed; R. v. Ivy, 24 U.C.C.P. 78; Hewitt v. Cane, 26 Ont. R. 133; McCann v. Preveneau, 10 Ont. R. 573; Goddard v. Smith, 6 Mod. 262, disapproved.] Tamblyn v. Westcott, 23 Can. Cr. Cas. 391, 20 D.L.R. 131.

EXTRADITION; FOREIGN INDICTMENT; BANKRUPTCY; FRAUD; FOREIGN LAW.

A certified copy of the indictment against the accused in a United States Court is admissible under sec. 23 of the Canada Evidence Act, R.S.C. 1906, ch. 145, in support of extradition proceedings taken in Canada to have him sent back to answer the indictment. See Annotations on Extradition from Canada, 5 Can. Cr. Cas. 251, 5 Can. Cr. Cas. 540, 6 Can. Cr. Cas. 80, 9 Can. Cr. Cas. 264-321.] Evidence of the concealment by the accused of certain other sums of money a few days before the concealment of a larger sum in respect of which the charge was laid that he had concealed part of his property with intent to defraud his creditors, is admissible as evidence of the intent to defraud and of guilty knowledge. [R. v. Shellaker, [1914] 1 K.B. 414; R. v. Ball, [1911] A.C. 47; R. v. Ollis, [1900] 2 K.B. 758, applied.] Where the expert evidence given on the part of the prosecution to prove the foreign law is contested by the accused in extradition proceedings, the extradition Commissioner may refer to the foreign text books and reports bearing upon the subject. (Bremer v. Freeman, 10 Moore P.C. 306, applied.) Re Goodman, 26 Can. Cr. Cas. 84, 28 D.L.R. 197, affirmed in 26 Can. Cr. Cas. 254, 29 D.L.R. 725.

DEPOSITION OF ABSENT WITNESS ON FORMER TRIAL; SIGNATURE BY SAME JUDGE.

Where a new trial had been ordered and the Crown on the second trial before the same Judge desired to put in the evidence given at the first trial of a witness who had since left Canada, it is sufficient that the Judge signs the evidence of such witness extended from the shorthand notes at any time before it is actually received in evidence under Cr. Code, sec. 999 at the second trial; this may be done even after tender of same and objection taken by the defence to the lack of authentication. R. v. Baugh, 28 Can. Cr. Cas. 146, 33 D.L.R. 191. See 27 Can. Cr. Cas. 373, 31 D.L.R. 66.

OF PRIOR SUMMARY CONVICTION.

Where no formal conviction has been drawn up the "minute or memorandum" of the summary conviction made in conformity with Cr. Code, sec. 727 and proved by the Police Court clerk having the custody thereof is admissible to prove such conviction on a charge of a subsequent offence before the same magistrate. [Commissioner of Police v. Donovan, [1903] 1 K.B. 895, followed.] R. v. Tausley, 28 Can. Cr. Cas. 280, 38 D.L.R. 339, affirmed in 29 Can. Cr. Cas. 225.

FOREIGN STATUTES; EXTRADITION.

The provincial laws of evidence are applicable to extradition proceedings by virtue of the Canada Evidence Act, R.S.C. 1906, ch. 145, sec. 35, and where such proceedings take place in the Province of New Brunswick the provincial statute C.S.N.B. 1903, ch. 127, sec. 58, applies to make a copy of a statute of the demanding State authenticated under the seal of that State, prima facie evidence that the foreign law is as there enacted. [Re Arton (No. 2), [1896] 1 Q. B. 509, discussed.] Ex parte Thomas, 28 Can. Cr. Cas. 396, 38 D.L.R. 716.

V. Demonstrative Evidence; Articles and Things; View of Jury.

See also View.

MONEY TAKEN FROM PRISONER.

It appearing that money taken by the police from a prisoner would not be required as evidence by the Crown, the Court ordered it to be restored. Regina v. Harris, 1 B.C.R. Pt. I., 255.

DEPOSITIONS OF DEFENDANT UPON DISCOVERY IN CIVIL ACTION.

Relevant statements made by the accused without objection on his examination for discovery in a civil action prior to the criminal proceedings are admissible in evidence on the criminal trial. The King v. Brindamour, 11 Can. Cr. Cas. 315.

ARTICLES OBTAINED UNDER SEARCH WARRANT.

Upon a trial for keeping a common betting house in violation of secs. 227 and 228 of the Criminal Code, R.S.C. 1906, ch. 146, articles for recording bets which were seized upon the premises by police officers are admissible in evidence against the prisoner, irrespective of a claim by the accused that the alleged search warrant was illegal and that the police officers had obtained possession of the articles by means of their own trespass. [Rex v. White (1908), 15 Can. Cr. Cas. 30, 18 O.L.R. 640, specially referred to.] The King v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276.

MAINTENANCE OF APPEARANCE OF BAR; DISPLAY OF BREWER'S CALENDARS; SUFFICIENCY OF EVIDENCE.

Evidence that in an unlicensed hotel there is a bar, and on the bar a beer pump used to pump a nonintoxicating beverage called "local option beer," and that brewer's calendars were there displayed, is insufficient to convict the occupant of the offence of keeping up a sign or having a bar containing bottles or casks displayed so as to induce a reasonable belief that the premises were licensed for the sale of liquor, where the former official license sign over the door had been removed, and there was no display of bottles or casks such as are used distinctively for intoxicating liquors, nor was there, apart from the brewer's calendars, any display of advertising matter suggestive of the sale of intoxicants in the

place. Rex v. Bevan, 20 Can. Cr. Cas. 237, 8 D.L.R. 86.

VI. Parol and Extrinsic Evidence concerning Writings.

Admissibility of secondary evidence of contents of books, originals of which were not produced pursuant to counsel's undertaking. 1 Can. Cr. Cas. 487, 500.

ORAL EVIDENCE WHERE DEPOSITIONS LOST.

A witness who has been cross-examined as to an alleged previous statement made by her under oath, in judicial proceedings relative to the subject-matter of the case, and who after mention to her of the circumstances designating the particular occasion, has denied that she made the alleged statement, may in case of the loss of the depositions containing the record of what was then sworn to, be contradicted by oral testimony regarding the disputed statement. R. v. Troop, 2 Can. Cr. Cas. 22.

PAROL EVIDENCE; CONVICTION WRONGLY DATED; APPEAL.

Oral testimony is admissible to prove that a conviction on a summary trial by two justices for assault occasioning bodily harm is erroneously dated, and that an appeal taken therefrom under Cr. Code, sec. 797 (amendment of 1913) was not, in fact, too late, as it would appear to be because of the error. R. v. Martinuik, 22 Can. Cr. Cas. 275, 17 D.L.R. 304.

VII. Opinions and Conclusions.

EXPERT TESTIMONY; QUALIFICATION OF MEDICAL EXPERT.

A witness was called at the trial to give evidence as a medical expert and in answer to the Crown prosecutor he said: "There are indicia in medical science from which it can be said at what distance small shot were fired at the body. I have studied this —not personal experience, but from books." He was not cross-examined as to the grounds of this statement and no medical witnesses were called by the prisoner to confute it. The witness then stated the distance from the murdered man at which the shot must have been fired in the case before the Court, and on what he based his opinion as to it, giving the result of his examination of the body:—Held, Strong, J., and Fournier, J., dissenting, that by his preliminary statement the witness had established his capacity to speak as a medical expert, and it not having been shewn by cross-examination, or other testimony, that there were no such indicia as stated, his evidence as to the distance at which the shot was fired was properly received. Regina v. Preeper (1888), 15 Can. S.C.R. 401.

GAMBLING TRANSACTIONS IN STOCKS; FINDING AGAINST FORM OF DOCUMENTS; INADMISSIBLE OPINION TESTIMONY.

(1) Upon a trial for unlawfully making gaming contracts (Cr. Code, sec. 201) by conducting bucket shop transactions in stocks, it is open for the jury, or the Judge trying the case without a jury, to find, notwithstanding the form of the papers which passed between the parties that there was a secret understanding between them that there should be no delivery of the stocks or property, but payment of differences only. (2) The reception of opinion testimony as to the illegality of the transactions was improper, but as a case against the accused was sufficiently made out without that testimony, and the trial was without a jury, the conviction should stand under Code, sec. 746 (1f). The King v. Harkness (No. 2), 10 Can. Cr. Cas. 199.

EXPERT'S OPINION ON FOREIGN LAW.

A question as to the law of a foreign jurisdiction is one of fact and not of law, and the Court should therefore accept the opinion of an expert in the foreign law in preference to its own upon the construction of a statute of the foreign jurisdiction. United States v. Webber (No. 2), 20 Can. Cr. Cas. 6, 5 D.L.R. 866.

SPEED OF AUTOMOBILE; SPEEDOMETER; OPINIONS.

Evidence of the driver of an automobile and of his wife, as to the speed of the car, based on a shewing of a speedometer, is to be preferred in a prosecution for operating a motor vehicle at an unlawful speed, to mere opinion evidence. R. v. Barker, 21 Can. Cr. Cas. 267, 12 D.L.R. 346.

SANITY; EXPERT TESTIMONY; MEDICAL BOOKS; PROOF OF THEIR AUTHORITY.

If a witness called to give expert testimony is asked about a text book (ex. gr., as to mental diseases) and expresses ignorance of it, or denies its authority, no further use of it can be made by reading extracts from it, for that would be in effect making it evidence; but if he admits its authority, he then, in a sense, confirms it by his own testimony, and then may quite properly be asked for an explanation of any apparent differences between its opinion and that stated by him. Answers to questions put to a prisoner in custody by a police physician who put the questions merely for the purpose of forming an opinion upon his mental condition are admissible to prove him sane where they were not in the nature of admissions or confessions as regards the charge against him, although no warning was given the accused that what he might say could be used in evidence against him. [See Annotation at end of this case on questioning accused person in custody.] R.

v. Anderson, 22 Can. Cr. Cas. 455, 16 D.L.R. 203.

OPINION OF EXPERT AS TO SANITY AND DELUSIONS.

The fact that an expert witness giving only opinion evidence for the defence was not cross-examined for the prosecution, nor was his evidence contradicted, does not place an obligation upon the trial Judge to direct the jury that they are bound to accept the evidence as correct; it is properly left to the jury to accept or reject such opinion evidence. [See Annotation on Medical Expert Witnesses at end of this case.] R. v. Moke, 28 Can. Cr. Cas. 296, 38 D.L.R. 441.

VIII. Confessions; Testimony or Evidence Wrongfully Obtained.

ADMISSIONS; INDUCEMENT BY PERSON IN AUTHORITY; SECONDARY EVIDENCE OF CONTENTS OF A LETTER; ADMISSIBILITY.

Admissions obtained from the accused after representations made to her by persons in authority, to the effect that the evidence was very strong against her, that another person, who was her lover, was suspected, and that she knew something about the murder, and would do well to speak, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement. (Wurtele and Ouimet, JJ., dissenting on this point.) Secondary evidence of the contents of letters, of which one of the witnesses for the Crown had taken cognizance, is inadmissible, where it is not proved that it was impossible to produce the letters themselves, or even that such letters ever existed. (The Court was unanimous on all points except the first.) Regina v. Viau, 7 Que. K.B. 362.

ADMISSION OF WRITTEN STATEMENT OF PRISONER.

The provisions of sec. 32 of 32 and 33 Vict. (Can.) ch. 30, are directory, and a statement in writing not prefaced with the statutory words, made by a prisoner to the committing magistrate, was admitted in evidence, upon evidence by the committing magistrate that he had verbally cautioned the prisoner to the effect required by the statute, before receiving the statement in question. Regina v. Kalabeen et al. (1867), 1 B.C.R. Pt. I., 1.

CONFESSION; INDUCEMENT BY POLICE OFFICER; ADMISSIBILITY.

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:—Held, that the prisoner's statement was improperly received, and that the conviction should be quashed. (Allen, C.J., and King, J., dissented.) The Queen v. McCafferty (1886), 25 N.B.R. 396.

CONFESSION; INVOLUNTARY; POSSIBLE INDUCEMENTS; OBSTRUCTING TRAINS.

Where it appeared that a police constable gave the usual caution to the prisoner, who was arrested on a charge of obstructing a railway train by placing blocks upon the line, but afterwards said to him: "The truth will go better than a lie. If anyone prompted you to it, you had better tell about it," whereupon the prisoner said that he did the act charged against him:—Held, that the admission was not receivable in evidence, and a conviction grounded thereon was improper. [Regina v. Fennell, 7 Q.B.D. 147, followed.] Regina v. Romp (1889), 17 O.R. 567.

CONFESSIONS; UNINFLUENCED BY PROMISE OR INDUCEMENT; ADMISSIBILITY.

The prisoner after his committal for trial and while in the custody of a constable made a statement upon oath which the latter took him before a magistrate, where he laid an information on oath charging another person with having suggested the crime and asked him to join in it, which he did. Upon the arrest of the accused the prisoner made a full deposition against him, at the same time admitting his own guilt. Both information and deposition appeared to have been voluntarily made uninfluenced by either hope or threat; but it also appeared that the prisoner had not been cautioned when under examination in his own case:—Held, following Queen v. Finkle, 15 U.C.C.P. 453, that both the information and deposition were properly received in evidence, as being statements which appeared to have been voluntarily made, uninfluenced by any promise held out as an inducement to the prisoner to make them, and that, too, though they had been made under oath, for that the rule of law, excluding the sworn statements of a prisoner under examination, applied only to his examination on a charge against himself, and not when the charge was against another, for that in the latter case a prisoner was not obliged to say anything against himself, but if he did volunteer such a statement it would be admissible in evidence against him. R. v. Field, 16 U.C.C.P. 98.

CONFESSION; CAUTION BY OFFICER TO WITHHOLD STATEMENTS; INDUCEMENTS BY PROSECUTOR; CHARGE OF ARSON.

The prisoner was convicted of arson.

His admission or confession was received in evidence on the testimony of the constable who said that after the prisoner had been in a second time before the coroner he stated there was something more he could tell, whereupon the constable cautioned him not to say what was untrue. He then confessed the charge. The constable did not recollect any inducement being held out to him. There was also evidence that on the Monday of his incarceration he expressed a wish to the coroner to confess, on which the latter gave him the ordinary caution, that anything he said might be used against him, and not to say anything unless he wished. He then made a second statement, and after an absence of a few minutes returned and made a full confession:—Held, that on these facts appearing the statement made to the constable was prima facie receivable and that the Judge was well warranted in receiving as voluntary the confession made to the coroner after due warning by him. Semble, however, that the more reasonable rule to adopt in such case is, that notwithstanding the caution of the magistrate, it is necessary in the case of a second confession, not merely to caution the prisoner not say anything to injure himself, but to inform him that the first statement cannot be used against him, but in this case, it having afterwards appeared that the prosecutor had offered direct inducements to the prisoner to confess. Held, that if the Judge was satisfied that the promise of favour thus held out had induced the confessions and continued to act upon the prisoner's mind, notwithstanding the warning of the coroner, he was right in directing the jury to reject them. Held, also, that if the Judge suspected the confessions had been obtained by undue influence, such suspicion should have been removed before he received the evidence. It is a question for the Judge whether the prisoner has been induced by undue influence to confess. Semble (1), that when the names of other prisoners are mentioned in the confession the proper course is to read the names in full but to direct the jury not to pay any attention to them; (2) that the withholding from the Court the confessions made before the coroner will render the application for a new trial irregular. R. v. Finkle, 15 U.C.C.P. 453.

CONFESSION AFTER THREAT; ADMISSION IN EVIDENCE.

Smith was a clerk in a post office. Stephen J. King was inspector of this office. He discovered irregularities and questioned Smith about them. Smith admitted that he delayed letters. The inspector said, "If you have tampered with the contents it will go hard with you." Smith then made a confession. The Court refused to allow evidence of confessions subsequent to the threat. Regina v. Smith (1897), 33 C.L.J. 331.

TRIAL FOR MURDER; STATEMENT OF PRISONER TO DETECTIVES; ADMISSIBILITY.

During the trial of the prisoner for murder questions arose as to the admissibility in evidence of statements made by him to certain detectives, in answer to questions put to him by them, he being at the time in their custody:—Held, upon a case reserved, that the statements were admissible in evidence. Regina v. Day (1890), 20 O.R. 209.

CONFESSION; ADMISSIBILITY; INDUCEMENT BY PROSECUTOR.

Evidence is inadmissible of a confession by the accused that he had stolen money from his employer, when such confession was induced by a statement of the employer that it would be better for the accused to confess, and that if he did not do so, the employer would send for an officer. R. v. Jackson, 2 Can. Cr. Cas. 149.

CONFESSION; ADMISSIBILITY; THREAT OR INDUCEMENT.

A confession by an accused person charged with stealing post-letters, induced by a false statement made to him by a detective employed by the prosecution, in presence of a post office inspector, that the accused had been seen taking the letters, will render the confession inadmissible in evidence against the accused. R. v. MacDonald, 2 Can. Cr. Cas. 221.

[Approved of in R. v. McCae, 16 Que. K. B. 199; referred to in R. v. McCran, 12 Can. Crim. Cas. 260.]

CONFESSION OBTAINED BY HOLDING OUT HOPE OF CLEMENCY; EVIDENCE ADMITTED AND AFTERWARDS STRUCK OUT.

(1) Where an alleged confession is received in evidence after objection by the accused, and the trial Judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury empanelled. (2) If the trial Judge refuses to impanel a new jury in such a case, a new trial will be ordered by a Court of Appeal. (3) On the motion before the Court of Appeal for a new trial the Court will not determine the question of the admissibility of the alleged confession. R. v. Sonyer, 2 Can. Cr. Cas. 501.

[Referred to in R. v. Lew, 1 D.L.R. 104.]

CONFESSION; INTERROGATION BY POLICE OFFICER.

Admissions made by a prisoner to a police officer in respect of the charge upon which he is in custody, are admissible in evidence although made in response to ques-

tions put by the officer, if the trial Judge finds that the answers were not unduly or improperly obtained, having regard to the circumstances of the particular case. R. v. Elliott, 3 Can. Cr. Cas. 95.

[Distinguished in R. v. Kay, 9 Can. Cr. Cas. 405; specially referred to in R. v. Cummings, 19 Can. Cr. Cas. 358, 5 D.L.R. 86.]

CONFESSION; ADMISSIONS MADE TO DETECTIVES.

An inducement held out to an accused person in consequence of which he makes a confession must be one having relation to the charge against him, and must be held out by a person in authority, in order to render evidence of the confession inadmissible. R. v. Todd, 4 Can. Cr. Cas. 514.

CONFESSION; ADMISSIBILITY; ONUS OF PROOF.

An admission of guilt made by a party charged with a crime to a person in authority under the inducement of a promise of favour, or by reason of menaces or under terror, is inadmissible in evidence. The onus of proving that the alleged confession was not made under an inducement or threat is on the Crown. R. v. Pah-cah-pah-ne-capi (alias Charcoal, an Indian), 4 Can. Cr. Cas. 93.

[Referred to in Re Lewis, 9 Can. Cr. Cas. 238.]

CONFESSION; ADMISSIBILITY OF; INDUCEMENT BY PERSON IN AUTHORITY FOLLOWED BY MAGISTRATE'S CAUTION IN STATUTORY FORM.

A confession which is preceded by a statement from a person in authority, which may have operated as an inducement to the prisoner to make the confession, will, notwithstanding, be admissible in evidence if he were duly cautioned after the inducing statement, and before the confession itself, by the magistrate who received the same. The King v. Lai Ping, 8 Can. Cr. Cas. 467.

ASSAULT; EVIDENCE; CONFESSION TO PERSON IN AUTHORITY; INVESTIGATION BY CHURCH AUTHORITIES; ANSWERS OF ACCUSED.

(1) The rector of a cathedral is a person in authority over the choir boys with respect to the investigation of an alleged assault committed by them while on the way to a meeting of the choir, and answers of a choir boy elicited by the rector and choir-master upon such investigation, and stated to be only for the purpose of that enquiry, are not admissible in evidence against the choir boy afterwards prosecuted for the assault without proof that the statement was voluntarily made. (2) The onus of proving that the alleged confession was a voluntary one is upon the Crown. The King v. Royds, 8 Can. Cr. Cas. 209.

CONFESSION OF ACCUSED; ADMISSIBILITY; ABSENCE OF THREAT OR INDUCEMENT.

(1) Unless the evidence before an extradition Judge, of an alleged confession by the accused, was clearly inadmissible, another Judge, hearing the case upon a habeas corpus after committal, should not discharge the prisoner upon the ground of its inadmissibility. (2) Semble, where a witness called to prove a confession alleged to have been made by the accused, purports to give a complete account of the interview, and no suspicious circumstances are brought out pointing to any threat or inducement relating thereto, the evidence should not be rejected, although the witness was not asked whether any threat or inducement had been held out. Re Lewis, 9 Can. Cr. Cas. 233.

CONFESSION; INTERROGATION OF PRISONER BY POLICE OFFICER; DIFFERENT CHARGE SUBSEQUENTLY PREFERRED.

(1) There is a distinction between confessions obtained before and after arrest, the arrest itself constituting an inducement or pressure upon the accused to speak; and in order to satisfy the onus upon the Crown of proving that a confession in answer to questions put by a constable to a prisoner was voluntary, it must be shewn that the accused was warned that what he said might be used against him. (2) A confession obtained from a person under arrest for theft in answer to questions put by a police officer without any warning being given to the prisoner is not admissible against him upon a charge of murder subsequently preferred. The King v. Kay, 9 Can. Cr. Cas. 403.

[Discussed in R. v. Hoo Sam, 19 Can. Cr. Cas. 269, 1 D.L.R. 569.]

CONFESSION; EVIDENCE NEGATIVING THREAT OR INDUCEMENT TO ACCUSED; PRACTICE.

(1) Evidence is admissible of a confession made by the accused in answer to questions put to him prior to the laying of the charge by a person in authority over him, if it be proved affirmatively that no threat was made nor inducement held out in respect thereof. (2) On a Crown witness being interrogated as to an alleged confession made by the accused, and the defendant objecting to its being received, counsel for the defendant may be allowed to intervene on the examination to cross-examine on the question of the confession being a voluntary one, with the view of excluding evidence thereof. The King v. Ryan, 9 Can. Cr. Cas. 347.

[Referred to in R. v. White, 15 Can. Cr. Cas. 34, 18 O.L.R. 640.]

CONFESSION OR ADMISSION TO CONSTABLE AFTER ARREST; STATEMENT OF CONSTABLE TO PRISONER COMMITTED FOR TRIAL; QUESTION OF ACCUSED AS TO EXTENT OF HIS PUNISHMENT.

(1) The fact that a prisoner committed for trial for assault occasioning bodily harm was told by the constable removing him to gaol under the commitment that the assaulted party would die, is not evidence of an inducement or threat to the prisoner so as to make his subsequent question, "What do you think I will get—about 15 years?" inadmissible against him. (2) The prisoner's question under the circumstances raised a strong inference that he was present when the injuries were inflicted. The King v. Bruce, 12 Can. Cr. Cas. 275.

CONFESSION; INTERPRETER FALSELY PRETENDING TO BE SENT BY PRISONER'S SOLICITOR; REJECTION OF EVIDENCE SUSTAINED.

(1) Where a person falsely assumed the character of an interpreter sent by the prisoner's solicitor to obtain from the prisoner his statement of the case and the prisoner was by that means induced to make a statement, such statement is privileged and is not admissible in evidence against him. (2) Where a police officer had asked the interpreter to get the prisoner to talk about the case and had arranged to conceal witnesses near the prisoner's cell to overhear the conversation, the concealed listeners will also be treated as having fraudulently adopted the character of solicitor's representatives, and their evidence will be rejected on the ground of privilege. The King v. Choney, 13 Can. Cr. Cas. 289.

ADMISSION OR CONFESSION; PREVIOUS FALSE STATEMENT OF OFFICER THAT CODEFENDANT HAD MADE SOME STATEMENT.

A false statement made by an officer to one of the persons accused to the effect that a codefendant also in custody had made a statement to the police about the facts, will not prevent the reception in evidence of a confession or admission afterwards volunteered by the prisoner to whom such false statement was made if no inducement was held out or threat made to obtain such confession. The King v. White, 15 Can. Cr. Cas. 30.

[Followed in Trepanier v. The King, 19 Can. Cr. Cas. 302; 18 Rev. de Jur. 177; specially referred to in R. v. Honan, 20 Can. Cr. Cas. 11, 6 D.L.R. 276.]

CONFESSIONS AND ADMISSIONS AS EVIDENCE; PROVING THAT MADE VOLUNTARILY; SAME WARNING NOT REQUIRED AS ON PRELIMINARY ENQUIRY.

(1) Evidence of statements made by the accused after his arrest and after warning that he need not say anything unless he liked and that anything he said might be used in evidence against him, is properly admitted where the inference might properly be drawn from the sworn circumstances attending the making of the statement that there were no threats, promises or inducements held out to the accused and the trial Judge is satisfied on that point. (2) Code, sec. 684 (2) prescribing the warning to be given to the accused by a justice holding a preliminary enquiry applies only to statements which the accused may make on the preliminary enquiry and the full statutory warning need not be given by police officers or other persons in authority with whom the prisoner holds conversations after his arrest. The King v. Stefoff, 15 Can. Cr. Cas. 366.

ROBBERY; THEFT FROM THE PERSON; EVIDENCE PRESENTING POSSIBLE CASE OF SIMPLE THEFT; CONFESSION OR ADMISSION TO POLICE OFFICER.

Semble, an admission or confession made to a police officer on money being found on the prisoner after his arrest for robbery is not rendered inadmissible because it followed a statement made by the officer to the prisoner at the time of the search that "this looks bad." The King v. Daley, 15 Can. Cr. Cas. 168.

MURDER; INTERROGATION OF PRISONER BY POLICE OFFICER; WARNING TO ACCUSED WITHOUT STATING THAT HOMICIDE MIGHT BE CHARGED.

A confession obtained from a person under arrest for assault and robbery will be admitted in evidence on a charge of murder if the accused was warned that he need not answer and that what he said might be used against him, although he was not told that he would be charged with homicide. The King v. Rossi, 17 Can. Cr. Cas. 182.

CONFESSIONS AND ADMISSIONS; FOREIGN LANGUAGE; OBJECTIONS.

(1) An entirely voluntary confession by the accused made to one in authority and without interrogation by the person in authority, is admissible although no caution or formal warning was given the accused. (2) A confession made to one not in authority in the presence of a person in authority need not be preceded by a warning, if it is shewn affirmatively that the confession was free and voluntary. (3) It will be presumed that English-speaking people in Canada are not conversant with the Chinese language so as to understand an overheard dialogue in that tongue between two Chinamen and the conversation between the Chinamen in the presence of the chief of police but in which the officer took no part, is to be treated as if the latter were not present as regards the proof of an admission or confession made therein. (Per

Newlands, J., Lamont, J., concurring.) (4) Where counsel for the prisoner objects, at the time, to evidence of a confession or admission by the accused being received on the ground that no proper foundation had been laid for such evidence, whereupon the Crown adduces evidence to disprove any threat or inducement and the prisoner's counsel cross-examines thereon but does not renew the objection when the examination is thereafter proceeded with, there is a waiver of further objection on that ground. (Per Wetmore, C.J.) The King v. Hoo Sam, 19 Can. Cr. Cas. 259, 1 D.L.R. 569.

CONFESSION OF ACCUSED; ADMISSIBILITY.

(1) In order that evidence of a confession of guilt made by one charged with crime, may be admitted on the trial therefore, it must be first affirmatively shewn that it was freely and voluntarily made after the accused had been warned that what he said might be used against him, and, where there is any doubt as to the sufficiency of such warning, the evidence of the confession should not be admitted, especially on a trial of a person for his life. (2) In order that evidence of a confession of crime by an accused person may be admitted against him, his mind should be disabused of all idea of hope of securing leniency by making it, and he must not be led to expect that some benefit may be obtained by making such confession. (Per Trenholme, J.) (3) Evidence of a confession of crime is inadmissible against a prisoner where, before making it, he was informed by the officers having him in charge, that whatever he might say would be taken down and might be used "for or against him." (Per Trenholme, J.) (4) A confession of crime is not voluntarily made where a person accused of murder, who had for nearly a week been on a drunken debauch, while confined in a tavern crowded with curiosity seekers, was privately plied with questions by detectives, and who, after being told that his wife and son had made statements contradictory to his own, said he would tell all, and made the alleged confession after he was warned that what he said might be used for or against him. (5) A confession of crime made by a person accused therewith, in connection with an appeal for assistance from his plight, is not admissible against him. (6) An answer given by a prisoner charged with murder, to a question put to him by the coroner in a conversation held before the opening of the inquest, is voluntarily made, and admissible against him on the trial. (Per Cross, J.) (7) Detective officers may properly interrogate a prisoner charged with crime, while under arrest or being kept in sight in view of arrest, and answers given without threat or inducement may by given in evidence against him. [Rogers v. Hawkins (1898), 67 L.J.Q.B. 526, referred to; R. v. McCraw, 12 Can. Cr. Cas. 253, distinguished.] (Per Cross, J.) Trepanier v. The King, 19 Can. Cr. Cas. 290.

CONFESSIONS; SUBORDINATE FACT.

An acknowledgment of a subordinate fact not directly involving guilt and not essential to the crime charged is not a "confession" within the rules by which evidence of a statement by way of confession made to a person in authority may be received only where shewn to have been made freely and voluntarily. [Wigmore on Evidence, sec. 821, approved.] R. v. Hurd, 21 Can. Cr. Cas. 98, 10 D.L.R. 475.

INCRIMINATING STATEMENTS TO DETECTIVE; PRISONER NOT CAUTIONED.

Incriminating statements made by a prisoner to a detective who did not caution the prisoner, will not be admitted in evidence on the hearing of an extradition charge without evidence to shew that they were made voluntarily. (Per Judge Wallace.) United States v. Wrenn, 21 Can. Cr. Cas. 119, 10 D.L.R. 452.

CONFESSIONS; PROOF THAT VOLUNTARY; INDUCING FELLOW PRISONER TO ELICIT STATEMENT.

The admissibility of a confession in a criminal case is to be determined by the evidence given at the trial, and where a confession had been admitted in evidence as not having been shewn to have been induced by a person in authority upon the facts then deposed to, and an application after conviction for leave to appeal upon the question of law under Crim. Code, 1906, sec. 1015, will not be granted upon the ground, supported by affidavits, that the fellow prisoner who testified to the confession by the accused had been induced to obtain the confession by a detective acting in the interests of the prosecution but not present when the confession was made. While the matter of a confession in a criminal case should go as a whole to the jury, it is within the province of the jury to accept a part of it and discredit other parts. R. v. Farduto, 21 Can. Cr. Cas. 144, 10 D.L.R. 669.

CONFESSIONS OR ADMISSIONS; PROOF THAT VOLUNTARY.

Before the Crown introduces statements made by a prisoner while in custody as evidence of an admission or confession, the onus is on the Crown to shew that there has been no inducement given to make those statements. [R. v. Bruce, 12 Can. Cr. Cas. 275, 13 B.C.R. 1, followed.] R. v. Bogh Singh, 21 Can. Cr. Cas. 323, 12 D.L.R. 626.

CONFESSIONS.

The arrest itself is an inducement sufficient to bar the reception in evidence of a

confession or statement elicited by questions put by an officer to a prisoner while under arrest, where there had been no caution or warning that what he might say might be used against him. [R. v. Kay, 9 Can. Cr. Cas. 403, 11 B.C.R. 157, followed; and see R. v. Hoo Sam, 19 Can. Cr. Cas. 269, 1 D.L.R. 569, as to voluntary statements made without interrogation.] R. v. Cook, 22 Can. Cr. Cas. 241, 23 Can. Cr. Cas. 50, 18 D.L.R. 706. See also 23 Can. Cr. Cas. 86, 19 D.L.R. 318.

CONFESSION; DEPOSITIONS IN TRIALS OF OTHERS SIMILARLY CONCERNED.

The accused may make a minor confession while not fully confessing his guilt and in view of this and of Cr. Code, sec. 978 it is not error to admit either at the preliminary enquiry or at the trial depositions in similar concurrent prosecutions of others for fraudulent stock subscriptions in the same company, where the same counsel acting for all of the accused signed a consent by which the evidence at the preliminary enquiry against any one of them might be used as against any other both at the several preliminary enquiries and upon the trials. [See also R. v. Brooks, 11 Can. Cr. Cas. 188, 11 O.L.R. 525.] R. v. Daigle, 23 Can. Cr. Cas. 92, 18 D.L.R. 56.

CONFESSION BY PERSON HELD AS WITNESS; INTERROGATION BY POLICE; REPETITION OF STATEMENT AFTER CAUTION.

Where a person in custody as a material witness is interrogated by the police without being cautioned and thereupon makes admissions implicating himself in the crime, his repetition of the same statement before the same officers on another occasion, after being cautioned that he is not obliged to answer but that if he does so his statement may be used against him, will not be admitted if he was not further cautioned that his previous statements could not be used and that he need not repeat them or say anything further unless he so desired. R. v. Kong, 24 Can. Cr. Cas. 142.

ADMISSION BY ACCUSED IN CUSTODY ON ANOTHER CHARGE; ADMISSIBILITY.

A statement voluntarily made by the accused to a police officer, after the usual caution on his arrest on a criminal charge, is admissible on his trial upon another criminal charge not connected with the first. [R. v. Kay, 9 Can. Cr. Cas. 403, 11 B.C.R. 157, cited.] R. v. Van Horst, 24 Can. Cr. Cas. 157.

ADMISSIONS OR CONFESSION; PRIOR CAUTIONING BY POLICE.

Answers made by the prisoner to questions propounded by the police at the police station are none the less admissible by reason of the fact that the usual caution was given by a constable while on the way there with the prisoner and that the latter was not again cautioned at the police station on his arrival there a few minutes later, if nothing was done to take away the effect of the caution. [R. v. Elliott, 3 Can. Cr. Cas. 95, 31 Ont. R. 14, and R. v. Day, 20 Ont. R. 209, followed.] R. v. Wallace, 24 Can. Cr. Cas. 158.

CONFESSION; PROOF THAT VOLUNTARY.

Where the master accompanied by a police constable threatened his servant saying "you will be arrested if you do not say where the stolen goods are," the statement made by the servant should be excluded from being put in evidence against him because it was not made freely and voluntarily. [R. v. Thompson, [1893] 2 Q.B. 12; Ibrahim v. The King, [1914] A.C. 599; R. v. Ryan, 9 Can. Cr. Cas. 347, applied; and see R. v. White, 15 Can. Cr. Cas. 30, 18 O.L.R. 640; R. v Steffoff, 15 Can. Cr. Cas. 366, 20 O.L.R. 103; R. v. Rossi, 17 Can. Cr. Cas. 182; Trepanier v. The King, 19 Can. Cr. Cas. 290; R. v. Bogh Singh, 21 Can. Cr. Cas. 323, 12 D.L.R. 626.] R. v. De Mesquito, 24 Can. Cr. Cas. 407, 26 D.L.R. 464.

Admission by prisoner to constable on subsequent occasion to that on which he was cautioned. R. v. Bela Singh, 25 Can. Cr. Cas. 169.

WRITTEN CONFESSION; DEFALCATION; PROOF THAT VOLUNTARY.

A written confession of his defalcations, signed by the accused after it had been read over and explained to him, is admissible, although no part of it but the signature was in his handwriting, if it be also shewn that no inducement was held out or threat made to obtain his signature, and that the confession was therefore a voluntary one. [See also as to confessions, R. v. Anderson, 22 Can. Cr. Cas. 455, 16 D.L.R. 203; R. v Kong, 24 Can. Cr. Cas. 142, 20 B.C.R. 71; R. v. Bogh Singh, 21 Can. Cr. Cas. 323, 12 D.L.R. 626, 18 B.C.R. 323; R. v. Farduto, 21 Can. Cr. Cas. 144, 10 D.L.R. 669; R. v. Hurd, 21 Can. Cr. Cas. 98, 10 D.L.R. 475.] De Paoli v The King, 25 Can. Cr. Cas. 256, 28 D.L.R. 370.

CONFESSION; STATEMENTS BY ACCUSED IN CUSTODY; IRREGULAR CAUTION BY POLICE; SUBSTANTIAL WRONG.

Every case reserved as to the admissibility of a statement made by an accused person while under arrest must be decided according to its own circumstances; and where the statements made by the accused under arrest for murder were not confessions of guilt, but were intended to justify the killing as done in self-defence and were, in substance, repeated by the accused in giving evidence on his own behalf at the trial, the Court of Appeal, acting under Cr. Code, sec. 1019, should affirm the verdict whether or not the form of caution given

by the police, before the admission was made, was strictly regular in telling him not only that he need not make any statement and that if he did so it might be used against him, but that he had "nothing to hope for and nothing to fear by any statement he might make," where the Court of Appeal finds the circumstances to be such that the case against the accused was clearly made out apart from the admissions to the police officers and their admissibility was most unlikely to have affected the verdict. R. v. Spain, 28 Can. Cr. Cas. 113, 36 D.L.R. 522.

[Referred to in R. v. Rodney, 30 Can. Cr. Cas. 259, 43 D.L.R. 404.]

STATEMENTS BY ACCUSED; NO WARNING GIVEN; VOLUNTARILY MADE; ADMISSIBILITY.

Statements made by an accused are admissible in evidence against him although the usual warning or caution was not given, if it is shewn that such statements were voluntarily made, and were not obtained either by fear of prejudice or hope of advantage exercised or held out by a person in authority. [Ibrahim v. The King, [1914] A.C. 599; Rex v. Voisin, [1918] 1 K.B. 531; Rex v. Spain (1917), 36 D.L.R. 522, 28 Can. Cr. Cas. 113, 27 Man. L.R. 473; Regina v. Day (1890), 20 O.R. 209, referred to. See annotation to Rex v. Anderson, 22 Can. Cr. Cas. 455, 16 D.L.R. 203; Rex v. Kong, 20 B.C.R. 71, 24 Can. Cr. Cas. 142; Rex v. Bela Singh, 25 Can. Cr. Cas. 169; Rex v. Blyth, 28 Can. Cr. Cas. 20, 11 O.W.N. 416; Rex v. McCraw, 12 Can. Cr. Cas. 253 (Que.).] R. v. Rodney, 30 Can. Cr. Cas. 259, 43 D.L.R. 404.

IX. Admissions.

ADMISSIONS; SUFFICIENCY.

The admissions of the prisoner of the first marriage, unsupported by other testimony, are insufficient to support the conviction of bigamy. Regina v. Ceramer, 10 L.C.R. 404.

STATEMENTS OF ACCUSED; ADMISSIBILITY.

Section 32 of the Act of 32-33 Vict. ch. 30, is directory, and a statement made by a prisoner as provided for by that Act, may be used in evidence against him, although the justice had not complied with the provisions of that section if it appears that the prisoner was not induced to make the statement by any promise or threat. The Queen v. Soucie, 17 N.B.R. 611.

HUSBAND AND WIFE JOINTLY ACCUSED; ADMISSION BY ONE OF THEM INCRIMINATING THE OTHER; ADMISSIBILITY.

(1) Any voluntary statement made by the accused person tending to connect himself, either directly or indirectly, with the commission of the crime charged, is admissible in evidence against the accused, whether such treatment is or is not a "confession." (2) Where two prisoners are being tried for an offence, a voluntary admission made by one of them is evidence against himself only, and if it implicates a fellow prisoner the trial Judge should warn the jury that the statement is evidence only against the person making it, and should not be considered in weighing the evidence against the fellow prisoner. (3) Semble, the prisoner jointly charged and likely to be implicated by the statement of the other accused person, would have good ground for applying to be separately tried, in order to prevent the statement being put in even with such warning, as evidence before the jury by which he is to be tried. (4) Such a statement of one prisoner, if proved, must be proved in toto, and the Court would not be justified in directing that the name of others thereby implicated be suppressed by the witness proving the statement of the accused. The King v. Martin, 9 Can. Cr. Cas. 371.

[Referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K. B. 238; R. v. Lee Woo, 16 Can. Cr. Cas. 214.]

STATEMENT OF ACCUSED TO POLICE OFFICER; ADMISSIBILITY; NEGATIVING POSSIBLE INDUCEMENTS; ONUS OF PROOF.

(1) The onus is upon the prosecution to establish that a statement or confession made by the prisoner to a police officer was made voluntarily. (2) The proper mode of proving that the prisoner's statement was voluntarily made is by negativing the possible inducements by way of hope or fear that would have made the statement inadmissible, and not by merely taking the affirmative answer of the officer under oath that the statement was made voluntarily. (3) Semble, whether or not a statement was voluntarily made involves questions of both law and fact. (4) The improper reception of evidence before a County Judge trying a case without a jury under the speedy trial clauses will not entitle the prisoner to a new trial upon a case reserved, if the County Court Judge certifies therein that apart from the evidence objected to there was sufficient evidence to compel him to find the prisoner guilty. The King v. Tutty, 9 Can. Cr. Cas. 544.

FORGERY CHARGE; STATEMENT OF THE ACCUSED; OBTAINING SIGNATURE OF ACCUSED TO SAME; COMPARISON OF HANDWRITING AT THE TRIAL.

(1) Upon a preliminary trial it is proper for the magistrate to ask the accused to sign the statement of the accused made under Code, sec. 591, even where the prisoner's answer to the statutory question is "I have nothing to say." (2) The signature of the accused to such statement may be afterwards used against him upon the charge of forgery upon which he was com-

mitted, for purposes of comparison of the handwriting with the alleged forgery. The King v. Golden, 10 Can. Cr. Cas. 278.

PROVING HANDWRITING OF ACCUSED; ACCUSED GIVING EVIDENCE ON HIS OWN BEHALF; DIRECTION BY JUDGE TO WRITE SPECIMEN OF HANDWRITING FROM DICTATION; ACCUSED TESTIFYING ON HIS OWN BEHALF NOT BOUND TO WRITE.

(1) An accused person does not, by offering himself as a witness on his own behalf, become bound to write in the witness-box at the direction of the Judge a specimen of his handwriting for comparison with a document in evidence. (2) Where the accused had furnished a specimen of his handwriting by direction of the Court at a previous trial, but under protest from his counsel, the specimen so obtained should be excluded on the subsequent trial. R. v. Gunder, 10 Can. Cr. Cas. 333.

CONFESSION; ADMISSION SUGGESTED BY PEACE OFFICER; INDUCEMENT; WITHDRAWAL OF PEACE OFFICER; ADMISSION MADE TO CROWN OFFICER ON SAME DAY WITHOUT REMOVAL OF INDUCEMENT.

A prisoner's admission to a Crown officer while in custody is not admissible in evidence, if it appears that such an admission was suggested to the prisoner by a peace officer with inducements which would make an admission to him inadmissible, and was shortly afterwards made to the Crown officer as a result of such inducement. The King v. Hope Young, 10 Can. Cr. Cas. 466.

ADMISSIONS; FRAUDULENT DISPOSAL OF PROPERTY; EXAMINATION AS JUDGMENT DEBTOR; FAILURE TO OBJECT ON GROUND OF CRIMINATION.

(1) The depositions of a judgment debtor upon his examination as to means may be proved in evidence against him upon a criminal charge of disposal of property in fraud of creditors, unless at the time of the examination he objected to answer on the ground that his answer might tend to criminate him. (2) If the examination were before a duly authorized authority, the admissions then made in answer to questions not objected to, may be afterwards used against the accused although such questions were not properly within the scope of the examination. The King v. Van Meter, 11 Can. Cr. Cas. 207.

SEDUCTION OF A GIRL UNDER SIXTEEN; CORROBORATION; STATEMENTS ANTECEDENT TO THE OFFENCE; ADMISSIONS SUBSEQUENT TO OFFENCE.

Evidence that the accused charged with seduction of a girl between 14 and 16 (Revised Code, sec. 211) had previously told a witness other than the girl of his desire to have sexual intercourse with her, and of subsequent admissions of the accused from which it might be inferred that he had afterwards taken advantage of an opportunity when he was left in charge of the house where the girl lived, is corroborative evidence to go to the jury under sec. 1002 of the Revised Code (former sec. 684), although no medical evidence is adduced in support of the girl's story. The King v. Burr, 12 Can. Cr. Cas. 103.

[Referred to in Von Koolberger v. Lapointe, 19 Que. K.B. 244.]

STATEMENT BY ACCUSED WHILE IN CUSTODY; INTERROGATION BY POLICE OFFICER; ANSWER THAT HE HAD NOTHING TO STATE; CONDUCT AS EVIDENCE; SILENCE WHEN CONFRONTED WITH WITNESS.

(1) When the prosecution offers evidence of an alleged confession by the accused, it is the duty of the presiding Judge to enquire into all the circumstances in order to ascertain if the confession was made freely, and, if he finds it was not, he must reject the evidence. (2) A prisoner's answer that he has nothing to say when confronted while in custody with the statement of a witness charging him with the crime of murder, cannot be considered as an admission or quasi-admission of the charge so as to be admissible in evidence against him. (3) The silence of the accused when incriminating facts are asserted in his presence does not afford a presumption of acquiescence, if the occasion, or the nature of the demand or the manner of making it will reasonably justify silence in a prudent man, and particularly if it is in the interest of the accused not to answer. The King v. McGraw, 12 Can. Cr. Cas. 253.

[Distinguished in Trepanier v. R., 19 Can. Cr. Cas. 291, 18 Rev. de Jur. 177.]

RAPE; ANSWERS TO QUESTIONS OF RELATIVES; QUESTIONS SUGGESTING GUILT; INADMISSIBILITY AS EVIDENCE OF COMPLAINT.

Evidence of complaint made by the woman on a charge of rape as corroborative of nonconsent will be rejected if made only in answer to questions suggesting the guilt of the accused. The King v. Dunning, 14 Can. Cr. Cas. 461.

ADMISSIONS BY ACCUSED; CIRCUMSTANCES ON WHICH ADMISSIBILITY DEPENDS NEED NOT APPEAR ON RECORD; CONVICTION ON PROOF OF CONFESSION.

(1) On a habeas corpus application following a summary trial before a magistrate for an indictable offence, no presumption arises that admissions of the accused to police officers were inadmissible because not shewn to have been made voluntarily where the evidence was admitted without objection before the magistrate and no evidence is offered in the habeas corpus proceedings to prove that the magistrate did not, as a preliminary to taking the evidence of the police officer, investigate the circumstances

upon which its admissibility might depend. (2) The magistrate was not bound to place on the record the answers of a witness to preliminary questions put to him to ascertain the admissibility of his testimony, particularly if no objection was raised. (3) Evidence of a confession of the crime is sufficient, if believed, to justify a conviction. The King v. Graf, 15 Can. Cr. Cas. 193.

[Referred to in R. v. Frejd, 18 Can. Cr. Cas. 113; specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 113.]

SECOND OFFENCE; PLEA OF GUILTY TO WHAT IS NO OFFENCE NOT AN ADMISSION.

As it is not an offence per se to have been convicted of an offence, the plea of guilty on such unauthorized charge will not avail as an admission of the fact of prior conviction. The King v. Teasdale, 16 Can. Cr. Cas. 53.

[Not followed in R. v. Graves (No. 2), 16 Can. Cr. Cas. 321; referred to in R. v. Pfister, 19 Can. Cr. Cas. 93.]

ADMISSION OF FIRST MARRIAGE IN BIGAMY CASES.

(1) On a prosecution for bigamy the admission of his first marriage made by the accused after his arrest, and the testimony of witnesses to that marriage which took place in a foreign country affirming that the same took place in the ecclesiastical form usual there, and was followed by cohabitation of the parties, will, if believed, be sufficient proof of the first marriage to support a conviction without expert evidence of the foreign marriage law. (2) An admission of the first marriage is to be received with caution on a prosecution for bigamy, because of the motives which might induce such a representation to be made whether true or not, and because it is an admission of a mixed question of law and fact. [Reg. v. Creamer (1860), 10 Lower Can. R. 404; R. v. Newton, 2 Moo. & Rob. 503; R. v. Simmonsto, 1 C. & K. 164, 1 Cox C.C. 30; and Reg. v. Ray, 20 O.R. 212, specially referred to.] The King v. Naoum, 19 Can. Cr. Cas. 102.

[See Taylor on Evidence, 10th ed., sec. 865; 1 Wharton's Crim. Evid., 10th ed., secs. 171, 172; referred to in Zdrahal v. Shatney, 20 Can. Cr. Cas. 206, 7 D.L.R. 554.]

NEW TRIAL; DEPOSITIONS ON FIRST TRIAL; ADMISSIONS.

Where a new trial has been granted to the accused by a Court of criminal appeal on the ground that the principal witness for the prosecution had not been properly sworn at the first trial, the depositions of the accused given on the first trial as a witness on his own behalf and his cross-examination and re-examination, may notwithstanding be given in evidence on behalf of the prosecution on the second trial as being evidence of admissions made by the accused. The King v. Deakin (No. 2), 19 Can. Cr. Cas. 274, 2 D.L.R. 282.

WHAT NEGATIVES CHARGE OF SEDUCTION; ADMISSION; CORROBORATION.

(1) A finding that a woman under the age of 21 years had sexual intercourse with the prisoner on a number of occasions in the year 1910, he being then over the age of 21 years, negatives a charge of seduction under promise of marriage based upon a similar act in the year 1911 alleged to have been induced by a promise of marriage. (2) An admission of the prisoner made on the witness stand and a letter written by him saying among other things: "I can't marry you now," and making reference to procuring medicines for the girl's pregnancy is corroborative of a charge of seduction under promise of marriage. [R. v. Romans, 13 Can. Cr. Cas. 68, distinguished; R. v. Lougheed, 8 Can. Cr. Cas. 184, at p. 187, approved.] The King v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 550.

ARSON; REBUTTAL TESTIMONY.

Where a person under conviction for arson is called by the Crown on the trial of another person on the charge of wilfully setting the same fire, to prove that the latter had instigated him to commit the offence, the testimony of the convict that he had caused the fire at the instance and direction of accused may be rebutted by the testimony of other prisoners that the convict had admitted to them that the accused had had nothing to do with the fire, on the convict denying having made such admissions. R. v. Webb, 22 Can. Cr. Cas. 424, 16 D.L.R. 317.

[Referred to in R. v. Kelly, 27 Can. Cr. Cas. 140.]

DECLARATIONS OF ACCUSED; FORGERY.

Where the person charged with attempting to utter forged documents is not implicated with the commission of the alleged forgery, his statement made subsequent to his attempt to pass the document that the same is a forgery and that he "knew they were forged" is not necessarily a sufficient admission that he knew them to be forged at the time when he attempted to utter them; the admission is an equivocal one which has to be construed with reference to the surrounding circumstances, and if these indicate merely that he had formed an opinion from knowledge acquired after the attempt that the documents were forged, it affords no proof either of the forging itself or of knowledge of the forgery at the time of the alleged offence of attempting to utter forged documents. (Per Beck, J.) In order that the true sense of the statement of the accused put in

evidence against him may be ascertained, he is entitled to shew the facts and circumstances surrounding the making of it to the like extent as in the case of a contract he is entitled to shew them in order to assist in its interpretation. R. v. Girvin, 27 Can. Cr. Cas. 265, 34 D.L.R. 344.

ASKING FORGIVENESS; CARNAL OFFENCE.

A statement made by the accused will not avail as an admission of guilt if it be an equivocal one such as a request for forgiveness for "what he had done," made at a time at which no accusation was made against him of any criminal offence, and when it did not appear that he knew that he was suspected of the alleged offence. R. v. Blyth, 28 Can. Cr. Cas. 20.

X. Hearsay; Declarations; Res Gestæ.

See also Dying Declaration.

BIGAMY; PROOF OF SECOND MARRIAGE; EVIDENCE OF OFFICIATING MINISTER; FOREIGN LAW.

In order to prove the second marriage which took place in Michigan, the evidence of the officiating minister was tendered who shewed 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:—Held, that this evidence was 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. In the case of a second marriage it is not essential to prove the foreign law where British subjects are concerned, as in this case. [Regina v. Griffin, 14 Cox, C.C. 308, followed.] (Per Boyd, C.C.) Brierly, R. v., 14 O.R. 525.

BIGAMY; TESTIMONY OF FIRST WIFE; ADMISSIBILITY.

In an indictment for bigamy, the first wife cannot be allowed to give evidence either for or against the prisoner. Regina v. Fontaine, 15 L.C. Jur. 141.

DYING DECLARATION; COMPLAINT OF DECEASED BEFORE DEATH; RES GESTÆ; ADMISSIBILITY OF ON TRIAL FOR MURDER.

At the trial of the prisoner upon an indictment for murder, a witness for the Crown swore upon direct examination that deceased lived about thirty rods from him, and that one night about half an hour after he had heard shots in the direction of deceased's house, deceased came to the witness's house, and asked the witness to take him in, for he was shot. The witness did so, and deceased died there some hours afterward. Evidence of statements made by deceased after being taken into the witness's house was rejected. Upon a case reserved it was contended on behalf of the prisoner:—(1) That his counsel was entitled to ask the witness in cross-examination whether deceased mentioned any particular person as the person who attacked him; (2) that statements made by deceased after he arrived at the witness's house were admissible as part of the res gestæ; (3) that such statements, or some of them, were admissible as dying declarations:—Held, (1) That the admission of evidence of a complaint having been made ought properly to be confined to rape and its allied offences, but even if such evidence is admissible in other cases, it can only be so where, as in such offences, the complainant has been examined as a witness; and moreover, in this case, when deceased asked the witness to take him in, for he was shot, he was not making a complaint at all, but merely assigning a reason for asking to be taken in, and the question proposed to be asked was not relevant. (2) That the statements made by deceased after he was taken into the house were not admissible as part of the res gestæ, being made after all action on the part of the wrongdoer had ceased through the completion of the principal act, and after all pursuit or danger had ceased. [Regina v. Bedingfield, 14 Cox 341, and Regina v. Goddard, 15 Cox 7, followed.] (3) That upon the evidence the statements made by deceased after being taken into the house were not made under a settled, hopeless expectation of death, and were, therefore, not admissible in evidence as a dying declaration. Regina v. McMahon et al., 18 O.R. 502.

CONVICTION ON EVIDENCE OF ACCOMPLICE CORROBORATION.

A conviction of a prisoner for horse stealing upon the uncorroborated evidence of an accomplice was legal, although the Judge did not caution the jury as to the weight to be attached to the evidence. R. v. Beckwith, 8 U.C.C.P. 274, 277.

MURDER; TESTIMONY OF ACCOMPLICE; CORROBORATION.

Upon a trial for murder it appeared that the deceased was found dead in his stable in the morning, killed by a gunshot wound. The prisoner was a hired man in his house. His widow, the principal witness for the Crown, testified that she and her husband went to bed by ten o'clock; that afterwards her husband, being aroused by a noise in the stable, got up and went out; that she heard the report of a gun; that a few minutes after the prisoner tapped at the door, which she opened; that he said he had done

it, and it was well done; that she asked him if he had killed her husband, and he said he had, and that it was for her sake he had done it; that he told her to keep quiet, and give him time to get into bed, which she did; that she waited a few minutes and then gave the alarm, calling the prisoner and another man who was sleeping in the house, who went out together and discovered the body. She also swore that the prisoner had previously told her he was planning the murder, but that she did not then consider him in earnest. There was evidence, apart from her own, of her improper intimacy with the prisoner; and a true bill had been found against her for the murder. The jury were told that there was no direct evidence corroborating her testimony; the rule requiring the evidence of an accomplice to be confirmed was explained to them, and they were directed that before convicting they should be satisfied that the circumstantial evidence relied upon by the Crown did corroborate her testimony. They convicted, and questions were reserved under C.S.U.C. ch. 112, whether the widow was an accomplice, and whether there was sufficient evidence to submit to the jury:—Held, that, whether she was an accomplice or not, there was no ground for disturbing the verdict. Quære, whether the widow was an accessory after the fact, and whether if so she was such an accomplice as to require corroboration, according to the rule of practice. (Per Harrison, C.J.) She was an accessory after the fact. (Per Morrison, J., and Wilson, J.) Regina v. Smith (1876), 38 U.C.Q.B. 218.

COUNTERFEITING; CONVERSATIONS RELATIVE TO PURCHASE OF COUNTERFEIT MONEY; ADMISSIBILITY.

In the course of a conversation between the prisoner and a detective relative to the purchase of counterfeit money, the prisoner asked the detective whether he had received a letter written by the former stating his desire to purchase counterfeit money, and upon the detective shewing prisoner the letter he admitted it was his:—Held, that the letter was admissible as in a sense forming part of the subject-matter of the conversation. R. v. Attwood (1891), 20 O.R. 574.

DYING DECLARATIONS; WHAT ARE; WHEN ADMISSIBLE.

On an indictment for manslaughter, it appeared that deceased died about midnight, December 16th, from the effect of severe bruises alleged to have been caused by the prisoner, her husband, striking her with a lighted coal oil lamp. Immediately after receiving the injuries, which was between eight and nine in the evening of the 15th December, she said to the prisoner, and to a female relative, that she was dying. Four physicians, who saw her almost at once, declared that there was no hope of recovery. One of them, who had remained with her till three A.M., on the 17th, returned in the forenoon of that day. He then told her that she would die, and asked her if she was afraid to die; she said, "No," and asked him if she was dying then; he answered, "Yes, you are," and she replied "God help me." He said from the manner of her answering he believed she thought she was dying. She then made the statement which was put in evidence. The doctor asked her how she had caught fire; she said, "Arthur" (the prisoner) "knocked me down with the lamp." He then asked if the prisoner had threatened her before he did it and she said, "Yes." She died about twelve tours after this, from the effect of her injuries. The parish clergyman, who was with her from six to nine o'clock in the morning of the 17th, said he addressed her as a woman whom he thought was dying, and she understood it in that way; that he recommended her to trust in Christ as her only hope, and she said, "Yes, I look to Him: "—Held, that this statement was admissible as a dying declaration; and that it made no difference that the second answer was given to a leading question. Regina v. Smith (1873), 23 U.C.C.P. 312.

CONSPIRACY; EVIDENCE OF ACCOMPLICE; CORROBORATION.

Upon an indictment for conspiracy to procure by fraud the return of one F. as a member for the Legislative Assembly:—Held, that a conviction upon the evidence of an accomplice not corroborated by other testimony is not illegal, but held that in this case such evidence was clearly confirmed, and that the verdict against all the defendants was warranted. It is clearly unnecessary to prove that all the defendants, or any two of them, actually met together and concerted the proceeding carried out; it is sufficient if the jury are satisfied from their conduct, and from all the circumstances, that they were acting in concert. R. v. Fellows (1859), 19 U.C.Q.B. 48.

MURDER; DEATH OF PEACE OFFICER ATTEMPTING ARREST; TESTIMONY OF ACCOMPLICES TO DISPROVE UNLAWFUL PURPOSE; COMPETENCY.

Where a number of persons against whom warrants for their arrest had been issued, were met together, at a certain house, and on the officers of the law attempting to arrest them, one of the latter was killed by a shot fired by some of the party, though it was not known by which, and all were indicted for murder, on the trial of one of them, it was held competent for the prisoners who were not on their trial, and were called as witnesses, to state the purpose for which they went to the

house, in order to disprove the inference that they were there for an unlawful purpose (Wetmore, J., dubitante); though declarations of the prisoners would not be admissible, unless accompanying and explanatory of an act, and thereby becoming a part of the res gestæ. Regina v. Chasson, 16 N.B.R. 546.

RIOT; UNLAWFUL ASSEMBLY; GENERAL CONVERSATION; ADMISSIBILITY.

On the trial of an indictment for riot, evidence of general conversations between a witness and the person at whose house the prisoners were alleged to have committed the riot was not allowed to be given. A witness may be asked on cross-examination if he has not previously made a statement at variance with his evidence on the trial; but in order to do this, the witness' attention must be called to the particular statement by which it is proposed to contradict him, and he cannot be asked generally to relate a conversation with another person in order to enable the cross-examining counsel to discover whether any of his statements vary from his evidence on the trial. A counsel has no right on cross-examination of a witness to go into evidence of what has taken place before a grand jury, though he may shew that a witness gave different evidence before the grand jury from that which he has given on the trial. On the trial of an indictment for riot and unlawful assembly on January 15th, the evidence was given on the part of the prosecution of the conduct of the prisoners on the day previous, for the purpose of shewing (as was alleged), that B., in whose office one act of riot was committed, had reason to be alarmed when the prisoners came to his office. The prisoners' counsel thereupon claimed the right to shew that they had met on the 14th to attend a school meeting, and claimed the right to give evidence of what took place at the school meeting, but the evidence was rejected, and held (per Allen, C.J., and Fisher and Duff, JJ., Weldon and Wetmore, JJ., dissenting), that the evidence was properly rejected, because the conduct of the prisoners on the 14th could not qualify or explain their conduct on the following day. It is no ground for quashing a conviction for unlawful assembly on one day, that evidence of an unlawful assembly on another day has been improperly received, if the latter charge was abandoned by the prosecuting counsel at the close of case and there was ample evidence to sustain the conviction. R. v. Maillaux, 3 Pugs. (N.B.) 493.

CONSPIRACY; ACTS OF COCONSPIRATOR.

In a charge of conspiracy when the existence of the common design on the part of the defendants has been proved, evidence is then properly receivable as against both of what was said or done by either in furtherance of the common design. R. v. Connolly, 1 Can. Cr. Cas. 468.

[Referred to in R. v. Hutchinson, 8 Can. Cr. Cas. 496; R. v. Central Supply Co., 12 Can. Cr. Cas. 390; followed in R. v. Wilson, 21 Can. Cr. Cas. 105.]

CONSPIRACY; ACTS OF A COCONSPIRATOR NOT CHARGED.

In a charge of conspiracy evidence is admissible of what was said or done in furtherance of the common design by a conspirator not charged, as against those who are charged, after proof of the existence of the common design on the part of the defendants with such conspirator. Ibid., 1 Can. Cr. Cas. 468.

MOTIVE; RES GESTÆ; LIFE INSURANCE.

To prove the alleged motive of securing life insurance moneys, in a trial for murder, evidence is properly admissible, as a part of the res gestæ of all applications for insurance made practically at the same time and forming parts of one transaction, although some of the applications were refused and no insurance effected thereupon. R. v. Hammond, 1 Can. Cr. Cas. 373.

[Referred to in R. v. Sunfield, 13 Can. Cr. Cas. 11.]

"RES GESTÆ; ASSAULT.

In a prosecution for an assault occasioning actual bodily harm (Cr. Code, sec. 262) it is improper to exclude evidence of statements sworn to by a witness for the prosecution at a preliminary enquiry, the record of the depositions whereat had been lost, as to what was said by the accused at the time of the assault, as such statements of the witness had reference to statements of the accused forming a part of the res gestæ. R. v. Troop, 2 Can. Cr. Cas. 22.

PROOF OF THEATENING LETTER; HANDWRITING.

Where, in a charge of sending a threatening letter to a person with intent to extort money, it is proved that the accused had stated that he had written a letter to such person, and that he had stated its purport in language to the like effect as the threatening letter, it is not error for the Court to admit the threatening letter in evidence without further proof of the handwriting, and to submit to the jury for comparison with an exhibit, already in evidence, admittedly written by the accused. A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusions as to its authenticity, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for some purpose in the case, although no witness was called to prove the handwriting to be the same in both. R. v. Dixon (No. 2), 3 Can. Cr. Cas. 220.

SEVERAL DEFENDANTS; CALLING CODEFENDANT AS WITNESS.

One codefendant cannot be called as a witness by another codefendant and compelled to give evidence, but a codefendant may testify if he chooses to do so. The Queen v. Connors, 5 Can. Cr. Cas. 70.

[Approved in R. v. D'Aoust, 3 O.L.R. 653.]

WIFE AS WITNESS AGAINST HER HUSBAND; HUSBAND'S STATEMENT MADE IN PRESENCE OF WIFE AND ANOTHER.

A wife, called as a witness against her husband, is incompetent under the Canada Evidence Act to disclose a communication made by her husband, in the presence of hearing of herself and a third party, which she will not undertake to say was not intended for her to hear. The King v. Wallace, 6 Can. Cr. Cas. 323.

HUSBAND AND WIFE; COMPETENT WITNESS ALSO COMPELLABLE.

The husband or wife of a person charged with an indictable offence is not only a competent witness for or against the person accused, but may also be compelled to testify. Gosselin v. The King, 7 Can. Cr. Cas. 139.

PRISONER'S TESTIMONY AS TO WITNESS AT ANOTHER TRIAL; CONSENT OF PRISONER'S COUNSEL.

(1) The distinction between felony and misdemeanour having been abolished by Code, sec. 535, the consent of counsel for the accused which before the Code would have been effective in misdemeanours only, is now effective although the offence charged was formerly a felony. (2) Evidence given on the trial of another person including the evidence of the prisoner then called as a witness, may with the consent of the prisoner's counsel be admitted in evidence both for and against the prisoner. The King v. Fox, 7 Can. Cr. Cas. 457.

MURDER; DYING DECLARATION; DECLARATION SIGNED AND SWORN IN NARRATIVE FORM; ADMISSIBILITY.

A written statement signed and sworn to by the deceased before a justice of the peace after being read over to him may be admitted as a dying declaration in a homicide case, although in narrative form not embodying the exact words of the declarant. The King v. Magyar, 12 Can. Cr. Cas. 114.

MURDER; RES GESTÆ; ADMISSIBILITY OF STATEMENTS.

(1) On a trial for murder by shooting, evidence of statements made by the person shot immediately after the shooting and while under apprehension of further danger from the accused and requesting assistance and protection therefrom, is admissible as part of the res gestæ, even though the person accused of the offence was absent at the time when such statements were made. (2) Statements not coincident, in point of time, with the occurrence of the shooting, but uttered in the presence and hearing of the accused and under such circumstances that he might reasonably have been expected to have made some explanatory reply to remarks in reference to them, are admissible as evidence. Gilbert v. The King (No. 2), 12 Can. Cr. Cas. 127.

[Relied on in The King v. Scherf, 13 Can. Cr. Cas. 389; followed in R. v. Barrett, 14 Can. Cr. Cas. 469; discussed in R. v. Daley, 16 Can. Cr. Cas. 175.]

COMPLAINT IN CASE OF RAPE; ADMISSIBILITY.

Where the complainant makes a statement to a third party, not in the presence of the accused, such statement may be given in evidence, provided it is shewn to have been made at the first opportunity which reasonably offered itself after the commission of the offence, and has not been elicited by questions of a leading and inducing or intimidating nature. The King v. Spuzzum, 12 Can. Cr. Cas. 287.

ATTEMPT TO COMMIT RAPE; DUTY OF JUDGE TO REJECT INADMISSIBLE EVIDENCE.

(1) It is the duty of the trial Judge in a criminal case to exclude inadmissible evidence, and its admission is a ground for a new trial whether objected to or not on the trial. (2) Whether or not the conditions required by sec. 11 of the Revised Evidence Act, 1906, formerly sec. 107 of the Criminal Code, 1892, to justify the admission of rebuttal testimony contradicting a witness who has denied making an alleged statement to a third party at variance with her testimony, have been fulfilled, is a question for the presiding Judge, and, if reasonably exercised, is not a ground for a new trial on a case reserved. (3) On the trial of an indictment for an attempt to commit rape, statements of the person assaulted, and of her companion present at the beginning of the assault, made to police officers, some four hours after the assault, that they had given a description of the assailant, but not stating what the description was, and evidence of the officers that in consequence of such description they had looked for the assailant, were properly received, although statements of a like character had previously been made to other persons. (4) Where the prosecutrix on cross-examination had stated that she had given a description of her assailant in the presence of her father, and that in consequence of such description her father had suspected a person other than the prisoner, the Crown was properly allowed to prove by the father what the description was that his daughter had given in his presence. The King v. Clarke, 12 Can. Cr. Cas. 299.

TRADE COMBINATIONS; CONSPIRACY IN RESTRAINT OF TRADE.

Before the acts of one conspirator can be given in evidence against another, it must be shewn that a conspiracy existed, that the alleged conspirators were parties to the same and that the acts in question were done in furtherance of the common design. The King v. Gage (No. 2), 13 Can. Cr. Cas. 428.

[Specially referred to in Weidman v. Shragge, 20 Can. Cr. Cas. 117, 2 D.L.R. 734.]

ATTEMPT TO CARNALLY KNOW CHILD UNDER FOURTEEN; EVIDENCE OF CHILD NOT UNDER OATH; CORROBORATION; CHILD'S COMPLAINT TO HER MOTHER ON DAY OF OFFENCE.

Evidence of a voluntary statement made within two hours of the occurrence by a child of seven years to her mother, implicating the accused on a charge of attempting to have carnal knowledge, is admissible, with other testimony, in corroboration of the child's evidence given without oath under Code, sec. 1003. The King v. Bowes, 15 Can. Cr. Cas. 326.

LOTTERY; ACTS AND DECLARATIONS OF REPRESENTATIVE.

(1) Upon a charge of carrying on a business by modes of chance contrary to the lottery clauses of the Criminal Code (Cr. Code, 1906, sec. 236), evidence of persons who had canvassed for business on her behalf with which the lottery features were proposed, is not admissible evidence against the accused where not connected by evidence that the accused did in fact hold the lottery drawings suggested by the canvassers. (2) Where the charge is for carrying on an illegal lottery business and not for fraudulently representing that the accused was carrying on such business, the prosecution must prove that the business was in fact carried on as alleged and not merely that the accused represented that she was conducting such business or that she authorized her agents to so represent. The King v. Lumgair, 19 Can. Cr. Cas. 123.

TESTIMONY AT A PRELIMINARY ENQUIRY FOR DIFFERENT OFFENCE; ADMISSIBILITY ON TRIAL; VOLUNTARY STATEMENTS.

(1) A statement made voluntarily by a person upon a preliminary enquiry on an offence with which he was charged, and in which he gave an account of a shooting connected with the charge then being enquired into and admitted firing the shot, will be admitted in evidence upon a charge of murder laid against him after the death of the person injured by the shooting although such death occurred subsequent to the preliminary enquiry upon which the admission was made. (2) A statement made by the prisoner after the statutory caution upon a preliminary enquiry being held upon a charge of escape from custody will, if relevant, be admitted in evidence against him upon a subsequent trial for murder. (3) Any statement of the accused made against self-interest is admissible if made voluntarily. The King v. James, 19 Can. Cr. Cas. 391, 4 D.L.R. 717.

AFFIDAVIT ESTABLISHING THE OFFENCE; DEPOSITIONS TAKEN IN A FOREIGN COUNTRY; EXTRADITION.

Under sec. 16 of the Extradition Act, R. S.C. 1906, ch. 155, authorizing the receiving in evidence in extradition proceedings of depositions or statements taken in a foreign state on oath, or copies of such depositions and statements and foreign certificates thereof, if duly authenticated, an affidavit tending to establish before the extradition commissioner the crime charged against a person sought to be extradited does not vitiate the extradition proceedings because such affidavit was taken by questions and answers and then written out in narrative form before being sworn to. In re O'Neill, 19 Can. Cr. Cas. 410, 5 D.L.R. 646.

RES GESTÆ; CONDUCT OF COCONSPIRATORS; FRAUDULENT INTENT.

The acts, conduct and statements of a coconspirator are properly admissible in evidence upon a charge if they relate to the common design; they are in such case a part of the res gestæ in the execution of the purpose of the conspiracy. [R. v. Connolly, 1 Can. Cr. Cas. 468, followed.] The fact that the accused charged with conspiracy in burning down his own store for the insurance had eight months before the alleged conspiracy unsuccessfully attempted to induce a third person to burn down another building owned by the accused and had told him that it was insured, taken in conjunction with the circumstance that such other building was in fact burned down a few weeks prior to the burning of the store in question, is properly admissible in proof of the design or intention of the accused as regards the offence being tried, as under sec. 541 (2) of the Criminal Code, 1906, the burning by the accused of his own building would constitute the statutory offence of arson only if done "with intent to defraud." [Makin v. Atty.-Gen. of N.S.W., [1894] A.C. 57; R. v. Collyns, 4 Can. Cr. Cas. 572; R. v. Bond, [1906] 2 K.B. 389, and R. v. Pollard, 15 Can. Cr. Cas. 86, considered.] On a charge of conspiracy to defraud by setting fire to defendant's own store building and contents so as to obtain the proceeds of an excessive insurance, where it appears that the insurance has been largely increased during the month preceding the fire, the defendant's signed statements of assets and liabilities submitted from time to time for the purpose of obtaining advances from a bank within a period of three months before the fire

are properly admissible for the purpose of shewing the acts and conduct of the accused with respect to his financial affairs at a time not too remote to be connected with the offence. Where an intention to defraud must be established as an essential ingredient of the offence, evidence of a similar criminal act sufficiently related in point of time to the alleged offence to shew a common design in both, is admissible in proof of the intent to defraud; and this rule applies notwithstanding that there is already evidence to go to the jury which is relied on by the Crown to prove the intention to defraud, apart from any other similar act of the accused. R. v. Wilson, 21 Can. Cr. Cas. 105.

CONSPIRACY; ABORTION; ACTS OF CONSPIRATORS.

Acts and declarations of those charged with the crime of conspiracy to procure the performance of an abortion, occurring immediately after its commission and made while procuring care for the person upon whom the abortion was performed, are admissible as tending to establish the conspiracy. R. v. Bachrack, 21 Can. Cr. Cas. 257, 11 D.L.R. 522.

PRISONER MAKING UNSWORN STATEMENT.

The former right of a prisoner who is defended by counsel to make an unsworn statement from the dock is displaced by the Canada Evidence Act, under which he may offer his own sworn testimony as evidence on his own behalf. [R. v. Aho, 8 Can. Cr. Cas. 453, considered.] R. v. Krafchenko, 22 Can. Cr. Cas. 277, 17 D.L.R. 244.

DYING DECLARATION; HOMICIDE.

A dying declaration is only admissible in the case of homicide where the death of the deceased is the subject of the charge and the circumstances which led to the death are the subject of the dying declaration. [R. v. Hutchinson, 2 B. & C. 605; R. v. Mead, 2 B. & C. 608n; R. v. Lloyd, 4 C. & P. 233; R. v. Hind, 29 L.J.M.C. 147, referred to.] R. v. Inkster, 24 Can. Cr. Cas. 294.

XI. Relevancy and Materiality.

ADMISSIBILITY OF SIMILAR ACTS.

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 admitted as shewing that the offences had been committed by the same person:—Held, that the evidence was properly received. Regina v. McDonald et al. (1886), 10 O.R. 553.

ADMISSIBILITY OF, TO SHEW DISQUALIFYING INTEREST OF MAGISTRATE.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act, it was contended that the defendant attempted to shew by witnesses that the magistrate had a disqualifying interest in the case, but the magistrate refused to admit such evidence:—Held, that the evidence was inadmissible, and even if admissible, the rejection of it would not afford ground for quashing the conviction. [Regina v. Sproule, 14 O.R. 375, not followed.] Regina v. Brown (1888), 16 O.R. 41.

BIGAMY; CONFESSION AS TO FIRST MARRIAGE.

Upon an indictment for bigamy the first marriage must be strictly proved as a marriage de jure. Evidence of a confession by the prisoner of his first marriage is not evidence upon which he can be convicted. Regina v. Ray (1890), 20 O.R. 212.

CRIMINAL LIBEL; PROOF OF ACTS SUBSEQUENT TO PUBLICATION; JUSTIFICATION; PROOF OF RUMOURS.

On a trial for libel, acts of the defendant immediately after the publication may be proved in order to shew there was no malice. The existence of rumours cannot be proved in justification of the libel. R. v. Dougall, 18 L.C. Jur. 85.

CROSS-EXAMINATION OF PROSECUTRIX; PREVIOUS CONNECTION WITH OTHER MEN.

The prosecutrix, in an indictment for rape, was asked in cross-examination, after she had declared she had not previously had connection with a man, other than the prisoner, whether she remembered having been in the milk-house of G. with two persons named M. one after the other:—Held, that the witness may object, or the Judge may, in his discretion, tell the witness she is or she is not bound to answer the question; but the Court ought not to have refused to allow the question to be put because the counsel for the prosecution objected to the question. Laliberté v. The Queen, 1 S.C.R. 117.

EVIDENCE OF A WITNESS CONTRADICTORY TO A PREVIOUS WRITTEN STATEMENT.

A witness for the Crown gave evidence quite different from a previous written statement made by him to the prosecutor's counsel. He admitted such statement when shewn to him, but said it was all untrue, and made to save himself. (Per Wilson, J.) The prosecutor's counsel was properly admitted to disprove the witness's assertion as to how the statement came to be made, for the fact of its being obtained as he stated would tend very much to prejudice

the prosecution and was therefore not a collateral matter, but relevant. Haggarty, J., inclined to the opinion that the witness having fully admitted his previous inconsistent statement, no further evidence relating to it should have been received. Regina v. Jerrett (1863), 22 U.C.Q.B. 499.

FALSE PRETENCES; INTENT; PROOF OF SIMILAR ACTS.

When goods are obtained by fraud, the Court will permit, without previous notice to the accused, the proof of similar frauds having been recently practised upon others, in order to shew the intent of the prisoner. R. v. Durocher, 12 Rev. Leg. 697, Que. (1882).

FORGERY; UTTERING FORGED NOTES; MENS REA; EVIDENCE OF ASSOCIATION WITH SIMILAR OFFENDERS.

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 shewing 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 seen, and were concealed, as was alleged by him, after W. had been arrested:—Held, that the evidence was properly received in proof of the guilty knowledge of the prisoner. Regina v. Bent (1886), 10 O.R. 557.

IDENTITY OF DEFENDANT; PREVIOUS CONVICTION.

In a prosecution for a third offence under the Canada Temperance Act, it is sufficient to put in certificates of the previous convictions without otherwise identifying the defendant as the party named therein. Identity of name is evidence of identity of person. Ex parte Dugan, 32 N.B.R. 98.

INDICTMENT FOR ASSAULT; EVIDENCE OF PRIOR CONVICTION; CHARACTER AND REPUTATION; ADMISSIBILITY.

An indictment for an assault occasioning actual bodily harm contained a second count charging a prior conviction for an indictable offence. The offence disclosed by the indictment upon which the prisoner was tried was not one of that class of offences for which, after previous conviction for felony, etc., additional punishment might be imposed. The first part of the indictment only was read in arraigning the prisoner, and no allusion was made to the second part charging the prior conviction. The prisoner in his defence gave evidence of good character. The Crown gave some general evidence in rebuttal, and then tendered under sec. 26 of ch. 29, 32–33 Vict. a certificate to prove a prior conviction, and read the second clause of the indictment charging such prior conviction:—Held, that this evidence was not properly admissible as to character, and that such evidence can only be as to general reputation; evidence of a prior conviction going to the matter of punishment, and not to general character. [Regina v. Rowton, 10 Cox C.C. 25, followed.] Reg. v. Triganzie (1888), 15 O.R. 294.

MALICIOUS PROSECUTION; POLICE OFFICERS' PRIVILEGE; DISCLOSURE OF INFORMATION; DISCRETION OF JUDGE.

In an action for malicious prosecution against two police officers, the defendants declined on examination for discovery, to give the name of the person for whom information was received, on which the plaintiff was arrested and prosecuted, on the ground that it was contrary to public policy, and would obstruct the detection of crime if the name of the party informing was given:—Held, that under the circumstances of this case, the defendants were bound to disclose the source of their information. It is not for the Court to decide whether the answering by subordinate officers of justice in ordinary prosecutions and causes arising thereout of any such question, would or would not in each case be injurious to the administration of justice. (Per Boyd, C.) The matter does not rest in the mere discretion of the magistrate, Judge or Court. The disclosure should not be compelled, without the consent of the informer, except where discovery of the truth and of the controversy; when higher public interest require it, and it then should be enforced. (Per Meredith, J.) Decision of Ferguson, J., and the Master in Chambers, reversed. Humphrey v. Archibald et al., 21 O.R. 553.

MANSLAUGHTER; SIMILAR ACTS OF VIOLENCE WITHIN ONE YEAR; ADMISSIBILITY OF.

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 fa' against a hard substance. About three

weeks before her death (17th October preceding), 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 in the side. The following questions were reserved, viz., whether the evidence of assaults and violence committed by the prisoner upon the deceased prior to the 10th November or the 17th October, 1881, was properly received, and whether there was any evidence to leave to the jury to sustain the charge in the first count of the indictment:—Held, affirming the judgment of the Supreme Court of New Brunswick, that the evidence was properly received, and that there was evidence to submit to the jury that the disease which caused her death was produced by the injuries inflicted by the prisoner. Theal v. Queen, 7 Can. S.C.R. 397.

MURDER; ADMISSIBILITY OF EVIDENCE.

On a trial for murder, the death of the deceased was shown to have been caused by his being stabbed by a sharp instrument. It was proved that the prisoner struck the deceased, but neither a knife nor other instrument was seen in his hand. For the prisoner evidence was offered that on the day preceding the homicide, the prisoner had a knife which could not have inflicted the wound of which the deceased died; and that on that day, the prisoner parted with it to a person who held it until after the crime was committed. The learned Judge at the trial refused to admit this evidence:—Held, Galt, J., dissenting, that the evidence was properly rejected. Regina v. Herod (1878), 29 U.C.C.P. 428.

MURDER; KILLING IN RESISTANCE OF ARREST; BOASTING OVER KILLING; ADMISSIBILITY.

Where several persons were resisting constables who sought to arrest them, and M., one of the persons resisting, was killed by one of the constables, and G., one of the latter, was also killed by a shot fired by the other party; on the trial of an indictment for the killing of the constable, a question put by defendant's counsel to another constable on cross-examination, as to whether he has not boasted that he had shot M., was held to have been improperly rejected. Regina v. Chasson, 16 N.B.R. 546.

MURDER; COLLATERAL FACTS; DISCREDITING WITNESS; PREJUDICE AS TO RELIGION OF JURORS; INTEREST IN PROSECUTION.

Questions relating to collateral facts may be put to a witness for the purpose of discrediting his testimony and shewing his interest, motives and prejudices. Therefore, on the trial of an indictment for murder, the following questions put to a witness by the prisoner's counsel on cross-examination, viz.: Whether he had not declared that no Roman Catholic should sit on the jury; whether he had not been constantly advising with the Attorney-General as to which of the jurors should be ordered to stand aside; and whether it was not his desire as a member of the Government to procure a conviction, were held to have been improperly rejected. Regina v. Chasson, 16 N.B.R. 546.

MURDER; RESISTING ARREST; PRIOR RIOTOUS ACTS AND CONDUCT; ADMISSIBILITY.

Evidence of one crime may be given to shew a motive for committing another; and where several felonies are all parts of the same transaction, evidence of all is admissible upon the trial of an indictment for any of them, but where a prisoner indicted for murder, committed while resisting constables about to arrest him, had, with others, been guilty of riotous acts several day before, it is doubtful if evidence of such riotous conduct is admissible, even for the purpose of shewing the prisoner's knowledge that he was liable to be arrested and, therefore, had a motive to resist the officers. Regina v. Chasson, 16 N.B.R. 546.

PROCURING PROSTITUTION; GENERAL REPUTATION OF THE HOUSE.

On an indictment for attempting to procure a woman to become a common prostitute, in corroboration of her evidence that for such purposes the prisoner had taken her to a bawdy house, evidence of the general reputation of the house is admissible. Regina v. McNamara (1891), 20 O.R. 489.

PROOF OF ABORTION; TESTIMONY OF ACCUSED AT THE INSTANCE OF CROWN; ADMISSIBILITY.

The prisoner was indicted for unlawfully using an instrument on J. L., with intent to procure a miscarriage. J. L. was called for the prosecution to prove the charge, and in cross-examination denied that she had told H. A., H. R., and M. T. that before the prisoner had operated on her she had been operated on by a doctor for the purpose of procuring a miscarriage. H. A., H. R., and M. T. were called for the defence, and swore that J. L. had so told them. The doctor was then called by the Crown, and he swore that he had not operated on J. L.:—Held, that the evidence of the doctor was properly admitted: but in any event the prisoner's case was not so affected by the evidence as to warrant a reversal of the conviction, even if the evidence were not strictly admissible. Regina v. Andrews, 12 O.R. 184.

PROVING PROPENSITY OF DOG.

The owner of a sheep killed or injured

by a dog can, under R.S.O. (1887), ch. 214, sec. 15, recover the damage occasioned thereby without proving that the dog had a propensity to kill or injure sheep; and the Act applies to a case where the dog has been set upon the sheep. Regina v. Perrin (1888), 16 O.R. 446.

INTENT; INFLUENCE FROM ACTS AND CONDUCT.

For the purpose of proving "intent to steal" it is sufficient if an inference of such intent is deducible from the acts and conduct of the prisoner as shewn by the evidence. R. v. Gibbons, 1 Can. Cr. Cas. 340.

OF IDENTITY; SUFFICIENCY OF.

Evidence given by the official stenographer to the effect that the prisoner resembled the party of the same name as prisoner, whose depositions he had taken, and that he believed him to be the same man, but could not sufficiently remember to swear positively to his identity, is properly submitted to a jury. R. v. Douglas, 1 Can. Cr. Cas. 221.

Of identity in extradition cases. 1 Can. Cr. Cas. 74, 80.

OF SIMILAR CRIMINAL ACTS.

Evidence of other similar criminal acts may be relevant in a charge of theft if it bears upon the question whether the taking was designed or accidental. Where such evidence is relevant to the issue, it is not necessary for its admission in evidence that it should establish conclusively that the accused had been guilty of such other criminal acts, but it will be received if it tends to shew that the accused had been so guilty. R. v. Collyns, 4 Can. Cr. Cas. 572.

[Referred to in R. v. Paul, 19 Can. Cr. Cas. 348, 5 D.L.R. 347; R. v. Wilson, 21 Can. Cr. Cas. 105.]

FOR CODEFENDANT; USE OF.

The evidence adduced by the witnesses called on behalf of any defendant is effective as regards the others, whether beneficially or adversely, and counsel for the other defendants may therefore cross-examine such witnesses before their cross-examination by counsel for the prosecution. R. v. Barsalou (No. 3), 4 Can. Cr. Cas. 446.

CREDENCE OF CORPORATION IN EALSE PRETENCE.

To prove that the board of a corporation had acted on the faith of the false representation made, it is not necessary on a charge of obtaining money from the corporation by false pretences to examine one or more of the directors, if the fact can be proved by other competent witnesses. Evidence is admissible of facts which are subsequent to the false representation, to prove the insolvency of the defendants a very short time after the false representation had been made, as an evidence of their knowledge of its falsity when they made it. R. v. Boyd, 4 Can. Cr. Cas. 219.

OF MOTIVE; PROOF OF IMMORAL RELATIONSHIP.

Where the question of motive is an important element in the case, and the motive charged depends on the alleged improper relations of the accused with a certain female, evidence is admissible to prove such relations, although it tends to shew that he is of bad character, and notwithstanding the general rule which prevents the prosecution from adducing evidence of the general bad character of the accused as a circumstance in proof of the charge. Where evidence is adduced on behalf of the accused as to his general good character, the witnesses may be cross-examined by the prosecution as to the grounds of their belief and as to the particular facts on the question of character of which they have knowledge. R. v. Barsalou (No. 2), 4 Can. Cr. Cas. 347.

PRISONER AS A WITNESS; CHARGE OF ROBBERY; CROSS-EXAMINATION AS TO PREVIOUS CONVICTIONS FOR INDICTABLE OFFENCES; RELEVANCY.

An accused person examined as a witness on his own behalf, may be cross-examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character had been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. The King v. D'Aoust, 5 Can. Cr. Cas. 407.

[Referred to in R. v. Reid, 14 Can. Cr. Cas. 333.]

CONTRADICTING ONE'S OWN WITNESS; OTHER RELEVANT TESTIMONY ADMISSIBLE ALTHOUGH INCONSISTENT; WITNESS HOSTILE OR ADVERSE; REFRESHING THE MEMORY.

(1) The party on whose behalf a witness is called is not declared by Code, sec. 699 from proving by other witnesses any relevant facts inconsistent with or contradictory of such witness' testimony without a ruling that the witness is hostile to the party calling him. (2) The witness' deposition at the preliminary enquiry may be shewn to him on his examination-in-chief at the trial for the purpose of refreshing his memory, but neither the examining counsel nor the witness may read the deposition aloud. (3) On the witness silently reading his previous deposition, a question, which had been put to the witness before he saw the deposition, and to which he had given an unexpected answer may be reput; and only in case the witness, after his memory has been so refreshed, persists in the same unexpected answer, can the question be re-

peated to him in a leading form from the depositions. (4) The opposite party is entitled to cross-examine not only upon the examination-in-chief, but upon the previous depositions which have been so shewn to the witness for the purpose of refreshing his memory. The King v. Laurin (No. 5), 6 Can. Cr. Cas. 135.

CIRCUMSTANTIAL EVIDENCE; RULES AS TO EFFICIENCY.

In order to justify a finding of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and must be incompatible of explanation upon any other reasonable hypothesis than that of guilt. The King v. Telford, 8 Can. Cr. Cas. 223.

EVIDENCE AT TRIAL; DEPOSITIONS ON PRELIMINARY ENQUIRY; WITNESS ABSENT FROM CANADA; PROOF OF ABSENCE.

Absence of a witness from Canada is not sufficiently proved under Code, sec. 687 to admit his depositions taken on the preliminary enquiry, by shewing the receipt of letters and telegrams from him despatched from an adjoining territory of the United States, the latest despatch being six days prior to the trial. The King v. Trefry, 8 Can. Cr. Cas. 297.

[Distinguished in R. v. Deloe, 11 Can. Cr. Cas. 225.]

FOREIGN WITNESSES; PARTIAL KNOWLEDGE OF ENGLISH LANGUAGE; TESTING COMPETENCY TO ANSWER IN ENGLISH.

(1) Where it is sought to examine a witness through an interpreter in a foreign tongue, the opposing counsel may be given leave first to question the witness in English for the purpose of testing the witness' competency to speak English. (2) Where a foreign witness examined in chief through an interpreter has some knowledge of English, the counsel entitled to cross-examine may do so in English without the intervention of the interpreter, and may also, if he chooses, put questions through the interpreter. The King v. Wong On (No. 2), 8 Can. Cr. Cas. 343.

ADMISSION OF IRRELEVANT TESTIMONY.

Where there was ample evidence to warrant the conviction made by a justice of the peace of keeping liquor for sale and no evidence was adduced by the defence in rebuttal of the charge, the Court will not on a stated case hold the conviction bad because of the admission of irrelevant testimony. The King v. Nugent, 9 Can. Cr. Cas. 1.

REFUSAL TO ANSWER; POWER OF MAGISTRATE TO COMMIT WITNESS FOR CONTEMPT.

To justify a magistrate in committing a witness under sec. 585 of the Criminal Code for refusing to answer a question put to him upon a preliminary enquiry, it must appear not only that the witness refused without just excuse to answer but that the question asked was in some way relevant to the charge. Re Ayotte, 9 Can. Cr. Cas. 133.

INDECENT ASSAULT; EVIDENCE OF COMPLAINT BY THE GIRL; REASONABLE TIME; SPECIAL CIRCUMSTANCES.

(1) It is not essential in all cases of indecent assault that complaint should have been made at the earliest opportunity after the offence, and evidence of such complaint may under special circumstances be received after the lapse of several days' delay. (2) The fact of the girl being only seven years of age, that the act was committed without violence and that the girl did not realize the serious nature of the act, are circumstances which make a complaint made ten days afterwards admissible in evidence. The King v. Barron, 9 Can. Cr. Cas. 196.

CORPUS DELICTI; DESTRUCTION OF THE REMAINS OF DECEASED; CIRCUMSTANTIAL EVIDENCE OF IDENTITY; COMMENT ON FAILURE OF ACCUSED TO TESTIFY.

(1) On a trial for murder, if the fact of the death of a human being is established by direct proof and the remains of the dead man have been so destroyed by fire that direct identification is impossible, circumstantial evidence is admissible to prove the identity of the remains and also the identity of the person who caused the death. (2) While the fact of death must always be established by direct proof, the fact of the killing by the defendant as alleged may be proved by circumstantial evidence supporting the charge beyond a reasonable doubt. (3) A statement by the Crown counsel in his address to the jury that the prisoner's counsel "took the very best and wisest course in not having the prisoner go on the witness stand," and that he, the Crown counsel, thinks it was wise for the prisoner himself, is a comment unfavourable to the accused on his failure to testify on his own behalf and is within the prohibition of sec. 4 (2) of the Canada Evidence Act, 1893. (4) Where comment has been made in contravention of the Canada Evidence Act, upon the failure of the accused to testify, the same is a substantial wrong to the prisoner. (Cr. Code, sec. 746), and entitles him to a new trial. The King v. Charles King, 9 Can. Cr. Cas. 426.

GAMING HOUSE; "LOOKING ON;" EVIDENCE OF ACCOMPLICE; CORROBORATION.

A summary conviction based upon the uncorroborated evidence of an accomplice who is shewn to have received money to testify against the accused is properly set aside on appeal. The King v. Ah Jim, 10 Can. Cr. Cas. 126.

[Distinguished in R. v. Frank, 16 Can. Cr. Cas. 242.]

AIDING AND ABETTING A RAPE; RELATIONS OF PROSECUTRIX WITH A WITNESS FOR PROSECUTION; REFUSAL OF BOTH TO ANSWER.

(1) On a charge of aiding and abetting another to commit rape if it appears that a man called as a witness for the prosecution had immediately prior to the offence been in the company of the prosecutrix under circumstances making it probable that he had had illicit connection with her, and that the man accused of the rape had taken the prosecutrix away from the witness, the witness may be cross-examined as to his relations with the prosecutrix for the purpose of shewing prejudice against the accused, and for this purpose is bound to answer whether he had had connection with the prosecutrix on that occasion. (2) Where the witness refused to answer as to his connection with the prosecutrix and the trial Judge upheld his refusal and the prosecutrix also refused to answer as to the same, but the guilt of the accused was corroborated by independent testimony, Code, sec. 746 may be applied to uphold the conviction on the ground that no substantial wrong has been occasioned by the ruling. The King v. Finnessey, 10 Can. Cr. Cas. 347.

TRIAL; MOTION TO DISCHARGE JURY; EVIDENCE GIVEN AFTER RULING THAT INADMISSIBLE.

If a witness at a trial before a jury volunteers evidence which the trial Judge has already ruled to be inadmissible and which might have weight with the jury in arriving at a verdict, the trial Judge is not bound by reason thereof to discharge the jury and impanel a new jury to try the issue. The King v. Grobb, 13 Can. Cr. Cas. 92.

EVIDENCE OF SIMILAR CRIMINAL ACTS; WHEN ADMISSIBLE; ISOLATED OFFENCE INSUFFICIENT.

(1) Where the issue at the trial was whether a surgeon had performed an operation to procure a miscarriage or a necessary and lawful operation, the evidence of another woman that he had at another time, previous to the offence charged, operated upon her to procure a miscarriage is not admissible as proving intent, without evidence of such conduct on the part of the surgeon as would justify the inference of a systematic pursuit of the same criminal object. (2) A single prior act of the like criminal nature as the subject of the charge but not connected therewith is not evidence proving the criminal intent of the act charged. (3) The trial Judge has a discretion to admit in reply, with leave to answer same, evidence of criminal intent which might have been offered in chief. The King v. Pollard, 15 Can. Cr. Cas. 74.

[Considered in R. v. Wilson, 21 Can. Cr. Cas. 105.]

EVIDENCE; CROSS-EXAMINATION; CROSS-EXAMINATION IN ONE AS TO FACTS IN OTHER; CREDIT OF WITNESS.

(1) Where charges for separate offences at different hours of the same day are laid under a liquor license law, the magistrate has a discretion on the trial of one of the charges to rule out questions on cross-examination of the witnesses for the prosecution as to their presence at the time and place of the other offence, and to confine the enquiry to the hours specifically mentioned in the information. (2) The proposed questions were not relevant to the issue nor proper for the purpose of discrediting the witness. The King v. Butterfield, 15 Can. Cr. Cas. 101.

MURDER; EVIDENCE OF PREVIOUS ASSAULTS UPON ACCUSED BY DECEASED; CHARACTER, EVIDENCE OF; PREVIOUS VIOLENT CONDUCT OF DECEASED.

(1) In support of a plea of self-defence on a charge of murder, previous assaults of the deceased on the prisoner and on members of the prisoner's family are admissible to shew the nature of the assault he had reason to fear. (2) The bad character of the deceased as a cruel and violent man towards his family may be shewn in support of a plea of self-defence and justification on a charge against the son of having murdered his father in an altercation during which the father had threatened to kill him and his mother. The King v. Drouin, 15 Can. Cr. Cas. 205.

LIQUOR LICENSE LAW; SECOND OFFENCE; NO JURISDICTION TO TAKE EVIDENCE OF FIRST OFFENCE BEFORE FINDING OF GUILT ON SECOND.

(1) Under the Ontario Liquor Licence Act, sec. 101 (similar to sec. 143 of the Canada Temperance Act), the magistrate trying a charge of a second or subsequent offence is prohibited from taking evidence as to the prior conviction until after his adjudication of guilty in respect of the subsequent offence, and noncompliance with the statute deprives the magistrate of jurisdiction. (2) Where the defendant gives evidence on his own behalf, a question on cross-examination as to previous convictions of the accused for any offence and which would necessarily involve an answer as to the prior conviction charged, is within the prohibition of the statute, although asked for the purpose of discrediting the testimony of the accused. The King v. VanZyl, 15 Can. Cr. Cas. 212.

CRIMINAL LIBEL; EVIDENCE OF ILL-WILL TOWARDS PERSON LIBELLED NO EVIDENCE OF PUBLICATION; INADMISSIBLE EVIDENCE RECEIVED WITHOUT OBJECTION.

(1) Where irrelevant evidence was admitted which would influence the jury adversely to the accused and the jury were led to regard such evidence as an important element in establishing guilt, the conviction will be quashed or a new trial ordered on the defendant's appeal, although his counsel took no exception to the evidence when it was being put in. (2) On a charge of criminal libel evidence to shew that the accused bore ill-will towards the person libelled is too remote to be admitted in evidence as proof that the accused wrote the libel. (3) Evidence tending to shew that the accused had been guilty of acts of malicious injury to the property of the complainant's father is improperly admitted on a trial for criminal libel, such charges being of an entirely different character to that of libel. (4) After such inadmissible evidence has been heard by the jury, the trial Judge should have discharged the jury and called a new one or at least have instructed the jury to disregard such evidence. (Per Cameron, J.A.) The King v. Law, 15 Can. Cr. Cas. 382.

MURDER; PREVIOUS THREATS AND VIOLENT CONDUCT OF DECEASED TOWARDS ACCUSED; ASSAULTS UPON OTHERS OF WHICH ACCUSED HAD INFORMATION; VIOLENT TEMPER OF DECEASED; EVIDENCE OF HIS CHARACTER.

(1) In support of a plea of self-defence in a homicide case and as shewing grounds for apprehending that the life of the accused was in danger, evidence is admissible of previous assaults and attempted assaults by the deceased upon the accused and of threats made by him against the accused. (2) Evidence is also admissible for the defence of assaults made by the deceased upon others of which the accused knew at the time of the shooting, as shewing the violence which the accused might expect from him. (3) Evidence merely of the bad character of the deceased is not admissible, but the defence may shew that the deceased was a man of violent temper. The King v. Martha Scott, 15 Can. Cr. Cas. 442.

FAST DRIVING OF AUTOMOBILE WITH MOTOR OUT OF REPAIR; EVIDENCE OF WANTONNESS.

Where a person drives an automobile on a city street at an excessive speed, knowing that the motor is in bad working order, that circumstance is evidence that the act is wanton, and a conviction for causing personal injury by wanton and furious driving will not be disturbed. The King v. Seager, 15 Can. Cr. Cas. 483.

ASKING WITNESS IF ACCUSED HAD SERVED TERM IN GAOL; EVIDENCE OF PRIOR CONVICTION NOT ADMISSIBLE UNLESS DEFENCE OFFERS CHARACTER EVIDENCE.

(1) Where the defence has offered no character evidence, notwithstanding which the Crown asks a defence witness whether the accused had not been in gaol for a year in a foreign city, which the witness neither affirmed nor denied, there is a mistrial because of the suggestion implied in the question of the Crown counsel upon a fact not relevant to the issues but likely to prejudice the accused with the jury. (2) Under such circumstances the jury should be discharged before verdict and the case traversed to the next sittings when a new panel of jurors would be available. (3) It was not admissible for the Crown to give evidence of a prior conviction unless the defence offered evidence of good character. The King v. Atlas, 16 Can. Cr. Cas. 35.

MURDER; BLOOD-STAINED CLOTHING POINTED OUT BY CROWN PROSECUTOR; FAILURE TO ADDUCE PROOF.

Where the Crown counsel in opening a prosecution for murder pointed to blood-stained clothing in the Court room and told the jury that it was human blood and the clothes belonged to the accused, but the wife of the accused on being called for the Crown to support such statements was held to be an incompetent witness, and no evidence was given in support of such statement nor was anything said to the jury to counteract the impression which such statement would make, upon them, an order should be made for a new trial. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. v. Sylvester, 19 Can. Cr. Cas. 314, 1 D.L.R. 186.]

GAMING; CONFESSION OF ANOTHER PERSON ARRESTED ON SAME RAID, BUT NOT JOINTLY CHARGED; INADMISSIBILITY IN EVIDENCE.

(1) On a seizure, under a search warrant for gaming instruments under Code, sec. 641 of articles used for playing "fan tan," but without finding any money employed in connection with the game, the prosecution must shew that the method of playing was within the prohibition of Code, sec. 226 as to games of chances and mixed games of chance and skill as "fan tan" is not per se an unlawful game. (2) Code, sec. 985 does not apply to shift the onus of proof from the prosecutor, unless it appears that the game being played was an unlawful one. (3) The confession of another person arrested with the accused in a gaming-house case, but not jointly charged, is not admissible on the trial of the accused; such person should be called as a witness for the prosecution if it is desired to prove the facts which he professes to confess. The King v. See Woo, 16 Can. Cr. Cas. 213.

DECOY EVIDENCE; POLICE SCHEME; EVIDENCE OBTAINED BY FRAUD; ADMISSIBILITY.

(1) Evidence otherwise admissible on a criminal trial cannot be excluded because it was illegally or fraudulently obtained. (2) A police scheme to place a prostitute in a house for the purpose of convicting the proprietor of keeping a house of ill-fame will not dispense with the necessity of proving want of reasonable or probable cause, nor exclude the defence that a conviction was obtained and has not been set aside, in a civil action for damages brought against the conspirators by the convicted party, although an unwarranted entry was made by some of the conspirators into the plaintiff's house in furtherance of the scheme. City of Montreal v. Lacroix, 16 Can. Cr. Cas. 395.

MURDER; ACCESSORY; EVIDENCE OF LONG CONTINUED SEXUAL INTIMACY; EVIDENCE FOR DEFENCE OF WOMAN'S INTIMACY WITH OTHER MEN REJECTED; EVIDENCE OF ACCOMPLICE.

(1) On a charge against the putative father of an illegitimate child of having counselled and procured the mother to murder the child, evidence of sexual intimacy between the accused and the child's mother for several years immediately prior to the birth of the child is admissible for the prosecution as shewing motive and the influence of the accused over the woman. (2) Evidence on behalf of the accused to shew that the woman, who was called as a Crown witness, had been sexually intimate with other men than the prisoner, which allegation she denied on cross-examination, is not relevant and was properly rejected, where the evidence so tendered could not affect the question of paternity, nor controvert the evidence that the accused believed himself to be the child's father. (3) The trial Judge having charged the jury that it was not usual or proper to convict on the uncorroborated evidence of an accomplice, but that the case could not be taken from them, and having fairly pointed out to the jury the points as to which there was corroboration and also those as to which there was no corroboration, the conviction should not be set aside on a claim of misdirection. The King v. McNulty, 17 Can. Cr. Cas. 26.

[Followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497.]

MURDER BY STABBING; FINDING OF KNIVES BELONGING TO ACCUSED.

On a trial for murder by stabbing, it is not error to admit evidence of the finding in the prisoner's room, where he was arrested, of knives belonging to him capable of producing the fatal wound. The King v. Ventricini, 17 Can. Cr. Cas. 183.

[Referred to in R. v. Hoo Sam, 19 Can. Cr. Cas. 267, 1 D.L.R. 569.]

IDENTITY OF PURSE; JUROR AT FIRST TRIAL, WITNESS AT SECOND.

The evidence of a juryman upon a former trial at which the jury disagreed is admissible to prove the physical condition of an exhibit when it was put in evidence at the former trial. The King v. Roso, 17 Can. Cr. Cas. 278.

CROSS-EXAMINATION OF COMPLAINANT AS TO PREVIOUS IMMORAL CONDUCT; DENIAL; EVIDENCE NOT ADMISSIBLE TO CONTRADICT.

Where the complainant on the trial of a charge of rape denies on cross-examination that while unmarried she had been living with a third person as his wife, evidence is not admissible to contradict her on that point as it is irrelevant to the issue. The King v. Muma, 17 Can. Cr. Cas. 285.

CRIMINAL USURY; PRETENDED REPRESENTATION OF BOTH LENDER AND BROKER.

Where a money lending business is carried on through a corporation which collects from the borrower out of the money advanced a commission for procuring the loan in addition to the maximum contract rate payable on the securities which are taken payable to an individual, and both the individual lender and the corporation are represented by the same person, evidence is admissible on a prosecution of the latter for an infraction of the Money Lenders Act to shew that there were not in fact two separate businesses and that the methods adopted were colourable and a mere attempt at evasion of the provisions of the statute. The King v. Smith and Luther, 17 Can. Cr. Cas. 445.

NONSUPPORT OF WIFE; EVIDENCE OF NEGLECT PRIOR THERETO NOT ADMISSIBLE ON SUBSEQUENT CHARGE; FINANCIAL INABILITY OF HUSBAND TO SUPPORT WIFE.

(1) Upon a charge of omitting to supply necessaries to his wife whereby her health was permanently injured, evidence is not admissible of the defendant's neglect of his wife prior to a former charge of a similar offence upon which the defendant had been acquitted. (2) Evidence having been adduced by the defence that the accused was not able to support his wife, the question of ability should have been left to the jury with an instruction that if the prisoner had not the ability to provide necessaries, he should be acquitted. (3) The admission of evidence as to what had been done or omitted before the date of his previous acquittal would be an infringement of the rule which forbids that a person shall be twice placed in jeopardy for the same offence. (Per

Moss, C.J.O.) The King v. Yuman, 17 Can. Cr. Cas. 474.

MURDER; MATERIAL QUESTION AS TO NUMBER OF PERSONS PRESENT AT QUARREL; CONFLICTING TESTIMONY OF SAME WITNESS.

Where, upon a material question in a murder trial as to whether there were two or three Italians present at the time of the quarrel, a witness stated on examination-in-chief that there were only two, but on cross-examination on behalf of the accused said there were three, and the trial Judge in his charge to the jury erroneously represented that the first statement was of three and that this was varied to two on cross-examination, the jury may have assumed from this error in reversing the order of the depositions that the statement as to the presence of three Italians, which was the more favourable to the accused, had been withdrawn by the witness, and such irregularity constitutes error, entitling the accused to a new trial. The King v. De Marco, 17 Can. Cr. Cas. 497.

MURDER; IMPROPER ADMISSION OF EVIDENCE.

(1) Where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the Court of Appeal may order a new trial. (2) While a person accused of murder, who gives evidence as a witness on his own behalf, may be asked on cross-examination, if he had made threats against the life of the deceased, the jury must not be informed either directly or indirectly by the Crown counsel, that a witness examined at the preliminary enquiry had sworn to such threats, unless that witness is produced or his deposition at the preliminary enquiry is given in evidence after proof of the preliminaries necessary to make it admissible. Allen v. The King, 18 Can. Cr. Cas. 1.

[Referred to in The King v. Lew, 1 D. L.R. 105.]

ADMISSIBILITY OF EVIDENCE; PROOF OF ATTEMPT OF SIMILAR OFFENCE WITH ANOTHER PERSON AT ANOTHER TIME; CHILD'S EVIDENCE NOT UNDER OATH; CORROBORATION; DEFENCE EVIDENCE.

(1) On a charge under Cr. Code, sec. 293 of indecent assault on a male, evidence is not admissible to prove an attempt by the accused of a similar offence at another time, with another male. (2) Where the evidence of a child is given without the oath being administered and evidence is given for the defence, the latter may be looked at for the statutory corroboration of the child's evidence required by sec. 16 of the Canada Evidence Act. The King v. Iman Din, 18 Can. Cr. Cas. 82.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 50; R. v. Whistnant, 20 Can. Cr. Cas. 322.]

ADMISSIBILITY OF A PLEA OF GUILTY IN FORMER PRELIMINARY HEARING.

Evidence is admissible against the accused on a charge of assault tried upon indictment that he had pleaded guilty to another identical charge for the same offence laid before a magistrate, on which charge no sentence had been pronounced or further proceedings taken for lack of jurisdiction in the magistrate to try the charge. The King v. Burke, 19 Can. Cr. Cas. 141.

AUTHORITY TO PERFORM MARRIAGE CEREMONY; FOREIGN LAW.

(1) In a prosecution for bigamy the clergyman who performed the marriage ceremony is competent to testify that he was an ordained minister and therefore authorized to perform such ceremony. (2) In a prosecution for bigamy the clergyman who, in a foreign country, performed the marriage ceremony is competent to give expert evidence regarding the statute from which he derived his authority. The King v. Bleiler, 19 Can. Cr. Cas. 249, 1 D.L.R. 878.

[See also Phipson on Evidence, 4th ed., p. 356; Wharton's Cr. Evid., 10th ed., p. 414.]

RELEVANCY AND MATERIALITY; CHARGE OF RAPE; EVIDENCE OF COMMISSION OF SIMILAR OFFENCE.

It cannot be shewn on the trial of a person for rape, that a few minutes after the commission of the offence charged, or at any other time, he committed a similar crime against the person of a sister of the complaining witness, such evidence not being admissible either as part of the res gestæ, or to shew a propensity on the part of the accused to commit such crimes. [Rex v. Bond, [1906] 2 K.B. 329, 21 Cox C.C. 252, followed, and Reg. v. Rearden, 4 F. & F. 76, distinguished.] The King v. Paul, 19 Can. Cr. Cas. 339, 5 D.L.R. 347.

ADMISSIBILITY ON CROSS-EXAMINATION OF QUESTIONS AS TO WHAT WAS SAID AT A POLICE COURT HEARING.

(1) In an action for libel complaining of the statement in a report of a Police Court trial that the plaintiff had been found guilty of blackmail, where the defence is an honest misunderstanding of what was said by the magistrate, and an apology, questions as to what was said about the plaintiff by the witnesses in the Police Court are not admissible in cross-examination of the plaintiff. (2) Where Police Court proceedings are relevant in an action the proper method

of proving them is to put in the record of such proceedings. [Rex v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139, 15 B.C.R. 29, referred to.] Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.

RELEVANCY AS TO CONCURRENT DATES; OWNERSHIP OF GOODS AT FIXED RATE; FALSE PRETENCES CHARGE.

On a charge of obtaining money under false pretence of ownership of certain chattels, the testimony of a witness taken nearly a year after the alleged offence, stating merely that such witness "was" the owner, is insufficient to negative the alleged pretence, unless such deposition by its context or otherwise indicates the date of the offence as the time at which he was the owner. Re William Staggs (No. 2), 20 Can. Cr. Cas. 310, 8 D.L.R. 284.

MURDER; EVIDENCE OF OTHER CRIMES; ASSAULT; ROBBERY; IDENTIFICATION.

On a trial for murder, where the accused, for the purpose of robbery induced the deceased by false pretences to leave his companion and accompany him to a lonely spot where the dead body was afterwards found, evidence of an assault and robbery of the companion made by the accused an hour after the separation is admissible if it tends to shew that the murder had taken place in furtherance of a scheme by the accused to rob both the deceased and his companion and for such purpose to get them separated, and this notwithstanding that it shews the commission of another crime. [Rex v. Ball, [1911] A.C. 47, specially referred to; Rex v. Rooney (1836), 7 C. & P. 517, considered; Rex v. Birdseye (1830), 4 C. & P. 386, distinguished.] Where the person accused of a murder committed in connection with a robbery is shewn to have suddenly become possessed of a sum of money, although previously he was entirely out of money and out of work, and the prosecution allege that such money is made up in part of money taken from the murdered person, but the accused giving evidence on his own behalf swears that the money was received in one sum from a third party not produced as a witness, it is competent for the prosecution to discredit such testimony by shewing that the excess over and above what was in the possession of the murdered man was obtained by robbing the latter's companion and so accounting for the difference in the amount of money of which the accused had suddenly become possessed, and the much smaller sum which the deceased had in his possession when robbed and murdered. R. v. Gibson, 21 Can. Cr. Cas. 477, 13 D.L.R. 393.

EMBEZZLEMENT; BANK ACCOUNT.

Where evidence of the commission of one criminal act is in itself circumstantial evidence of the commission of another criminal act, it is admissible in evidence to establish the commission of the latter; so where a cashier is short in his accounts and alone has a check on the amounts, evidence of an alteration made by him in the books to make them tally with the cash is evidence tending to convict him of the theft. The private bank account of an accused cashier is admissible in evidence against him on a charge of embezzlement to shew that the deposits of moneys in his private account at or about the time of the alleged embezzlement is too large to be accounted for by his salary or known income, as tending to shew that the missing money went into his possession and not into that of his fellow-employees. [Williams v. U.S., 168 U.S. 382, 18 Sup. 92, referred to; and see 1 Wigmore on Evid. sec. 154n.] That the personal bank account of a person accused of embezzlement is put in evidence against him and counsel for the accused limits his examination of witnesses to an explanation of a single item of that account, does not preclude the trial judge from considering in his directions to the jury any inferences apart from such single item which may properly be drawn from what appears in the bank account, although counsel for the Crown had not during the examination by prisoner's counsel demanded an explanation of other items. [Browne v. Dunn, 6 R. 67, distinguished.] R. v. Minchin, 22 Can. Cr. Cas. 254, 15 D.L.R. 792, affirmed in 23 Can. Cr. Cas. 414, 18 D.L.R. 340. [Referred to in R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.]

OF WIFE; SUMMARY CONVICTION; NONSUPPORT.

The evidence of the wife is not admissible against her husband on the hearing before a magistrate of a charge under Code, sec. 242A (amendment of 1913) whereby it was made an offense punishable on summary conviction for a husband to neglect without lawful excuse to provide for his wife and children when destitute, as no corresponding amendment was made to the Canada Evidence Act when sec. 242A was added to the Code. Sec. 242A of the Criminal Code which was inserted by the Code Amendment Act, 1913, is not to be considered a sub-section of sec. 242, but as an entirely independent section. [See Annotation at end of this case.] R. v. Allen, 23 Can. Cr. Cas. 67, 17 D.L.R. 719.

RELEVANCY; EVIDENCE DISCLOSING COLLATERAL CRIME; THEFT; BANK ACCOUNT.

Where evidence of falsification of books of account is directly relevant to the question at issue on a trial for theft, as where money had been misappropriated by an employee and the books falsified by an entry made by him to cover the deficiency in the employer's books, the falsification of the

books although a crime in itself is none the less admissible on a charge of theft laid as for one offence of the aggregate sum misappropriated during a defined period although it may have been taken in numerous small amounts at different times during that period. On a charge of theft in respect of the amount alleged to have been embezzled from the city's funds by a city employee it is admissible for the Crown to put in evidence the defendant's bank account shewing that about the time of the defalcation as disclosed by the audits, a deposit was credited to him by the bank of a like amount to that embezzled, but where any suggestion based on the bank deposit was met by shewing that the money was a loan procured by a discount at another bank of his own and his wife's note, there is no "substantial wrong or miscarriage" (Cr. Code, sec. 1019) to entitle the accused to a new trial or to set aside the conviction, if the Judge directed the jury that none of the deposits were shewn to have come from the city funds, and no unfair or improper use prejudicial to the accused had been made of the bank account. Minchin v. The King, 23 Can. Cr. Cas. 414, 18 D.L.R. 340, affirming 22 Can. Cr. Cas. 254, 15 D.L.R. 792.

TESTIMONY OF ACCUSED IN CIVIL PROCEEDINGS; PRIVILEGE; EVIDENCE ACT.

The evidence of the accused upon his examination taken under sec. 52 of the Assignments Act, Alta., following his assignment for the benefit of creditors, is admissible against him on the trial of a criminal charge of obtaining credit on false pretences unless on the examination he has objected to answer upon the ground that the answer would tend to criminate him or upon some other of the grounds referred to in the Canada Evidence Act, R.S.C. ch. 145, sec. 5, or in the Alberta Evidence Act, 1910, Alta., 2nd session, ch. 3, sec. 7 and this although the examination proceedings may have been irregular. [R. v. Widdop, L.R. 2 C.C. R. 3 and R. v. Van Meter, 11 Can. Cr. Cas. 207, 3 Terr. L.R. 416, applied.] R. v. Graham, 24 Can. Cr. Cas. 54, 21 D.L.R. 513.

THEFT; OTHER CRIMES; EVIDENCE BROUGHT OUT BY DEFENCE.

Where, in answer to questions to a Crown witness by counsel for the accused on the trial of a charge of theft, the witness divulges facts tending to prove another theft of about the same time from the same employer, and no objection is taken to the admission of that part of the testimony, the admission of the same will not constitute a ground for appeal against the verdict against the accused, and, semble, the evidence was admissible, as in answer to the plan of defence which was to throw the crime upon a fellow employee. [Makin v. Att'y-Gen'l of New South Wales, [1891] A.C. 57, 63 L.J. P.C. 41, referred to.] Rivet v. The King, 25 Can. Cr. Cas. 235, 27 D.L.R. 695.

THEFT; BAD CHARACTER; OTHER OFFENCES; IRRELEVANCY.

Upon a charge of theft it is not competent for the prosecution to adduce evidence tending to shew that the accused had been guilty of a theft subsequent to that for which he is being tried, and not connected with it, where no evidence as to character has been offered by the prisoner. The introduction of such evidence, even though not objected to by counsel for the accused, will invalidate the conviction, if it may have operated prejudicially to the accused, and this notwithstanding that prisoner's counsel re-examined the witness as to the alleged subsequent offence. [R. v. Law, 15 Can. Crim. Cas. 382, applied.] R. v. Doyle, 26 Can. Cr. Cas. 197, 28 D.L.R. 649.

UNSWORN STATEMENT BY ACCUSED; IRRELEVANT FACTS; ACCOMPLICE.

Where the accused dispensed with counsel at his trial and himself addressed the jury but in doing so exceeded the proper bounds of such an address by bringing in wholly irrelevant matters, the Judge is justified in telling the jury that such irrelevant statements are not evidence and are not to be considered as such; nor is there any improper comment on the accused's failure to testify in his own behalf (Canada Evidence Act, sec. 5) because of the trial Judge telling the jury that statements of alleged facts so made by the accused (who had called no witnesses) were not to be considered as they were entitled to have the guarantee of the religious sanction of an oath backing up a statement before considering it and that the only way to bring facts before the jury was to bring them out by the testimony of witnesses or by submitting proved documents. [R. v. Aho, 8 Can. Cr. Cas. 453, 11 B.C.R. 114, and R. v. Krafchenko, 22 Can. Cr. Cas. 277, 17 D.L.R. 244, 24 Man. L.R. 652, considered.] Proof of acts of his coconspirators in furtherance of the common design may be given in evidence against the accused although the charge against him was for the ultimate crime and not for the conspiracy to commit it. [R. v. Desmond, 11 Cox 148; R. v. Charles, 17 Cox 499 and R. v. Jessop, 16 Cox 204, followed.] R. v. Kelly (No. 2), 27 Can. Cr. Cas. 140, affirming 27 Can. Cr. Cas. 94; affirmed in 27 Can. Cr. Cas. 282, 34 D.L.R. 311.

SUBSEQUENT TRANSACTIONS INVOLVING DIFFERENT CRIME; MOTIVE; MURDER.

The mere fact that the evidence tends to shew the commission of other crimes does not render it inadmissible if it is relevant to the issue before the jury, and it is rele-

vant on a murder trial if it bears upon the question whether or not the shooting was in self-defence by shewing a chain of subsequent transactions by the accused from which the jury might infer that they were intended to cover up the disappearance of the deceased and his personal property. R. v. Letain, 29 Can. Cr. Cas. 389.

SIMILAR ACTS IN PROOF OF INTENT.

Where the intent with which the alleged criminal act was done is material to the crime and an issue is raised at the trial on the question of intent, the prosecution may adduce evidence of similar acts by the accused in proof of such intent. [Makin v. Att'y Gen'l for N.S.W., [1894] A.C. 57, applied; and see Brunet v. The King, 57 S.C.R. 83, 30 Can. Cr. Cas. 16, 42 D.L.R. 405, and annotation to same, 30 Can. Cr. Cas. 50-55.] R. v. Barron, 30 Can. Cr. Cas. 326, 44 D.L.R. 332.

IDENTIFICATION OF PERSON BY VOICE.

Evidence of the identity of the accused as the person who assaulted the complainant may be given by the latter's identification of the voice of the accused when taken into custody as being the voice of the man who spoke when the assault took place and whom he could not otherwise identify. R. v. Murray and Mahoney (No. 2), 27 Can. Cr. Cas. 247, 33 D.L.R. 702. See also 25 Can. Cr. Cas. 214, 28 D.L.R. 372, 28 Can. Cr. Cas. 247, 38 D.L.R. 395.

COMPARISON OF HANDWRITING; FORGERY.

Evidence by comparison of writing should always be received by the courts with great care: The test of genuineness ought to be the resemblances between the writings compared in their general character and not in the manner of forming particular letters. The most efficacious means of showing the general character of handwriting where evidence by comparison of handwriting is produced, is by witnesses who have seen the accused write when his mode of writing was not in question. [See Annotation on comparison of handwriting in forgery cases, at end of this case.] R. v. Ranger, 30 Can. Cr. Cas. 65.

EVIDENCE OF IDENTITY OF ACCUSED; APPEAL.

On a question of identity of the accused, the court on a case reserved will affirm the conviction by a "speedy trial" court if the evidence were such that the question of identity could not have been withdrawn from the jury had the case been tried in a jury court. R. v. Harvey, 30 Can. Cr. Cas. 160.

XII. Weight, Effect and Sufficiency.

CONCEALING BIRTH OF CHILD; SUFFICIENCY OF EVIDENCE TO GO TO JURY.

In an indictment for concealing the birth of a child, it appeared that the prisoner, who lived alone, had placed the dead body of the child behind a trunk in the room she occupied, between the trunk and the wall. On being charged with having had a child, she denied it, saying she was suffering from cramps, and it was only after the doctor who was called in had informed her that he knew she had been delivered of a child, and on being pressed by one of the women present, that she pointed out where the body was, and the woman went and got it. Until so pointed out the body could not be seen by any one in the room:—Held, that the evidence was sufficient to go to a jury, and the County Court Judge before whom the prisoner was tried by her consent without a jury, having found her guilty, the Court refused to interfere. Regina v. Piche (1879), 30 U.C.C.P. 409.

DEPOSITIONS OF ABSENT WITNESS; SUFFICIENCY OF PROOF OF ABSENCE.

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, upon the following proof that C. was absent from Canada; C. is, to the best of my belief, in the United States. He was employed about 10 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:—Held, that there was sufficient proof of absence from Canada. Regina v. Pescaro and Jim (1884), 1 B.C.R. pt. 2, 144.

DEPOSITIONS NOT READ TO DEFENDANT NOR SIGNED BY HIM.

Where prisoner was charged with an extraditable crime, and the evidence was taken down in the narrative form on the Judge's notes and by way of question and answer by a shorthand reporter, which were afterwards extended by the reporter but were not read over to the witnesses nor signed by them:—Held, upon habeas corpus that there was no evidence, that is no evidence that the Court could look at, as proof of the alleged crime. R. v. Stanbro, 1 Man. L.R. 325.

EVIDENCE OF INTERESTED PARTIES; CORROBORATION.

Prisoner was indicted for forging an order for the delivery of goods. The only witnesses examined were the person whose name was forged, and the person to whom the order was addressed, and who delivered the goods thereon; and there was no corroborative testimony:—Held, under 10 and 11 Vict. ch. 9, sec. 21, not sufficient evidence. Regina v. Giles (1856), 6 U.C.C.P. 84.

FORGERY; EVIDENCE OF INTERESTED PERSON.

By sec. 218, R.S.C. ch. 174, "The evi-

dence 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." The prisoner was indicted for forgery in feloniously uttering a cheque signed by H. J. & Co. on the Quebec Bank, which he had altered from $400 to $1,400. The evidence in support of the forgery was that of J., who though a member of the firm when the cheque was made, had ceased to be such at the time of the trial, and who had been released by his partner from all liability, and disclaimed any interest in the cheque. There was some evidence of the liabilities of the firm to creditors at the time of J.'s withdrawal:—Held, that J. was not a person interested, or supposed to be interested, within the meaning of the Act; and his evidence did not require corroboration. (Rose, J., dissented.) Regina v. Hagerman, 15 O.R. 598.

INDECENT ASSAULT; UNSWORN STATEMENTS CORROBORATED; REDUCING CONVICTION TO SIMPLE ASSAULT.

In support of a prosecution against the defendant under sec. 12 of 53 Vict. ch. 37, for having committed an indecent assault upon a girl of the age of 13 years, the evidence of the girl, although not given upon oath, was admitted under the provisions of sec. 13 of the same Act (now sec. 685 of the Criminal Code.) The unsworn statement was corroborated by other sworn testimony. The defendant was acquitted of indecent assault, but convicted of simple assault:—Held, that the conviction was valid, although the unsworn evidence of the girl, which would have been inadmissible if the defendant had been tried for simple assault, was the chief evidence against him. [R. v. Wealand, 20 Q.B.D. 827, 16 Cox 402, followed.] R. v. Grantyers, 2 Q.B. (Que.) 376.

MURDER; DAUGHTER OF PRISONER; CREDIBILITY.

On a trial for murder, the Crown having made out a prima facie case by circumstantial evidence, the prisoner's daughter, a girl of 14, was called on his behalf, and swore that she herself killed the deceased without the prisoner's knowledge, and under circumstances detailed, which would probably reduce her guilt to manslaughter:—Held, that the learned Judge was not bound to tell the jury that they must believe this witness in the absence of testimony to shew her unworthy of credit, but that he was right in leaving the credibility of her story to them; and if from her manner he derived the impression that she was under some undue influence, it was not improper to call their attention to it in his charge. As to certain threats alleged to have been uttered by the prisoner, held, that they were clearly admissible, and if undue prominence was given to them in the charge, the attention of the learned Judge should have been called to it by the prisoner's counsel. Remarks as to alleged misdirection, in not directing that the jury must be satisfied not only that the circumstances were consistent with the prisoner's guilt, but that some one circumstance was inconsistent with his innocence. The prisoner's witness having stated that death was caused by two blows from a stick of certain dimensions, held, that a medical witness previously examined for the Crown was properly allowed to be recalled to state that, in his opinion, the injuries found on the body could not have been so occasioned. Remarks as to evidence of confessions, and an objection that the whole statement was not given. And as to the effect in criminal cases of a belief by the jury that false evidence has been fabricated for the prisoner, or false answers to questions. Regina v. Jones (1868), 28 U.C.Q.B. 416.

NECESSITY OF CORROBORATION.

The prisoner was charged in the first count with forging the name of a superintendent of the N.W.M. Police to a requisition for transport, and in the second, with uttering the same, knowing it to be forged:—Held, that the superintendent was not "a person interested, or supposed to be interested," within the meaning of the Criminal Procedure Act, R.S.C., ch. 174, sec. 218, and that, therefore, his evidence did not require corroboration. Queen v. Farrell (1888), 1 Terr. L.R. 166.

PRIOR MARRIAGE; PROOF OF; BIGAMY.

On a trial for bigamy, in proof of an alleged prior marriage a deed was produced executed by the prisoner, containing a recital of the prisoner having a wife and child in England, and conveying certain lands and premises to two trustees, in trust, to receive and pay over the rents and profits to such wife and child; but with a power of revocation to the prisoner. B., one of the trustees, proved that at the time of the execution of the deed the prisoner informed him that he had quarrelled with his present wife, and had a lawsuit with her; that the place had been bought with the first wife's money, and he wished it to go to her; and that he requested B. to act as trustee and to receive and pay over to them the rents and profits, but B. never paid anything over, nor had he ever written to or heard from such alleged wife:—Held, that this was not sufficient evidence to prove the alleged prior marriage. Regina v. Duff (1878), 29 U.C.C.P. 255.

PROOF OF BY-LAW; PRODUCING BY-LAW AT ADJOURNED HEARING.

The by-law mentioned in this conviction was not put in or proved at the hearing before the magistrate, or at the first hearing on the appeal, but was put in at the adjourned hearing:—Held, sufficient. Regina v. Washington (1881), 46 U.C.Q.B. 221.

SEVERAL PRISONERS; NO EVIDENCE AGAINST ONE OF THEM.

Where no evidence appears against one of several prisoners, he ought to be acquitted at the close of the prosecutor's case. Quære, whether without such formal acquittal he may be called as a witness for his coprisoner. Semble, not unless it appears that he has been joined in order to exclude his testimony. It is in the discretion of the Judge, at the close of the prosecution, to submit such prisoner's case separately to the jury; but he is not bound to do so, and whether he has rightly exercised his discretion or not, cannot be reserved as a point of law:—Held, that in this case it could not be said there was no evidence against E. H., one of the prisoners, and semble, that under the circumstances he could not be called as a witness for the other. Where points of law were reserved under the Act, and the prisoner, besides relying upon them, moved for a new trial, the Court refused to grant it, though the evidence was slight. The Queen v. Hambly (1859), 16 U.C.Q.B. 617.

SUFFICIENCY OF; CONVICTION UNDER CANADA TEMPERANCE ACT.

Defendant was convicted before the stipendiary magistrate for the police district of Yarmouth, of having unlawfully sold intoxicating liquor contrary to the provisions of the Canada Temperance Act, 1878. A writ of certiorari having issued, the magistrate sent up the minutes of the evidence taken before him, as part of his return, instead of returning the facts:—Held (following Hawes v. Hart, 18 N.S. Reps. 42), that the evidence being before the Court, it might be looked at to determine the question of jurisdiction. It appeared from the minutes of evidence that defendant, who was keeper of an hotel or boarding house, had gone out and purchased or procured liquor for her boarders, with money given her for that purpose, acting merely as a messenger, and without making any profit:—Held, that this evidence was not sufficient to support the conviction. Quære, whether points which had been discussed on the application for the writ of certiorari could be brought before the Court a second time on the motion to quash the conviction. The Queen v. McDonald, 19 N.S.R. 336.

SUFFICIENCY OF CORROBORATION.

The Court of Quarter Sessions has no jurisdiction to try the offence of forgery. Semble, that on the evidence, stated below, the testimony of the prosecutor, whose name had been forged to a note, was sufficiently corroborated. Regina v. McDonald (1871), 31 U.C.Q.B. 337.

SUFFICIENCY OF, TO GIVE JURISDICTION TO MAGISTRATE.

Defendant was convicted under ch. 18, sec. 12, of the Acts of 1890, for having a door from his licensed shop "not opening on a public street in the city of Halifax." The evidence shewed that in addition to the door opening on the street, there was a second door communicating between defendant's shop and the kitchen:—Held, that the offence was sufficiently stated in the conviction, and that the convicting magistrate had authority and jurisdiction to make the conviction. The Queen v. McDonald (1894), 26 N.S.R. 402.

SUFFICIENCY OF, TO GO TO JURY; CHARGE OF MURDER.

P. (the prisoner) and D. (deceased) being brothers, were in the house of the latter, both a little intoxicated. D. struck his wife, and on P. interfering a scuffle began. While it was going on D. asked for the axe, and when they let go P. went out for it and gave it to him, asking what he wanted with it. D. raised it as if to strike P. and they again closed, when the wife hid the axe. While the scuffle was going on D. struck P. twice. On getting up P. kicked him on the side and arm, and then ran across the garden, got over a brush fence into the road, and dared D. three times to come on, saying the last time that he would not go back the same way as he came. D. seized a stick from near the stove, which had been used to poke the fire with, and ran towards P. In trying to cross the fence he fell to his knees, and P. came forward and took the stick out of his hand. He got up, and as he went over the fence P. struck him on the head with it. The wife entreated him to spare her husband, but he struck him a second time, when he fell, and again while on the ground, from which he never rose. P., in answer to the wife, said D. was not killed, and refused to take him in, saying, "Let him lie there till he comes to himself:"—Held, that the evidence was sufficient to go to the jury to establish a charge of murder: that if the death had been caused by the kicks received before leaving the house, the circumstances would have repelled the conclusion of malice; but that whether what took place at the fence was under a continuance of the heat and passion created by the previous quarrel, was, under the circumstances, a question for the jury. A conviction for murder was therefore upheld, and a new trial refused. The Queen v. McDowell (1865), 25 U.C.Q.B. 108.

TESTIMONY OF ACCOMPLICES; CAUTIONING JURY AS TO.

When the jury have been cautioned as to acting upon the unconfirmed testimony of accomplices, no fault can be found with the admission of their evidence. Reg. v. Seddons (1866), 16 U.C.C.P. 389.

TRIAL FOR MURDER; HASTENING DEATH OF DECEASED.

Held, that the depositions, etc., before the County Court Judge disclosed sufficient evidence to warrant the defendant being placed on his trial for murder caused, as was alleged, by the defendant having feloniously ravished the deceased while in such a state of health as to hasten her death. Re Weir, 14 O. R. 389.

CORROBORATON.

(1) The corroborative evidence "implicating" the accused which is made necessary by Criminal Code, sec. 684, to sustain a charge of seduction of a girl under sixteen may consist of the prisoner's admission made after she attained sixteen that he had had connection with her. (2) A statement made by the accused before he was charged with the offence that he had been advised that if he could get the girl to marry him he would escape "punishment," is corroborative evidence "implicating" the accused and proper to be considered by a jury or by a Judge exercising the functions of a jury. R. v. Wyse, 1 Can. Cr. Cas. 6.

CONFISCATION; CIVIL ACTION TO CONTROVERT.

In an action to recover from the constable and the clerk of the peace moneys seized in a common gaming house under confiscation proceedings, the rules of evidence in force in the province for civil matters will apply and not the Canada Evidence Act. O'Neill v. Attorney-General, 1 Can. Cr. Cas. 303.

CONSPIRACY; PROOF OF.

In a charge of conspiracy, it is not necessary to prove that the parties came together and actually agreed in terms to carry out their common design; but the jury may group the detached acts of the parties severally, and view them as indicating a concerted purpose on the part of all as proof of the alleged conspiracy. Ibid., 1 Can. Cr. Cas. 468.

FORMER DEPOSITION; CONTRADICTION OF TESTIMONY BY.

The oral statement of a witness on his examination before a magistrate, reduced to writing by the magistrate, must be proved by the writing if it can be produced, but if the depositions have been lost or stolen, and no copy of them is under the control of the party adducing the evidence, it is then not necessary to prove the contents of the written record of the evidence; and the statement of a witness who was present at the examination will be admissible. R. v. Troop, 2 Can. Cr. Cas. 22.

WEIGHT OF EVIDENCE; QUESTION FOR JURY.

It is the province of the jury, after taking into consideration the circumstances of a case and the character and demeanour of the witnesses, to discredit some of the witnesses and reject their evidence, and to believe others and accepted their evidence; and when there is a conflict in the evidence, but there is evidence to support the verdict, it cannot be juridically maintained that the verdict is against the weight of evidence. When, however, there is no conflict in the evidence, and it tends indubitably in a direction favourable to the defendant, or does not establish his guilt, a verdict convicting the defendant would not be supported by nor be based upon proper evidence, and would manifestly be against the weight of evidence, and where there is an absolute failure of evidence to sustain the verdict, the Court can give leave to apply to the Court of Appeal for a new trial. R. v. Harris, 2 Can. Cr. Cas. 75.

OBTAINING GOODS BY FALSE PRETENSES; PROOF OF CONTINUING PRETENSE UNTIL DELIVERY.

To prove a charge of obtaining goods by false pretense where there is a lapse of time between the making of the pretence and the delivery of the goods, there must be a direct connection between them constituting the former a continuing pretence up to the time of delivery. R. v. Harty, 2 Can. Cr. Cas. 103.

PROOF OF MARRIAGE; EVIDENCE OF DEATH OF FORMER HUSBAND.

Where the complainant in a charge of nonsupport of wife had been previously married, but had always lived apart from her first husband, and swore to having heard two years before the second marriage that her husband was dying in a foreign country, and that about a year after the second marriage she again heard that her husband was dead, such was held to be evidence to go to the jury to prove that her first husband had died before her marriage to the defendant. R. v. Holmes, 2 Can. Cr. Cas. 131.

FORGERY; CORROBORATION; COMPARISON OF HANDWRITING.

A witness who testified that the forged signatures were written by the accused is not corroborated in a "material particular by evidence implicating the accused" by proof that certain other signatures were in the same handwriting, when the only evidence shewing that the latter signatures were written by the accused, was the testimony of the same witness who had testified to the handwriting of the signatures first

mentioned. R. v. McBride, 2 Can. Cr. Cas. 544.

[Referred to in R. v. Henderson, 18 Can. Cr. Cas. 248.]

IMPROPER RECEPTION CURED BY SUBSEQUENT EVIDENCE.

An error in receiving in evidence a document insufficiently proved may be cured by the subsequent evidence in the case; and it is not necessary to again tender the document after the evidence necessary to complete its proof has been disclosed. R. v. Dixon (No. 2), 3 Can. Cr. Cas. 220.

PERMANENT INJURY TO HEALTH; EXPERT EVIDENCE.

The Court should not, without expert evidence upon the effect of the loss of a child's toes, resulting from exposure to cold, and their consequent amputation, infer that the child's health had thereby been or was likely to be "permanently injured" (Cr. Code sec. 211), or that his life has thereby been endangered. R. v. Coventry, 3 Can. Cr. Cas. 541.

REJECTION OF CORROBORATIVE EVIDENCE.

Leave to appeal will not be granted to a private prosecutor from the decision of a police magistrate holding a summary trial by consent, merely upon the ground that the magistrate erred in rejecting certain evidence which was properly admissible but corroborative only. R. v. Burns (No. 1), 4 Can. Cr. Cas. 323.

[Discussed in R. v. Phinney, 36 N.S.R. 272.]

ATTEMPT; EVIDENCE OF PRINCIPAL OFFENCE.

Where on an indictment for a principal offence and for an attempt to commit such an offence, the evidence is wholly directed to the proof of the principal offence, the jury's verdict of guilty of the attempt only, will not be set aside although there were no other witnesses in respect of the attempt that those whose testimony, if wholly believed, shewed the commission of the greater offence. It is within the province of the jury, to believe, if it sees fit to do so, a part only of a witness's testimony and to disbelieve the remainder of the same witness's testimony, and it may therefore credit the testimony in respect of a greater offence only in so far as it shews a lesser offence. R. v. Hamilton, 4 Can. Cr. Cas. 251.

CRIMINATING ANSWERS; PROTECTION ON SUBSEQUENT CRIMINAL PROCEEDINGS IF OBJECTION TAKEN.

(1) If a witness when called upon to testify in a criminal proceeding does not object to do so upon the ground that his answers may tend to criminate him, they are receivable against him in any criminal proceeding against him thereafter other than a prosecution for perjury in giving such evidence, and if he does object he is bound to answer, but his answers are then not receivable in evidence against him in a subsequent criminal proceeding except such a charge of perjury. (2) Where on a case reserved or a case stated by direction of a Court of Appeal the sole question is whether there was evidence of guilt, and no leave has been obtained to apply for a new trial on the ground that the verdict is against the weight of evidence, the finding of a jury, or of the trial Judge trying the case without a jury, cannot be disturbed as to conclusions or inferences justly capable of being drawn from the evidence, or as to the credibility of the witnesses. The King v. Clark, 5 Can. Cr. Cas. 235.

CORROBORATION; PROSTITUTION.

On a charge of allowing a girl under 18 to be upon premises for immoral purposes, the evidence of the girl proving that she shared with the proprietor the money she obtained by prostitution there carried on, sufficiently corroborated under Code, sec. 684, by the evidence of another witness tending to shew that the place was a bawdy house. The King v. Brindley, 6 Can. Cr. Cas. 196.

COMMENT ON FAILURE TO CALL PRISONER'S WIFE AS WITNESS.

The statutory rule prohibiting comment by the prosecuting counsel upon the failure of the accused to call his wife as a witness is an absolute one; and a new trial must be given to the accused upon its infraction, although the prisoner's counsel himself first commented thereon by way of explanation of the wife's absence in his address to the jury, and the prosecuting counsel's comment was made in contradiction of and reply to such explanation. The King v. Hill, 7 Can. Cr. Cas. 38.

[Applied in R. v. King, 9 Can. Cr. Cas. 426, 436, 6 Terr. L.R. 150; discussed in R. v. McLean, 39 N.S.R. 166; referred to in R. v. Blais, 10 Can. Cr. Cas. 357.]

APPLICATION OF TERRITORIAL LAW; CANADA EVIDENCE ACT, SEC. 21.

The evidence which would be sufficient in civil proceedings in the province to prove one of the material facts (ex. gr., service of documents) is likewise sufficient to prove that fact when alleged in a criminal prosecution. The King v. Rapay, 7 Can. Cr. Cas. 170.

CROSS-EXAMINATION; INADMISSIBLE MATTERS INTRODUCED; STATEMENTS VOLUNTEERED BY WITNESS; RIGHT TO RE-EXAMINE THEREON.

Where, on the cross-examination of a witness, inadmissible matters are introduced whether volunteered by the witness or given in answer to questions put by the cross-examining counsel, the opposite party will be entitled to re-examine thereon unless the

cross-examining party applies to have the inadmissible evidence struck out. The King v. Noel, 7 Can. Cr. Cas. 309.

ALIBI; QUESTION OF IDENTITY; ONUS OF PROOF; PREPONDERANCE OF TESTIMONY.

It is misdirection entitling the accused to a new trial for the trial Judge to charge the jury that the onus is upon the accused to prove an alibi set up in defence by a preponderance of testimony. The King v. Myshrall, 8 Can. Cr. Cas. 474.

EVIDENCE IN REBUTTAL; DISCRETION OF TRIAL JUDGE.

The trial Judge has a discretion to allow the prosecution to call in rebuttal a witness whose evidence is in strictness evidence in chief, provided that the defence are given an opportunity to answer such testimony. The King v. Wong On (No. 3), 8 Can. Cr. Cas. 423.

INDECENT ASSAULT; TIME INTERVENING BETWEEN ASSAULT AND COMPLAINT; CIVIL ACTION.

Where evidence of complaint is admissible on a charge of indecent assault, not only the fact of the complaint may be shewn, but the particulars of the complaint. Hopkinson v. Perdue, 8 Can. Cr. Cas. 286.

ATTEMPT TO CARNALLY KNOW; GIRL'S EVIDENCE NOT UNDER OATH; CORROBORATION.

Upon the trial of a charge of attempted carnal knowledge of a girl under fourteen who is too young to understand the nature of an oath, a conviction for that offence is not warranted unless her evidence not under oath is corroborated by some other material evidence implicating the accused (Cr. Code, sec. 685), but the accused may be convicted of common assault upon the charge so laid if there be corroboration merely by some other material evidence (Can. Evidence Act, sec. 25.) The King v. De Wolfe, 9 Can. Cr. Cas. 38.

EVIDENCE TO SUPPORT CONVICTION; JUSTICE'S FINDING OF FACT.

Upon an application to quash a summary conviction made by a justice of the peace, the justice's finding of fact should be treated in the same manner as the verdict of a jury, and not interfered with unless it clearly appears that there was no evidence to justify the finding. The King v. Canadian Pacific Railway Company, 9 Can. Cr. Cas. 328.

[Case reversed on other ground in C.P.R. v. R., 13 Can. Cr. Cas. 160.]

PUBLISHING OBSCENE MATTER; PROVING KNOWLEDGE OF CONTENTS BY ACCUSED; ONUS.

(1) To constitute a book or printed matter "obscene" within the meaning of Code, sec. 179, it must express unchaste or lustful ideas, and tend to corrupt those whose minds are open to such immoral influences and into whose hands the publication may fall. (2) The offence declared by sec. 179 of the Criminal Code being that a person "knowingly" without lawful justification or excuse sells or distributes the obscene publication, it is obligatory upon the prosecution to prove knowledge of the contents on the part of the accused. The King v. Beaver, 9 Can. Cr. Cas. 415.

[Relied on in R. v. Macdonald, 15 Can. Cr. Cas. 482, 39 N.B.R. 388; referred to in R. v. Graf, 15 Can. Cr. Cas. 200; R. v. Britnell, 20 Can. Cr. Cas. 85, 4 D.L.R. 56.]

FAILURE TO OBJECT TO INADMISSIBLE DEPOSITIONS NOT AN ADMISSION OF "FACT;" TRIAL JUDGE'S DUTY TO EXCLUDE IMPROPER EVIDENCE EX MERO MOTU.

(1) The failure of prisoner's counsel to object at the trial to the reception in evidence of depositions taken upon another prosecution, does not relieve the Judge in a criminal case from the duty of seeing that proper evidence only is placed before the jury. (2) If upon a case reserved, the Appellate Court finds that important depositions were improperly received in evidence, and is unable to say that no substantial wrong or miscarriage was occasioned by the irregularity, the conviction should be quashed notwithstanding Code, sec. 746 (f), but a new trial may be ordered. (3) Code, sec. 690 permits an admission of any "fact" to be made at the trial by the prisoner or his counsel so as to dispense with proof, but the section does not apply to an alleged consent of prisoner's counsel to put in as evidence previous depositions of other persons which are not properly evidence against the prisoner. The King v. Brooks, 11 Can. Cr. Cas. 188.

[Referred to in R. v. Farrell, 15 Can. Cr. Cas. 285; Allen v. R., 18 Can. Cr. Cas. 31; commented on in R. v. Weir, 8 Que. P.R. 402; referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 13, 19 Que. K.B. 236; relied on in Re Janneau, 12 Can. Cr. Cas. 360; R. v. Poirier, 31 Que. S.C. 69.]

FORGERY; CORROBORATIVE EVIDENCE; SEVERAL FORGED ENDORSEMENTS.

Where a prisoner is charged with forgery, by writing three false signatures, as endorsements, on the back of a promissory note, and each of the parties whose signature is thus made to appear, swears that it is not his and is a forgery, there is the corroborative evidence required by article 685 of the Criminal Code (Revised Code, sec. 1002) to make good a conviction. The King v. Houle, 12 Can. Cr. Cas. 56.

[Applied in R. v. Curry, 21 Can. Cr. Cas. 273, 12 D.L.R. 13.]

EVIDENCE TO EXPLAIN CORPORATE ACTS.

(1) For the purpose of proving the motive and effect of certain corporate acts, evidence is properly admissible on a charge

of conspiracy laid against two corporations to shew that the formation and operation of an illegal trade combine was the object of the incorporation of each of them, and that the formal agreements whereby the property and assets of unincorporated trade associations were respectively assumed by them, were made in furtherance of that design. (2) Evidence of the nature of the conspiracy alleged may be given before proof of the criminal agreement. The King v. Central Supply Association, Limited, 12 Can. Cr. Cas. 371.

[Referred to in R. v. Beckett, 15 Can. Cr. Cas. 434.]

CIRCUMSTANTIAL EVIDENCE.

(1) On a trial for murder where the evidence is circumstantial, it is for the jury alone to pronounce on the question of the truth of the alleged circumstances deposed to and also as to what inferences which the facts would warrant shall be drawn from the circumstantial evidence. (2) It is error and ground for a new trial for the trial Judge to instruct the jury that they cannot doubt that certain inferences are to be drawn on points material to the issue. The King v. Collins, 12 Can. Cr. Cas. 402.

[Considered in R. v. Wilson, 21 Can. Cr. Cas. 105.]

CHILD OF ELEVEN YEARS.

The fact that a girl of eleven years was instructed as to the nature of an oath only a few days before the trial is not sufficient ground for rejecting her testimony under oath if the magistrate is satisfied that she is competent to be sworn. The King v. Armstrong, 12 Can. Cr. Cas. 544.

[Referred to in R. v. Iman Din, 18 Can. Cr. Cas. 93.]

FALSE BANK RETURN; OTHER RETURN AS EVIDENCE.

(1) It is a ground for a new trial of a charge under the Bank Act for wilfully making a false bank return, that evidence of other returns both before and after that in question was admitted and no instruction was given to the jury as to the limited purpose for which such other returns were admissible in evidence. (2) To sustain a conviction against the president of a bank for wilfully making a false return to the Government it must appear that the accused knew that he was signing a statement which misrepresented the bank's affairs, and not merely that he adopted and signed the return prepared by other officials and neglected to take any steps to verify the statements it contained. The King v. Lovitt, 13 Can. Cr. Cas. 15.

[Inapplicable in Oldstadt v. Lineham, 1 A.L.R. 423; discussed in R. v. Browne, 14 Can. Cr. Cas. 250.]

EXTRADITION; EVIDENCE FOR COMMITTAL; BOOKKEEPING IRREGULARITIES.

A committal for extradition on a charge of embezzlement is not justified on evidence only of errors or irregularities in bookkeeping in books kept by the accused for his employers, such evidence alone not being sufficient to establish a prima facie case of theft or conversion of money. Re Kalke, 13 Can. Cr. Cas. 253.

INCEST; PROOF OF BLOOD RELATIONSHIP.

On trial for incest, the evidence of the child, a girl of 11 years, that the accused was her father and the evidence of another person that the accused and the girl lived together as father and daughter for some seven or eight months, is not sufficient proof of relationship to justify a conviction. The King v. Smith, 13 Can. Cr. Cas. 403.

USURY; ORAL EVIDENCE TO SHEW REAL TRANSACTION NOTWITHSTANDING FORM OF DOCUMENTS.

(1) A conviction under the Money Lenders Act, R.S.C. 1906, ch. 122, will be quashed if no evidence is given that the accused made a practice of lending money at a higher rate than ten per cent. (2) Oral evidence is admissible on a prosecution under the Money Lenders Act to show that the true transaction was one of loan and not, as claimed by the defence, a purchase of unearned salary from the party to whom the money was given. The King v. Clegg, 14 Can. Cr. Cas. 217.

WEIGHT OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE.

In the consideration of circumstantial evidence the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt, in order to justify the inference that he is guilty. The King v. Jenkins, 14 Can. Cr. Cas. 221.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 53]

EXTRADITION; PROVING PRIMA FACIE CASE FOR COMMITTAL; ABORTION.

In extradition proceedings for abortion alleged to have been committed by a physician at the instigation of the accused, it is necessary to produce evidence to prove both that the physician's operation was unnecessary and unlawful and that the accused procured or abetted such unlawful operation. Re McCready, 14 Can. Cr. Cas. 481.

ABDUCTION; PROOF OF PROPERTY INTERESTS OR PRESUMPTIVE INTERESTS AS NEXT OF KIN.

Evidence must be given on a prosecution under Code, sec. 314 as amended by the Code Amendment Act of 1909, to prove that a girl under twenty-one alleged to have

been fraudulently detained against her parent's will with intent to marry her, is an heiress or is entitled to real or personal property within the terms of the statute; and such property interest must be alleged in an indictment or charge. The King v. Fielding, 14 Can. Cr. Cas. 486.

CORROBORATION; ACCOMPLICE.

A conviction on the uncorroborated testimony of an accomplice is legal, although the jury was advised by the trial Judge not to convict on such evidence. The King v. Reynolds, 15 Can. Cr. Cas. 209.

[Followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497; distinguished in R. v. Ratz, 21 Can. Cr. Cas. 343, 12 D.L.R. 678.]

EVIDENCE NOT UNDER OATH; CORROBORATION BY "SOME OTHER MATERIAL EVIDENCE;" COMPLAINT OF GIRL AFTER OFFENCE INVOLVING INDECENT ASSAULT; ANSWERS TO QUESTIONS.

(1) The corroboration "by some other material evidence" required by the Canada Evidence Act (sec. 16) on taking the testimony of a child of tender years not under oath, need not be in respect of all material issues; it is sufficient if there is corroboration in some material respect that will strengthen the credibility of the main witness and justify the evidence being acted upon if it is believed and is sufficient. (2) The complaint of a girl of tender years made immediately after the attempt at incest accompanied by indecent assault, will be received although made in answer to interrogations, if the latter were not of a leading or suggestive character. The King v. Pailleur, 15 Can. Cr. Cas. 339.

[Referred to in R. v. Whistnant, 20 Can. Cr. Cas. 322.]

CATTLE RANCHING; POSSESSION OF BRANDED CATTLE OF ANOTHER AS PRESUMPTIVE EVIDENCE OF THEFT; ONUS OF PROOF.

Where the evidence shews that the accused stockman appropriated and rebranded with his own brand a stray three-year-old steer on which appeared the brand of another rancher and turned the stray steer into his own herd kept on his home range, there is such proof of possession of the animal as throws upon the accused the onus under Code, sec. 989 of proving on a charge of stealing the steer that the same came into his possession lawfully. The King v. Dubois, 15 Can. Cr. Cas. 485.

EVIDENCE OF ACCOMPLICE; CORROBORATION.

(1) While the practice is to warn the jury that they ought not to convict upon the evidence of an accomplice unless they think that it has been corroborated, a case cannot be withdrawn from the jury for want of corroborative evidence. (2) On a trial by a Judge without a jury a conviction upon the evidence of an accomplice will not be set aside for want of corroboration. The King v. Frank, 16 Can. Cr. Cas. 237.

[Referred to in R. v. Trapnell, 17 Can. Cr. Cas. 351; followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497.]

SHEWING KNOWLEDGE OF MINORITY BY VENDOR OR THAT VENDEE APPARENTLY UNDER TWENTY-ONE; PROOF OF AGE.

(1) The offences under sec. 78 of the Liquor License Act as amended by 7 Edw. VII. (Ont.), ch. 46, sec. 8, are selling liquor to a minor apparently under 21 and selling to a person known to the vendor to be under age, and where the minor is not produced before the County Judge and the case is reheard by consent upon the depositions returned by the magistrate, the conviction made by the magistrate is properly reversed by the County Judge if the record of proceedings before the magistrate does not shew that the vendee was either known to the vendor to be under twenty-one or that he was "apparently" under that age. (2) Where the purchaser of the liquor is of adult stature and weight, it is not sufficient for the prosecutor to shew merely that the purchaser is in fact under twenty-one; it is essential that the magistrate should find that he is apparently under twenty-one or was known by the vendor to be under age. (3) Quære, whether the vendee's age can be established by his own testimony. The King v. Farrell, 16 Can. Cr. Cas. 419.

CANADA TEMPERANCE ACT; DATE OF PRIOR INFORMATION NOT SHEWN IN CERTIFICATE; PRESUMPTION.

(1) A certificate of a former summary conviction under the Canada Temperance Act, in respect of an offence charged to have been committed between dates covering a period of three months, but dated two weeks after the expiry of that period, is prima facie evidence of an offence within the statutory limit of three months prior to the commencement of the prosecution, although the date of laying the information was not proved. (2) If the prior conviction was invalid on the ground that the information was not laid within three months after the offence, the onus is upon the accused to shew the fact where it does not appear on the certificate. The King v. Woodlock, 17 Can. Cr. Cas. 203.

MURDER; LETTER RECENTLY IN POSSESSION OF ACCUSED FOUND BESIDE THE DEAD BODY; QUESTION FOR JURY.

The finding beside the body of the murdered woman of a letter shewn to be the property of the accused and to have been in his possession on the night of the murder, is evidence properly for the jury, and its cogency as against the explanation offered by the evidence of the accused given on his own behalf is solely for the consider-

ation of the jury and will not be interfered with by the Court of Appeal. The King v. Bennett, 17 Can. Cr. Cas. 322.

RAPE; OMISSION TO ASK PROSECUTRIX WHETHER MARRIED TO ACCUSED; PRESUMPTION CONTRA FROM OTHER EVIDENCE.

On a trial for rape, where the prosecutrix was not expressly asked whether she was the wife of the accused but was sworn as a witness and identified herself under a name differing from that upon which the accused was arraigned and had pleaded, and further swore that she did not know the accused by name, this was held sufficient proof that she was not the wife of the accused, and leave to appeal was refused. The King v. Mullen (No. 2), 18 Can. Cr. Cas. 80.

[Applied in R. v. Walebek, 21 Can. Cr. Cas. 130, 10 D.L.R. 522.]

FORGERY; CORROBORATION; VALUE OF EXPERT EVIDENCE.

A witness who testified that the impugned documents were unsigned when handed by him to the prisoner, and that when, a few minutes afterwards, they were handed back to him by the prisoner, they bore the signatures, subsequently found to be forged, is not sufficiently corroborated under sec. 1002 of the Criminal Code, by the evidence of an expert, who, on comparison of the forged signatures with the handwriting of the prisoner, as contained in letters written by the latter, swears that the forgeries are in the prisoner's handwriting, but whose expert testimony is contradicted by the evidence of an expert equally credible examined by the defence. The King v. Henderson, 18 Can. Cr. Cas. 245.

ATTEMPT TO DEFRAUD; INTENT TO DEFRAUD INSURANCE COMPANY.

(1) Upon an indictment for an attempt to defraud by setting fire with intent to defraud the fire insurance company, evidence is admissible on the question of intent of a fire on defendant's premises, although nine years previous, upon which his insurance claim had been disputed and compromised for a lesser amount. (2) It is for the jury to say what weight should be attached to such evidence of intent in view of the lapse of time and other circumstances. The King v. Beardsley, 18 Can. Cr. Cas. 389.

CORROBORATION OF ACCOMPLICE.

On a charge of conspiracy to defraud, the evidence of the accomplice may be sufficiently corroborated by entries found in a memorandum book found upon the prisoner. The King v. St. Pierre, 19 Can. Cr. Cas. 82.

SUFFICIENCY AND WEIGHT OF A CONFESSION; ADMISSIBILITY.

(1) A Court should weigh all the circumstances which precede and surround a confession, in order that it may decide as to its accuracy, the observation of the rules in such cases provided, and its validity or invalidity. (2) A confession made in the office of the chief detective of the city in his presence, and that of his assistant and one or two newspaper men who happened to be there, without pressure upon the accused, or threats or promises of immunity, but upon his own initiative and after he had been warned by the chief detective in the following words: "Now I am going to ask you a few questions. Make a statement if you want to; but I am going to tell you that you are not obliged to make one, but if you do, it will be taken down and may be used in connection with your trial," is admissible in evidence on the trial of the accused. (3) A distinction is to be drawn between a solemn confession made before a justice of the peace or before any person having such authority over the accused as will bring the latter to believe that any promises made to him will be observed, and a confession made at any other time and under different circumstances. [R. v. Day, 20 O.R. 209; R. v. Elliott, 3 Can. Cr. Cas. 95, and R. v. Viau, 7 Que. Q.B. 362, specially referred to.] The King v. Cummings, 19 Can. Cr. Cas. 358, 5 D.L.R. 86.

NECESSITY OF CORROBORATING TESTIMONY OF AN ACCOMPLICE; VERDICT OF GUILTY; SETTING ASIDE FOR ABSENCE OF CORROBORATION.

While it is the duty of a Court to caution the jury as to the danger of convicting the accused on the uncorroborated evidence of an accomplice and to advise them not to convict him on such evidence, yet, notwithstanding such caution and advice, a verdict of guilty rendered by the jury will be legal and cannot be set aside on the ground alone that there was no evidence corroborative of that of the accomplice. [Rex v. Stubbs (1835), 25 L.J.M.C. 16; Rex. v. Frank (1910), 16 Can. Crim. Cas. 237, 21 O.L.R. 196, 16 O.W.R. 50; Rex v. McNulty (1919), 17 Can. Cr. Cas. 26, 22 O.L.R. 350, 17 O.W.R. 611; Rex. v. Reynolds (1908), 15 Can. Cr. Cas. 209; 1 Sask. L.R. 480, 9 W.L.R. 299, followed; Rex v. Tate, [1908] 2 K.B. 680; Rex. v. Beauchamp (1909), 73 J.P. 224, referred to; Rex v. Warren (1909), 2 Cr. App. R. 194, 73 J.P. 359; Rex v. Everest, (1909), 2 Cr. App. R. 116, 130, 73 J.P. 269, disapproved.] The King v. Betchel, 19 Can. Cr. Cas. 423, 5 D.L.R. 497.

SUFFICIENCY OF PROOF TO JUSTIFY ISSUANCE OF A WARRANT OF COMMITTAL FOR EXTRADITION.

The evidence to warrant a committal for extradition need not be such as to justify a conviction at the trial. A prima facie case only need be made. United States v.

Webber (No. 1), 20 Can. Cr. Cas. 1, 5 D.L.R. 863.

PROOF OF MARRIAGE; CRIMINAL CONVERSATION.

(1) The fact of a marriage having been validly solemnized may be proved by some person who was actually present and saw the ceremony performed. (2) In an action for criminal conversation, where evidence of a marriage can be proved by an eyewitness, in a jurisdiction wherein the old common law disqualification has been removed and a party to the action is therefore a competent witness; the husband himself is one of the best eye-witnesses and is competent. [Morris v. Miller (1767), 4 Burr. 2057; Birt v. Barlow (1779), 1 Doug. 171 (decided long prior to ch. 68 of 32 and 33 Vict. (Imp.) (1869), qualifying the husband), distinguished.] (3) In an action for criminal conversation, the admission of the defendant that he knew the plaintiff to be married, coupled with the affirmative testimony of those present at the ceremony, is evidence of the marriage, though it took place in a foreign country, but it is not sufficient to prove the foreign marriage law. [Rex v. Naoum (1911), 19 Can. Cr. Cas. 102, 24 O.L.R. 306; R. v. Creamer, 10 L.C.R. 404, 450 (n), referred to.] (4) A cogent legal presumption is raised in favour of any marriage which is shewn to be celebrated de facto, and this presumption of law is not lightly to be repelled or broken in upon by a mere balance of probability, but the evidence for the purpose of repelling it must be strong, distinct, satisfactory and conclusive. [Taylor on Evidence, 10th ed., par. 172, referred to.] Zdrahal v. Shatney, 20 Can. Cr. Cas. 205, 7 D.L.R. 554.

EFFECT AND SUFFICIENCY OF; DISORDERLY HOUSE OR PERSON.

Evidence as to a general reputation of the house is admissible upon a charge of keeping a disorderly house. [Regina v. McNamara, 20 O.R. 489; Regina v. St. Clair, 3 Can. Cr. Cas. 551, 27 A. R. (Ont.) 308, referred to.] The King v. Demetrio (No. 1), 20 Can. Cr. Cas. 316.

CORROBORATION OF ACCOMPLICE; INSTRUCTION AS TO.

It is the duty of the trial judge to inform the jury in a criminal case, in which the evidence of an accomplice is given on behalf of the prosecution, that it is inadvisable to convict on such evidence unless corroborated. R. v. Bechtel (No. 2), 21 Can. Cr. Cas. 40, 9 D.L.R. 552. See also 19 Can. Cr. Cas. 423, 5 D.L.R. 497.

CORROBORATION.

The evidence of witnesses called for the defence may be looked at for the purpose of finding the corroboration required by statute (Cr. Code 1906, sec. 1002) for conviction of certain offences. [R. v. Girvin, 45 Can. S.C.R. 167, and R. v. Fraser, 7 Cr. App. R. 99, followed.] R. v. Wakelyn, 21 Can. Cr. Cas. 111, 10 D.L.R. 455

CORROBORATION; MISDIRECTION; APPEAL.

If the presiding judge on the trial of a criminal case erroneously rules at the close of the Crown's case that the prosecution has made out the corroboration required by statute for the particular offence and refuses the defendant's motion to take the case from the jury for lack of corroboration, the defence may either rest its case or adduce evidence in defence, but if it elects the latter course and sufficient corroboration is made out from the defendant's witnesses the defendant cannot, upon an appeal by case reserved, take advantage of the absence of corroborative evidence at the close of the Crown's case. [R. v. Girvin, 45 Can. S.C.R. 167, and R. v. Fraser, 7 Cr. App. R. 99, followed.] R. v. Wakelyn, 21 Can. Cr. Cas. 111, 10 D.L.R. 455.

CORROBORATION; PERJURY.

There need not be two witnesses to prove every fact necessary to make out an assignment of perjury, the corroboration being required merely for the perjured fact as a whole and not to every detail or constituent part of it; and where the accused had in his testimony connected two persons at different points with the one act, e.g., a joint attempt to bribe him for his vote at an election, evidence on the perjury charge by one of the alleged bribers negativing the bribery charge as to himself and evidence by the other to the like effect as regards himself, may establish the perjury, the one statement sufficiently corroborating the other. [The King v. Houle, 12 Can. Cr. Cas. 56; Reg. v. Roberts, 2 C. & K. 607, 614, applied.] R. v. Curry, 21 Can. Cr. Cas. 273, 12 D.L.R. 13.

CORROBORATION; INDECENT ASSAULT; TIME; STATEMENT BY CHILD.

Evidence of statements made by a child as to an indecent assault made upon her are not necessarily involuntary and inadmissible in corroboration of her testimony because she was led to make the statement only by questions put by her natural guardian and then only after the lapse of ten days from the alleged offence, if there was in the questions no suggestion as to the person to be blamed. [R. v. Osborne, [1905] 1 K.B. 551; R. v. Spuzzum, 12 Can. Cr. Cas. 287, 12 B.C.R. 291; R. v. Bowes, 15 Can. Cr. Cas. 326; and R. v. Iman Din, 18 Can. Cr. Cas. 82, referred to.] R. v. McGivney, 22 Can. Cr. Cas. 222, 15 D.L.R. 550.

CORROBORATION; UNSWORN TESTIMONY OF CHILD; EVIDENCE ACT.

Neither under Cr. Code, sec. 1003 nor under sec. 16 of the Canada Evidence Act, 1906, can there be corroboration of the unsworn testimony of a child of tender years

who does not understand the nature of an oath, by similar unsworn testimony of another child. [Rex v. Whistnant, 8 D.L.R. 468, 20 Can. Cr. Cas. 322 (dictum of Harvey, C.J.), approved; Rex v. Inman Din, 18 Can. Cr. Cas. 82, 15 B.C.R. 476, discussed and certain dicta withdrawn.] R. v. McInulty, 22 Can. Cr. Cas. 347, 16 D.L.R. 313.

CORROBORATION; CHARGE OF FORGERY.

The corroboration required by sec. 1002 of the Cr. Code 1906, on a charge of forgery, is additional evidence that will fortify and strengthen the credibility of the main witness and justify the evidence being accepted and acted upon if it is believed and is otherwise sufficient. [R. v. Daun, 11 Can. Cr. Cas. 244, 12 O.L.R. 227; and R. v. Wakelyn, 21 Can. Cr. Cas. 111, 10 D.L.R. 455, referred to.] R. v. Scheller, 23 Can. Cr. Cas. 1, 16 D.L.R. 462.

CORROBORATION; PERJURY CHARGE.

Where the accused gives evidence on his own behalf in defence of a charge of perjury, material variances in such testimony from that in respect of which the charge is brought may in themselves supply the statutory corroboration which Cr. Code, sec. 1002, requires, namely, that the accused shall not be convicted "upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused." [See also R. v. Girvin, 45 Can. S.C.R. 167; R. v. Wakelyn, 21 Can. Cr. Cas. 111, 10 D.L.R. 455; R. v. Fraser, 7 Cr. App. R. 99; R. v. St. Pierre, 19 Can. Cr. Cas. 82.] R. v. Nash, 23 Can. Cr. Cas. 38, 17 D.L.R. 725.

CORROBORATION; CHARGE OF INDECENT ASSAULT.

R. v. Fontaine, 23 Can. Cr. Cas. 159, 18 D.L.R. 275.

CORROBORATIVE TESTIMONY; ADMISSIBILITY.

Facts which tend to render more probable the truth of a witness' testimony on any material point are admissible in corroboration thereof although otherwise irrelevant to the issue, and although happening before the date of the fact to be corroborated. [Wilcox v. Gotfrey, 26 L.T.N.S. 481, applied.] R. v. Rabinovitch and Clingman, 23 Can. Cr. Cas. 496, 21 D.L.R. 600, affirmed in 24 Can. Cr. Cas. 350.

CORROBORATION; ACCOMPLICE; INDECENCY WITH MALE PERSON; CR. CODE, SEC. 206.

R. v. Williams, 23 Can. Cr. Cas. 339, 19 D.L.R. 676.

GIRL'S EVIDENCE OF AGE IN SEDUCTION CHARGE.

The girl's own statement of her age as nineteen is not competent evidence on a charge under Code, sec. 212 of seduction of a girl under twenty-one under promise of marriage, nor does Code, sec. 984 (2) enable the jury to infer a girl's age from her appearance except in charges of crimes against children under sixteen years of age referred to in sec. 984. [Doe v. Ford, 3 U.C.Q.B. 352; Martin Hargreaves Co. v. Wrigley, 30 W.L.R. 92; Haines v. Guthrie, 13 Q.B.D. 818; R. v. Wedge, 5 C. & P. 297, referred to.] R. v. Hanberg, 24 Can. Cr. Cas. 297.

"SPOTTER" SENT BY POLICE; CORROBORATION; DISORDERLY HOUSE.

The evidence of men sent as "spotters" by the city police department for the purpose of enticing a woman to agree to nefarious proposals and then using her assent to same as evidence against her on a charge of keeping a disorderly house should not be given more credit by the trial magistrate than the evidence of ordinary accomplices and the same corroboration should be required (Dictum per Galt, J.) R. v. Sands (No. 1), 25 Can. Cr. Cas. 116, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 120.

CORROBORATION; DETECTIVE; ACCOMPLICE.

The practice of declining to convict on the uncorroborated evidence of an accomplice does not apply to the evidence of a special constable in the employ of the government for the purpose of detecting and prosecuting offences of the class charged (in this case, illegal sale of liquor); but if the constable made false statements to the accused for the purpose of inducing him to commit the offence, that circumstance is properly considered as one tending against his credibility. [R. v. Bickley (1909), 73 J.P. 239, followed.] Amsden v. Rogers, 26 Can. Cr. Cas. 389, 30 D.L.R. 534.

CORROBORATION; DENIAL.

Evidence which is consistent with two views is not corroborative to either, but if the accused has denied under oath the correctness of one of such views, the evidence becomes corroborative as to the other. [Re Finch, Finch v. Finch, 23 Ch. D. 267, referred to.] R. v. Peterson, 27 Can. Cr. Cas. 3, 32 D.L.R. 295, affirmed in 28 Can. Cr. Cas. 332, 32 D.L.R. 298, 55 Can. S.C.R. 115.

EVIDENCE OF ACCOMPLICE; CORROBORATION.

The corroboration which is necessary in the case of evidence of an accomplice should be made by evidence independent of that of the accomplice and which affects the prisoner by fastening or tending to fasten the crime on to him. There should be evidence which implicates the prisoner, i.e., which corroborates in some material particular not only that the crime was committed but also that the prisoner was guilty of it. It is not, however, necessary to produce as corroboration direct evidence that the prisoner committed the crime, it is sufficient to establish proof of circumstances that he had something to do with its perpetration. R. v. Dumont, 29 Can. Cr. Cas. 442.

XIII. Admissibility under pleadings; Variance.

UTTERING FORGED CHEQUE; PROOF OF FORGED ENDORSEMENT.

The first count of the indictment charged the defendant with uttering a forged cheque:—Held, that this count was not sustained by proof of forgery of the endorsement, and that the conviction on his count must be set aside. The Queen v. Cunningham, 18 N.S.R. 31.

COMMISSION TO TAKE EVIDENCE; TIME OF APPLICATION FOR.

A commission to take the evidence of witnesses abroad in a libel prosecution is properly ordered at the trial where the evidence relates wholly to a plea of justification just entered of record. An order for a commission to take such evidence should not be made before plea. The Queen v. Nicol, 5 Can. Cr. Cas. 31.

OBTAINED BY ILLEGAL SEARCH WARRANT; ADMISSIBILITY.

Evidence is none the less admissible because of the invalidity of the search warrant in the execution of which the evidence was procured. [R. v. Honan, 20 Can. Cr. Cas. 10, 26 O.L.R. 484, 6 D.L.R. 276, applied.] R. v. Gibson, 30 Can. Cr. Cas. 308.

EXCEPTION.

Note as to statutory exceptions. 1 Can. Cr. Cas. 108.

IN DESCRIPTION OF OFFENCE; NEGATIVING.

The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the charge. R. v. Strauss, 1 Can. Cr. Cas. 103.

ONUS OF PROOF.

If a statute creates an offence in general terms with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. R. v. Strauss, 1 Can. Cr. Cas. 103.

[Referred to by Drysdale, J., dissenting in R. v. Sam Chak (No. 2), 12 Can. Cr. Cas. 508, 42 N.S.R. 384.]

STATUTORY OFFENCE DECLARED WITH AN EXCEPTION; NEGATIVING EXCEPTION IN INFORMATION.

(1) If the statute creates an offence with an exemption or exception the statement of which is necessary to properly charge the offence, and such exemption or exception is not negatived in the information, Code, sec. 717 does not apply to cast upon the accused the onus of proving himself within the exception. (2) Where such exemption is not negatived in the information and there is no evidence before the magistrate on the point, the Court hearing an appeal from a summary conviction cannot amend the proceedings by inserting the exception in the charge and rehear the case as upon an amended charge. (3) The power conferred by Code, sec. 754, upon an appeal from a summary conviction, to determine the charge upon the merits notwithstanding any defect in the conviction does not apply where both the information and the conviction omit an exception the statement of which is essential to properly charge the offence. (4) If such exemption is not stated in the information and no evidence is given in respect of the exemption, a summary conviction including it must be quashed for want of evidence to support it. The King v. Boomer, 13 Can. Cr. Cas. 98.

[Referred to in R. v. McGuire, 13 Can. Cr. Cas. 325; R. v. Farrell, 16 Can. Cr. Cas. 424.]

EXPERT TESTIMONY.

See Evidence.

EXTORTION.

Threatening to accuse with intent to extort; Truth of charge. 6 Can. Cr. Cas. 133.

By public officers; Note on offence of. 7 Can. Cr. Cas. 365.

Justices of the peace receiving larger fees than authorized; Penalty. 8 Can. Cr. Cas. 511.

LETTER DEMANDING MONEY; THREATS TO BRING PROSECUTION.

R.S.C. ch. 173, sec. 1, provides that "Every one who sends . . . 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 . . . is guilty of a felony," etc.:—Held, (Killam, J., dubitante) that a letter sent by the prisoner to a tavern keeper, demanding a sum of money and threatening in default of payment to bring a prosecution under the Liquor License Act, was not a menace within the meaning of the above section:—Held, also (Killam, J., dubitante), that the test is whether the menace was such as a firm and prudent man might and ought to have resisted. [Rex v. Southern, 6 East 126, followed.] Reg. v. McDonald and Vanderberg, 8 Man. L.R. 491.

MAGISTRATES EXACTING MONEY FROM PERSON CHARGED WITH FELONY; JOINT CONVICTION WHEN OTHER NOT DISSENTING.

Where two defendants sat together as magistrates, and one exacted a sum of money from a person charged before them with a felony, the other not dissenting:—Held, that they might be jointly convicted:

—Held, also, not indispensable that the indictment should charge them with having acted corruptly. Regina v. Tisdale et al., 20 U.C.Q.B. 272.

SENDING THREATENING LETTERS.

32 and 33 Vict. ch. 21, sec. 43 (D.), makes it a felony to send "any letter demanding of any person with menaces, and without reasonable or probable cause," any money, etc.:—Held, that the words "without reasonable or probable cause" apply to the money demanded, and not to the accusation threatened to be made. Regina v. Mason (1874), 24 U.C.C. 58.

ACCUSING WITH INTENT TO EXTORT; LAYING INFORMATION.

Where an information for rape or other offence under Cr. Code, sec. 405 is laid with the sole intent to extort money or property from the person against whom the charge is made, the information thereby "accuses" such person with intent to extort or gain something from him under Cr. Code, sec. 405, and commits an indictable offence thereunder. R. v. Kempel, 3 Can. Cr. Cas. 481.

EXTORTION BY THREATS; SEPARATE CIVIL CLAIM.

Where the prisoner is being tried on a charge of having, with intent to extort money, accused or threatened to accuse a physician of having procured an abortion on the prisoner's wife, the evidence for the prosecution being to the effect that the demand for money was on a claim of seduction as well as abortion, and the defence claiming that the demand was in respect of the seduction only, evidence is not admissible on behalf of the defence to prove that the charge of seduction was true. The King v. Warren Wilson, 6 Can. Cr. Cas. 131.

ILLEGAL FEES; PRELIMINARY ENQUIRY RESPECTING INDICTABLE OFFENCE.

(1) The provision of sec. 902 of the Criminal Code which imposes a penalty on a justice of the peace if he wilfully receives "a larger amount of fees, than by law he is authorized to receive," applies only to fees received under the summary convictions part of the Code. (2) The same construction is applicable to R.S.O. 1887, ch. 95, sec. 3, which is in similar terms as regards summary proceedings under provincial jurisdiction. (3) A "wilful" receiving of unauthorized fees means receiving them intentionally with a knowledge that there is no legal right to collect them. (4) A justice of the peace is not entitled to fees in respect of a preliminary enquiry for an indictable offence, and an action lies against him to recover fees illegally collected. (5) Semble, a justice who wilfully receives fees to which he is not entitled is liable to indictment for extortion. McGillivray v. Muir, 7 Can. Cr. Cas. 360.

CAUSING SERVICE OF SUMMONS FOR OFFENCE PUNISHABLE ON SUMMARY CONVICTION; INTENT OF PERSON SERVING BUT NOT OF COMPLAINANT TO EXTORT.

(1) Upon a charge of extortion in causing a person to be summoned for ill-treatment of a horse with intent to extort money, a letter written by the person summoned to a third person, on whom he had given an order for the money demanded to settle the charge, is not admissible in evidence against the accused charged with the extortion, unless the latter is shewn to have known its contents, although it was written concurrently with the order and was delivered therewith to such third party by the accused. (2) A summons by a justice of the peace requiring the person summoned to answer a charge punishable on summary conviction under the Criminal Code, is a "document containing an accusation" within the meaning of Code, sec. 406 (c). (3) It is an offence under Code, sec. 406 (c) for any person, with intent to extort or gain, to cause another person to be served with a justice's summons charging the latter with a criminal offence, notwithstanding that the information was laid by a third person without any such intent to extort. The King v. Cornell, 8 Can. Cr. Cas. 416.

JUSTICE OF THE PEACE EXACTING UNLAWFUL FEES; QUI TAM ACTION UNDER CR. CODE, SEC. 1134; "WILFUL" EXACTION.

(1) It is not necessary that the leave of the Attorney-General should be obtained for a qui tam action under Cr. Code, sec. 1134 against a justice for wilfully exacting unlawful fees. (2) Qui tam action against justices for the penalty provided by sec. 1134 of the Criminal Code of Canada for exacting unlawful fees are subject to the procedure imposed by provincial authority including notice of action to the justice where required by a provincial statute. (3) The making up of the costs to be imposed with a summary conviction does not go to the jurisdiction of the justice to convict and the defendant from whom the justice wilfully exacts unlawful fees may sue for the penalty without first having the conviction quashed. (4) Fees for adjournments before justices are not to be allowed in summary conviction matters. (5) Where the justice who has taken unauthorized fees receives notice of action but refuses to make amends and pleads justification he may be properly found to have "wilfully" exacted the illegal fees. Aikins v. Simpson, 18 Can. Cr. Cas. 99.

[Affirmed in Aikins v. Simpson (No. 2), 19 Can. Cr. Cas. 325.]

THREATENING IN WRITING TO ACCUSE OF CRIME WITH INTENT TO EXTORT; REQUISITES OF OFFENCE.

To constitute the offence of writing a letter threatening to accuse of crime with intent to extort money, the words used must be such as would naturally and reasonably operate upon the mind of an ordinary person and put compulsion upon him to do as suggested rather than to pursue the course which he would otherwise have taken; a mere fraudulent scheme to get money from the complainant on the pretense of using it to suppress evidence against him is not sufficient in the absence of any threat or menace. The King v. Hatch, 18 Can. Cr. Cas. 125.

IMPOSITION OF EXCESSIVE FEES; FAILURE TO RETURN.

A justice of the peace who receives from a person convicted before him more costs than are legally authorized and afterwards upon notice that they were not authorized by law fails to return such excess of costs, wilfully retains the illegal fees within the meaning of sec. 1134, Cr. Code, 1906, and therefore the penalty imposed by such section upon such officers for so retaining fees not authorized by law may be recovered by the party from whom he took the excess of costs. Aikins v. Simpson (No. 2), 19 Can. Cr. Cas. 325, affirming 18 Can. Cr. Can. Cr. Cas. 99.

BY THREAT OR ACCUSATION OF CRIME; CONSTABLE WITH WARRANT.

A constable who is given a warrant of arrest for theft to have executed in another county on its being endorsed by a magistrate there and who, at the same time, acts for the private prosecutor in attempting to settle the charge with the accused is properly convicted of extortion under Cr. Code (1906), sec. 454, if he accuses or threatens to accuse the person against whom the warrant is directed of the criminal offence therein mentioned and thereby obtains from such person a payment of money as representing the value of the article alleged to have been stolen and a reimbursement for expenses. R. v. Lapham, 21 Can. Cr. Cas. 79, 10 D.L.R. 315.

EXTRADITION.

Note on extradition with U.S.A.; Ashburton Treaty, 1842; Convention of 1889; What are extradition offences. 2 Can. Cr. Cas. 71.

Of convicted persons; Proof of identity, and of conviction. 2 Can. Cr. Cas. 73.

Disposal of articles in possession of fugitive when arrested. 2 Can. Cr. Cas. 74.

Persons surrendered not to be held for other crimes. 2 Can. Cr. Cas. 74.

Note of foreign depositions as evidence. 2 Can. Cr. Cas. 265.

Note on evidence to obtain extradition. 5 Can. Cr. Cas. 251.

Note on prosecution for other offences. 5 Can. Cr. Cas. 539.

Note on question of bail. 5 Can. Cr. Cas. 540.

Extradition convention between Great Britain and the United States of America, 1901, text of. 5 Can. Cr. Cas. 554.

Imperial Order-in-Council relating to. 5 Can. Cr. Cas. 553.

Crimes made extraditable by the Convention of 12th July, 1889, between Great Britain and the United States of America. 5 Can. Cr. Cas. 556.

Crimes extraditable under the Ashburton Treaty of 1842. 5 Can. Cr. Cas. 556.

Note on the Canadian Extradition Act of 1886. 6 Can. Cr. Cas. 80.

Note on bail in extradition cases. 7 Can. Cr. Cas. 193.

Interpretation of extradition treaties; "Money, valuable security or other property;" Offence of "receiving;" The ejusdem generis rule. 8 Can. Cr. Cas. 251, 261.

Habeas corpus to review commitment. 8 Can. Cr. Cas. 249, 250.

Alphabetical synopsis of leading cases upon points of practice under the Canadian Extradition Act. 9 Can. Cr. Cas. 264–321.

Extradition: "His Majesty's dominions;" Extradition Treaty, 1889, art. 6. 10 Can. Cr. Cas. 167.

Objection at trial of extradited person based on irregularity of extradition proceedings. 30 Can. Cr. Cas. 135.

EXTRADITION FOR FORGERY; ALTERING FIGURES IN OFFICIAL BOOKS; EXTRADITABLE CRIME AS TO TIME OF COMMISSION.

The prisoner was a clerk in the office of the comptroller of the city of Newark, New Jersey, U.S.A., his duty being to make proper entry of money received for taxes in the official books of the comptroller provided for that purpose. Having received a sum of money for taxes, he entered the correct amount at first and then erasing the true figures, he entered a less sum, with intent to benefit himself by abstraction of the difference between the two, and to deceive the comptroller and the municipality:—Held, that the offence was forgery and that the prisoner had been properly committed for extradition. It is not necessary to constitute the crime of forgery that another's right shall have been actually prejudiced; the possibility of prejudice to another is sufficient; and if publication be necessary, the books in question being of a public character, the forged entry in them must be regarded as having been published as soon as made. Semble, it is not necessary for purposes of extradition that the crime charged should have been such an act as

would have constituted that crime at the date of the Ashburton Treaty. It is sufficient if it constituted the crime in question at the date of its alleged commission. (Per Proudfoot, J.) Re Hall, 3 O.R. 331, affirmed in 8 A.R. (Ont.) 31; and see Re Hall, 8 A.R. (Ont.) 135; Re Hall, 32 U.C. C.P. 498.

SUFFICIENT AUTHENTICATION OF PAPERS OF FOREIGN STATE.

In extradition proceedings the information, warrant and depositions were certified under the hand and seal of a justice of the peace of Oscoda township, in the county of Josio, in the State of Michigan. There was also a certificate under the hand of the clerk of the county of Josio and the clerk of the Circuit Court for the said county and the official seal of the said Circuit Court, certifying that the said justice of the peace was, at the time of signing his certificate, a duly qualified justice of the peace, in the active discharge of the duties of his said office, and that his official seals were entitled to full credit. At the hearing before the County Court Judge, before whom the extradition proceedings were had, S. stated he was the prosecuting attorney for Josio county, and all criminal prosecutions therein came under his care. He identified the papers, and that they were the depositions and copies of depositions relating to the charge; and that the justices who took the depositions were justices of the peace as alleged, and had jurisdiction in the premises:—Held, that the documents were sufficiently authenticated. "Authenticated," as used in sec. 9 of 40 Vict. ch. 25 (Dom.) is in effect the same as "attested" in sec. 2 of 31 Vict. ch. 94 (Dom.). Re Weir, 14 O.R. 389.

EXTRADITION WHEN WARRANTED; EVIDENCE OF PROBABLE CONVICTION OF EITHER OF SEVERAL OFFENCES.

In cases arising under the Extradition Treaty, if the evidence present several views, on any one of which there may be a conviction, if adopted by the jury, the Court will not discharge the prisoner, but will direct extradition. Re Regina v. Gould (1869), 20 U.C.C.P. 154.

MURDER COMMITTED BY A SLAVE TO PREVENT CAPTURE.

A. being a slave in the State of Missouri, belonging to one M., had left his owner's house with the intention of escaping. Being about thirty miles from his home he met with D. a planter, working in the field with his negroes, who told A. that as he had not a pass he could not allow him to proceed, but that he must remain until after dinner when he D. would go with him to the adjoining plantation, where A. had told him that he was going. As they were walking towards D's' house A. ran off, and D. ordered his slaves, four in number, to take him. During the pursuit D., who had only a small stick in his hand, met A. and was about to take hold of him when A. stabbed him with a knife, and as D. turned and fell he stabbed him again. D. soon afterwards died of his wounds. By the law of Missouri any person may apprehend a negro suspected of being a runaway slave, and take him before a justice of the peace; any slave found more than twenty miles from his home is declared a runaway; and a reward is given to whoever shall apprehend and return him to his master. A. having made his escape to this province was arrested here on a charge of murder, and the justice before whom he was brought having convicted him, he was brought up in this Court upon a writ of habeas corpus and the evidence turned under a writ of certiorari. It was contended that A. acted only in defence of his liberty, there was no evidence upon which to found a charge of murder if the alleged offence had been committed here, and that he could not be demanded by the treaty:—Held, under the Ashburton Treaty and our statute for giving effect to it, Consol. Stats. C. ch. 89, the person was liable to be surrendered. (McLean, J., dissenting) and holding that the information warrant of commitment and evidence (to which no objection was taken on argument) were insufficient; that if the charge had been clearly made out the case was not within the treaty; and that the person therefore was entitled to his discharge. Re John Anderson, 20 U.C.Q.B. 124.

REVIEW ON HABEAS CORPUS; SUCCESSIVE APPEALS; EFFECT OF.

The prisoner was remanded for extradition by the Chancery Division of the High Court of Justice, which on appeal to this Court was affirmed, the Court being equally divided. A second writ of habeas corpus was thereupon obtained, and the prisoner brought before the Common Pleas Division, when he was again remanded, whereupon he again appealed to this Court, which appeal was dismissed with costs, as under such circumstances a second appeal could not be entertained. The prisoner having already appealed to this Court from the judgment of the Chancery Division, he must abide by the legal result of such appeal, viz., the dismissal of it and consequent affirmance of the decision appealed from, and he could not again ask the interference of this Court on the same state of facts. (Per Hagarty, C.J., Spragge, C.J.O., concurring.) The grounds for the technical rule of practice of the House of Lords on an equal division have no existence in other appellate tribunals, although in the particular case the Appellate Court is the Court of last resort. The effect of an equal division in

this Court, as in a Court of first instance, is simply that the rule or motion drops or the appeal is dismissed, and the judgment below remains undisturbed, but is not considered as a binding authority. (Per Burton and Patterson, J.J.A.) The Act 29-30 Vict. ch. 45, apparently substituted the right of appeal in habeas corpus cases for successive applications from Court to Court. By the effect of the Judicature Act, a decision of any one division is a decision of the High Court, this matter had therefore been already disposed of on the former appeal. (Patterson, J.A.) Re Hall, 8 Ont. App. R. 135.

TREATY OF WASHINGTON; JURISDICTION TO ARREST FUGITIVE CRIMINALS.

By an order of the Queen-in-Council in December, 1882, the operation of The Extradition Act, 1870, was suspended in Canada, so far as related to a foreign state with which there was an extradition arrangement:—Held, that under this suspending order, the provisions of the Canada Extradition Act, 1877, were made applicable to fugitive criminals from the United States, under the provisions of the Treaty of Washington, 1842. Under The Extradition Act, 1877, a requisition from the United States Government is not necessary as a preliminary condition to the arrest and commitment of a person charged with an extraditable offence. In order to give jurisdiction to issue a warrant to arrest a person under the Extradition Act, 1877, it is not necessary that the information should state that he was then within the province. It is sufficient to authorize a commitment for an extraditable offence, that the evidence would justify a commitment for trial if the offence had been committed in this province. A warrant of commitment under the Extradition Act may state the crime generally—as "forgery"—according to the prescribed form: without setting forth the acts constituting the offence. The Governor of a State in the United States of America is not a minister of a foreign state within sec. 9 of the Extradition Act, so as to make depositions authenticated by him evidence in this province. Forgery of an instrument purporting to be a promissory note, may be committed whether the name signed to it is that of an existing, or a fictitious person; provided the name is assumed for a fraudulent purpose. A fugitive criminal arrested in Nova Scotia under an extradition warrant and improperly brought into this Province, while the proceedings were pending, by the officer having him in charge, was discharged from custody here by a Judge's order:—Held, that being out of the jurisdiction of Nova Scotia he might afterwards be arrested here for the same offence; and that his arrest in this province was not a violation of sec. 6 of the Habeas Corpus Act (31 Car. 2, ch. 2). Ex parte Cadby (1886), 26 N.B.R. 452.

AFTER CONVICTION; EVIDENCE.

Under the Ashburton Treaty between Great Britain and the United States of America in 1842, and the convention of 1890, to obtain the extradition of a fugitive charged with the commission of an extradition crime, the same evidence must be given as would justify his committal for trial if the crime had been committed in Canada, and to obtain the extradition of a fugitive who had been convicted of an extradition crime, a duly authenticated copy of the record must be produced and proof of the fugitive's identity must be made. Re Levi, 1 Can. Cr. Cas. 74.

[Referred to in Re Lorenz, 9 Can. Cr. Cas. 164; distinguished in Re Collins (No. 1), 10 Can. Cr. Cas. 72.]

In the case of a fugitive who has been convicted, the Judge does not examine the evidence given at his trial and must not revise the verdict of the jury; his duty is to see if the offence is an extradition crime, if the conviction after a regular trial has been duly proved, and if the prisoner has been identified. Ibid., 1 Can. Cr. Cas. 74.

EXCEPTION OF POLITICAL OFFENCE; EVIDENCE.

On an application for the extradition of a fugitive, evidence to show that the offence charged is a political one, or that it is not an extradition crime, should be allowed, and if the proof be made to that effect the prisoner must be discharged. Ibid., 1 Can. Cr. Cas. 74.

HABEAS CORPUS; REVIEW ON.

On a writ of habeas corpus in an extradition case the Judge must see, in the first place, whether the offence charged is or is not of a political character, or whether it is or is not an extradition crime, and then whether the proceedings are regular and justify the prisoner's committal for surrender. Ibid., 1 Can. Cr. Cas. 74.

FOR LARCENY; COMMON-LAW OFFENCE.

Under the Extradition Convention of 1889 between Great Britain and the United States by which "larceny" was made an extraditable crime, whatever was then larceny both in Canada and in the state in which the alleged crime was committed was thereby made an extradition offence. The abandonment of the term "larceny" in Canadian jurisprudence on the enactment of the Criminal Code of Canada subsequent to an extradition convention including such offence, does not affect the liability to extradition of a person charged with an offence which was larceny at common law and which is by the Criminal Code still an offence in Canada under the name

of "theft" or "stealing." Re Gross, 2 Can. Cr. Cas. 67.

FOREIGN DEPOSITIONS; IRREGULARITY; CONFESSION.

Depositions taken in the foreign state, which are certified to have been sworn to at a date subsequent to that of the foreign warrant of arrest, are irregular, and extradition will not be granted on such evidence alone. To justify the admission in evidence in extradition proceedings of an alleged confession of the prisoner, it must be affirmatively proved that such confession was free and voluntary, and was not preceded by any inducement held out by a person in authority, or was not made until after such inducement had clearly been removed. Re Ockerman, 2 Can. Cr. Cas. 262.

[Referred to in Re Kalke, 13 Can. Cr. Cas. 258.]

PROOF OF FOREIGN LAW; FORGERY.

If such a prima facie case is made out in extradition proceedings as would warrant a committal for trial upon a preliminary enquiry before a magistrate under the law of Canada had the charge been that the accused had committed in Canada an offence known by the same name as the extradition crime charged, the prisoner must be extradited, although it is not proved by the prosecution that the alleged offence is a crime under the law of the demanding country. (Per Hagarty, C.J.O., and Maclennan, J.A.) It is necessary for the prosecution to make out a prima facie case that the alleged offence is a crime according to the law of the demanding country as well as under Canadian law. (Per Burton and Osler, JJ.A.) Where the facts shewn in extradition proceedings for forgery disclose a prima facie case in respect of an offence which is forgery only by virtue of the extended meaning given to that term by Canadian statutes, it is necessary for the prosecution to prove that the same is also forgery under the law of a foreign country in which the alleged offence was committed. (Per Burton and Osler, JJ.A.) Re Murphy, 2 Can. Cr. Cas. 578.

DEFECTIVE WARRANT OF COMMITMENT; PERUSUAL OF DEPOSITIONS ON HABEAS CORPUS MOTION.

Upon habeas corpus proceedings following a commitment under an extradition warrant, the Court is not justified in referring to the depositions returned, and inferring therefrom facts material to the proof of the offence, if the warrant of commitment is in itself defective in that it does not recite a finding of such facts. Re Murphy, 2 Can. Cr. Cas. 578.

[Followed in Re Cohen, 8 Can. Cr. Cas. 252; referred to in Re Moore, 16 Can. Cr. Cas. 266; Re Harsha (No. 1), 10 Can. Cr. Cas. 442; Re Royston, 15 Can. Cr. Cas. 98; adhered to by Burton, J.; distinguished by Osler, J., Re Lazier, 3 Can. Cr. Cas. 167.]

POWER OF EXTRADITION COMMISSIONER.

An Extradition Commissioner appointed under the Extradition Act (Can.) has jurisdiction only within the province for which he has been appointed; and has the power to issue a warrant for the arrest of a fugitive only in case the latter is in or is suspected to be in the province in which the commissioner has jurisdiction. Ex parte Seitz (No. 1), 3 Can. Cr. Cas. 54.

[Followed in Ex parte Greene and Gaynor (No. 1), 7 Can. Cr. Cas. 382.]

EXECUTION OF WARRANT IN ANOTHER PROVINCE.

Where the complaint in an extradition matter shews that the fugitive is in a province other than the one in which the commissioner has jurisdiction, and other than the one in which the extradition complaint is laid, the issue of a warrant of arrest thereon and its execution in such other province is illegal. When a warrant of arrest has been legally issued by an Extradition Commissioner, it may be executed in any part of Canada without endorsation. Ex parte Seitz (No. 1), 3 Can. Cr. Cas. 54.

HABEAS CORPUS; REVIEW OF FINDINGS.

On the return of a writ of habeas corpus in an extradition proceeding, the Judge has no power to review the decision of the Extradition Commissioner on the ground that it is against the weight of evidence. Ex parte Seitz (No. 1), 3 Can. Cr. Cas. 54.

[Referred to in Ex parte Gaynor and Greene (No. 1), 9 Can. Cr. Cas. 252.]

DISCHARGE FOR WANT OF JURISDICTION.

When a prisoner is discharged upon habeas corpus merely by reason of a defect in the commitment or for lack of jurisdiction in the committing magistrate, such discharge is not a bar to the prisoner's rearrest and trial before a Court of competent jurisdiction in respect of the same charge. To constitute such a bar, the case must be such that the return to a second writ of habeas corpus following the rearrest would raise the same question as the first with reference to the validity of the grounds of detention. Ex parte Seitz (No. 2), 3 Can. Cr. Cas. 127.

EXTRADITION COMMISSIONER; TERRITORIAL JURISDICTION.

Where a person known to be in the Province of Ontario is arrested there under an extradition warrant issued by an Extradition Commissioner of the Province of Quebec, and is taken to the latter province under such warrant, and there discharged upon habeas corpus for want of jurisdiction in the commissioner to issue a warrant unless the fugitive is in or suspected to

be in the province for which he has jurisdiction, the accused may, notwithstanding, be legally rearrested in the Province of Quebec under a new complaint in respect of the same extradition offence. Semble, that the commissioner may decline to exercise his jurisdiction upon the new complaint if the prisoner has been inveigled into his jurisdiction by a trick or device of the adverse party. Ex parte Seitz (No. 2), 3 Can. Cr. Cas. 127.

[Referred to in R. v. Watts, 6 Can. Cr. Cas. 249.]

PROOF OF FOREIGN LAW.

Before ordering the extradition from Canada of a fugitive, an Extradition Commissioner must be satisfied that the offence charged is a crime against the law of the country demanding the extradition, as well as that it would, if committed in Canada, be an offence against Canadian law, and that it is within the treaty with the foreign country. Ex parte Seitz (No. 2), 3 Can. Cr. Cas. 127.

AUTHORIZATION BY DEMANDING COUNTRY; PROOF OF REQUISITION.

Proceedings in extradition may be regularly initiated in Canada before any requisition is made by the country entitled to make the demand for extraditon. Extraditon proceedings in Canada are not void because, during the course of same, no proof was adduced to shew that the extradition complaint was laid under the direction or authorization of the country in which the alleged offence was committed; and it is sufficient that the requisition of the demanding country be made in due time after the commitment for surrender. Re M. B. Lazier, 3 Can. Cr. Cas. 107.

[Distinguished in Re Federenko (No. 2), 17 Can. Cr. Cas. 271, 47 C.L.J. 114, 20 Man. L.R. 224; reversed in No. 3, [1911] A.C.; referred to in Re Horace Gates, 8 Can. Cr. Cas. 250.]

HABEAS CORPUS; APPEAL; MOTION TO QUASH.

By sec. 31 of the Supreme and Exchequer Courts Act (R.S.C. ch. 135) "no appeal shall be allowed in any case of proceedings for or upon a writ of habeas corpus arising out of any claim for extradition made under any treaty." An application to the Court to fix a day for hearing a motion to quash an appeal from an order refusing a habeas corpus in an extradition matter should be refused, the matter being coram non judice and there being no necessity for a motion to quash. Re Lazier (No. 2), 3 Can. Cr. Cas. 419.

SUFFICIENCY OF EVIDENCE TO JUSTIFY SURRENDER.

In extradition proceedings the indictment of the accused in the foreign Court is hearsay evidence only and is not admissible in evidence in the enquiry before the extradition commissioner. On habeas corpus in respect of an extradition commitment for surrender to the foreign State, the Court may revise the commissioner's decision on the question of whether or not there was legal and competent evidence tending to prove the commission of the crime, but it will not review the commissioner's decision as to the sufficiency of the evidence to justify the committal. To justify the committal of an accused person for trial or for extradition it is only necessary that the evidence should be such as gives rise to probable cause to believe him guilty, and it is not necessary that it should be sufficiently conclusive to authorize his conviction if unanswered. Upon either a preliminary enquiry or an examination in extradition proceedings, any reasonable doubt must go in favor of committal and not in favour of discharge. Ex parte Feinberg, 4 Can. Cr. Cas. 270.

[Referred to in Ex parte Greene and Gaynor, 7 Can. Cr. Cas. 382; Re Cohen, 8 Can. Cr. Cas. 252; U. S. v. Brown (No. 2), 11 Can. Cr. Cas. 172; followed in Re Horace Gates, 8 Can. Cr. Cas. 250.]

INTERCOLONIAL EXTRADITION; FUGITIVE OFFENDERS' ACT, R.S.C. CH. 143; SPECIAL POWER ON HABEAS CORPUS TO REVIEW THE EVIDENCE.

The effect of secs. 9 and 10 of the Fugitive Offenders' Act, R.S.C. ch. 143, is to confer a special power upon the Court hearing a habeas corpus application thereunder to review the evidence upon which the commitment for intercolonial extradition is founded. No certiorari is required in aid of the writ of habeas corpus in cases under the Fugitive Offenders' Act, because the effect of secs. 10 and 17 thereof is to put the Court in possession of the whole of the record and evidence. Extradition from Canada to another British possession will not be confirmed on habeas corpus unless a prima facie case of guilt is made out to the satisfaction of the Superior Court to which the accused makes application for his discharge, irrespective of the decision of the committing magistrate. The enquiry under sec. 10 of the Fugitive Offenders' Act and the power to discharge the accused in trivial cases, etc., is practically unlimited, and the Court on habeas corpus may in the exercise of its discretion order a discharge for any reason which appears to it to be satisfactory. It is not necessary to order intercolonial extradition for the purpose of having a jury determine the controverted facts, if a prima facie case is not made out, and if, in consequence, an acquittal might at a trial be properly directed by the trial Judge. The Queen v. John Delisle, 5 Can. Cr. Cas. 210.

[Followed in Re McTier, 17 Can. Cr. Cas. 82.]

PROOF OF FOREIGN LAW; PRESUMPTION AS TO CRIMES OF LIKE DESIGNATION; ONUS OF PROOF; COLLATERAL ATTACK.

In the absence of evidence to the contrary, it should be assumed that the crime of "child-stealing" referred to in the extradition convention between Great Britian and the United States is identical with the offence so designated by Canadian law. It is competent for the prisoner in extradition proceedings to shew that the crime of "child-stealing" under the foreign law was not covered by the facts disclosed on the depositions, and where such is shewn the prisoner should be discharged. The child's own father may be guilty of child-stealing within sec. 284 of the Code, if after a divorce by a Court of competent jurisdiction and the award thereon of the custody of the child to the mother, the father wilfully removes the child from her custody. An objection by the husband to the validity of the divorce on the ground of collusion, cannot, where the collusion is denied on oath, be adjudicated upon by the extradition commissioner, but extradition should be ordered notwithstanding such objection and the prisoner left to his right to contest the divorce decree at his trial by the foreign Court. The King v. Watts, 5 Can. Cr. Cas. 246.

[Referred to in Re Horace Gates, 8 Can. Cr. Cas. 250; Re Lorenz, 9 Can. Cr. Cas. 164; Re Collins (No. 2), 10 Can Cr. Cas. 78; Re Harsha (No. 1), 10 Can. Cr. Cas. 449; Re Bartels, 13 Can. Cr. Cas. 63.]

COMMITTAL FOR EXTRADITION; BAIL PENDING HABEAS CORPUS; REMAND; RENEWING BAIL PENDING APPEAL.

Under ordinary circumstances bail should not be granted to a person committed for extradition. Where bail was granted to the accused in extradition proceedings pending a habeas corpus application on his behalf, and afterwards the application for his discharge under habeas corpus was refused, the accused must surrender himself into close custody before a fresh application will be entertained to bail him pending an appeal from the order refusing his discharge. Re Watts, 5 Can. Cr. Cas. 538.

[Referred to in Re Bartels, 13 Can. Cr. Cas. 63; R. v. Hamilton, 17 Can. Cr. Cas. 416.]

ASSAULT WITH INTENT TO COMMIT MURDER; PROOF OF INTENT; EVIDENCE MUST JUSTIFY COMMITTAL FOR TRIAL FOR THE EXTRADITION CRIME.

In extradition proceedings for the offence of assault with intent to commit murder, the prosecution must prove such intent as well as the assault, and a committal for extradition is only authorized where the evidence, had the crime been committed in Canada, would have justified a "committal for trial" for the extradition crime charged and not merely for a less serious offence included therein. Re Kelly, 5 Can. Cr. Cas. 541.

LAYING INFORMATION IN EXTRADITION OR PROVING FOREIGN WARRANT OF ARREST; ALTERNATIVE PROCEDURE; FOREIGN WARRANT MUST BE IN FULL FORCE.

(1) An extradition Judge may issue a warrant for apprehension either upon a complaint laid before himself or upon proof of a foreign warrant of arrest, but, in the latter case, the original must be produced and it must appear that it is still in force. (2) An authenticated copy of a foreign bench warrant, and of a return thereto that the accused could not be found within the jurisdiction of the sheriff, is insufficient proof of a warrant outstanding and in full force, unless there be evidence of a valid reissue of such foreign warrant. (3) An extradition Judge has no jurisdiction to issue a warrant for apprehension without an information of complaint laid before him or proof made of a valid outstanding foreign warrant; nor does jurisdiction attach upon the appearance before him of the accused under arrest upon a warrant improperly issued without such requirements having been complied with. In Re Bongard, 6 Can. Cr. Cas. 74.

BAIL PENDING EXTRADITION ENQUIRY.

A County Court Judge exercising the powers of an extradition Judge under the Extradition Act (Can.) has no power to bail the accused pending the enquiry before him. Re Stern, 7 Can. Cr. Cas. 191.

TERRITORIAL JURISDICTION OF EXTRADITION COMMISSIONER; HABEAS CORPUS PENDING EXTRADITION ENQUIRY.

(1) When a prisoner, whose extradition is sought, has been brought before a Judge of the Superior Court on a writ of habeas corpus issued before the committal of the accused, and before the conclusion of the enquiry before the commissioner, the powers of the Judge are limited to determining whether the commissioner has jurisdiction to make the enquiry. (2) The jurisdiction of an extradition Judge or commissioner in the Province of Quebec extends over the whole province, and not alone to the judicial district for which he is a Judge; he may therefore order a prisoner to be brought before him from any part of the province in which he has been arrested. Ex parte Green (No. 1), Ex parte Gaynor (No. 1), 7 Can. Cr. Cas. 375.

"MONEY, VALUABLE SECURITY OR OTHER PROPERTY;" EJUSDEM GENERIS RULE; CONDUCT AS PROOF OF GUILTY KNOWLEDGE.

(1) Upon a habeas corpus application in an extradition matter, the decision of the extradition commissioner rejecting a certain deposition as inadmissible in evidence for

the prosecution cannot be reviewed. (2) Leave granted by the extradition commissioner upon rejecting a deposition produced by the prosecution to renew the application for its admission upon a future habeas corpus motion to a Superior Court, is ineffectual to confer any additional power upon the latter Court. (3) The conduct of the alleged receiver of stolen property in remaining silent while statements incriminating him were being made in his presence by the thief is some evidence of guilty knowledge. (4) Merchandise is not "other property" within the meaning of the phrase "receiving any money, valuable security or other property knowing the same to have been embezzled, stolen or fraudulently obtained" in article 1 of the Extradition Convention of 1889 with the United States of America, and extradition does not lie for the offence of receiving an article of merchandise knowing it to have been stolen. (5) The words "other property" in the extradition convention refer only to property ejusdem generis with "money" and "valuable security." Re Cohen, 8 Can. Cr. Cas. 251.

ARREST WITHOUT WARRANT ILLEGAL; RELEASE OF PRISONER BEFORE SUBSEQUENT ARREST UNDER WARRANT; HABEAS CORPUS; CONTROL OR CUSTODY AFTER ISSUE OF WRIT.

(1) An arrest to answer an extradition charge cannot legally be made without a warrant. (2) Where the accused is in custody under an illegal arrest without warrant, a subsequent warrant will not validate his further detention unless the accused has first been liberated from the illegal imprisonment. (3) After the service of a writ of habeas corpus on behalf of a prisoner, the prisoner is deemed to be under the protection of the Court issuing such writ, and is not liable to re-arrest without the permission of such Court until it has disposed of the habeas corpus application. Ex parte Cohen, 8 Can. Cr. Cas. 312.

BAIL PENDING EXTRADITION ENQUIRY; DELAY TO BRING EVIDENCE FOR PROSECUTION.

(1) An extradition commissioner should not, under ordinary circumstances, admit the accused person to bail pending the reasonable delay required by the prosecution to bring witnesses from the foreign country to prove the alleged offence. (2) A petition for a writ of habeas corpus may be refused if the Court is satisfied that the writ would, if issued, be quashed upon the petitioner's own shewing. United States v. Weiss, 8 Can. Cr. Cas. 62.

[Referred to in Ex parte Gaynor and Greene (No. 5), 9 Can. Cr. Cas. 260.]

17

CONVENTION OF 1889 WITH U.S.A.; "GRAND LARCENY IN THE SECOND DEGREE" UNDER STATE LAW; OBTAINING PROPERTY BY FALSE PRETENCES UNDER CANADIAN LAW.

(1) The offence known in Canada as obtaining goods by false pretences and in the State of Minnesota as grand larceny in the second degree, is one for which extradition lies from Canada to that State under the convention of 1889, sec. 3. (2) A warrant of arrest issued by an Extradition Commissioner may properly describe the offence by the phraseology of the country in which it issues. Re F. H. Martin, 8 Can. Cr. Cas. 326.

SUFFICIENCY OF EVIDENCE; PRIMA FACIE CASE; PROBABLE CAUSE TO BELIEVE GUILTY.

Upon a committal for extradition, a Court of common law will not, upon habeas corpus, revise the decision of the extradition Judge or commissioner as to the weight of the evidence, if the evidence given was legally admissible, and gives rise to probable cause for believing the accused guilty of the offence charged. Re Horace D. Gates, 8 Can. Cr. Cas. 249.

TELEGRAM FROM FOREIGN POLICE OFFICE ASKING ARREST; ARREST WITHOUT CANADIAN WARRANT INVALID.

An arrest in Canada for extradition cannot be legally made upon a mere telegraphic or other request from the authorities of the foreign country without a warrant issued in Canada. Re Dickey (No. 1), 8 Can. Cr. Cas. 318.

INFORMATION, FORM OF; PROOF THAT ACCUSED IS IN CANADA OR IS SUSPECTED OF BEING IN CANADA; SWORN INFORMATION ON INFORMATION AND BELIEF ONLY; WARRANT OF ARREST; EXECUTION BY CONSTABLE INFORMANT.

(1) A warrant of arrest in extradition proceedings must not be executed by the constable by whom the information was laid to obtain the same, and the person so arrested is entitled to be discharged on habeas corpus. (2) An information laid to obtain an extradition warrant of arrest must disclose that the accused is in Canada or is suspected of being in Canada. (3) An information taken to lead a warrant of arrest in extradition is insufficient if made upon information and belief only, without disclosing the facts upon which the informant's belief is founded. Re Dickey (No. 2), 8 Can. Cr. Cas. 321.

OFFENCES AGAINST STATE AND COLONIAL LAWS; CHILD-STEALING.

(1) Extradition lies from Canada to the State of New York for an offence named in the extradition treaties between Great Britain and the United States, although such offence is not against a Federal law

of the United States, if by the laws both of Canada and of the demanding State the offence charged is criminal and within the list of crimes specified in the treaties. (2) Where a divorce decree of a Court of competent jurisdiction in the United States has awarded the custody of a child to the father as against the mother, and the mother thereafter removes and conceals the child for the purpose of evading the decree, a prima facie case for extradition is thereby made out against the mother upon a charge of child-stealing. (3) Semble, the offence of child-stealing under the Criminal Code, sec. 284, may be complete against the child's mother, although the father, to whom the child's custody had been awarded, has never had any actual separate possession of the child. Re Lorenz, 9 Can. Cr. Cas. 158.

LARCENY; AUTHENTICATION OF FOREIGN DEPOSITIONS; STATE OFFICERS; COPY OF INFORMATION IN FOREIGN STATE; CONFESSION OF ACCUSED.

(1) The clerk of a State Court of criminal jurisdiction in one of the States of the United States of America is an "officer of the foreign State" within the meaning of the Canadian Extradition Act, sec. 10 (2a), for the purpose of certifying the information laid in that Court for the extraditable offence; and a copy of the information so certified under the seal of his Court, is duly authenticated for the purposes of the Extradition Act if certified by the Governor of the State and the "Secretary of State" of that State under the State seal and accompanied by the certificate of the Secretary of State of the United States under his official seal verifying such State seal and by the certificate of the British Embassy verifying the latter certificate. (2) The State attorney for the county in which the charge was laid is an "officer of the foreign State" within the meaning of the Extradition Act, sec. 10 (2a), for the purpose of authenticating an original deposition of a witness taken in that county to be used as evidence in obtaining the extradition; and such authentication may be made by the deposition of such State attorney duly certified by the State and Federal authorities. (3) A charge of "grand larceny" is within the extradition arrangement with the United States as a species of "larceny." (4) Unless the evidence before the extradition Judge of an alleged confession by the accused was clearly inadmissible, another Judge, hearing the case upon a habeas corpus after committal, should not discharge the prisoner upon the ground of its inadmissibility. (5) Semble, where a witness called to prove a confession alleged to have been made by the accused purports to give a complete account of the interview, and no suspicious circumstances are brought out pointing to any threat or inducement relating thereto, the evidence should not be rejected although the witness was not asked whether any threat or inducement had been held out. Re Lewis, 9 Can. Cr. Cas. 233.

PARTICIPATION IN LARCENY; OVERT ACT IN CONSPIRACY TO DEFRAUD; EFFECT OF PROCEEDING WITH CHARGE OF CONSPIRACY IN THE FOREIGN COUNTRY; REMAND PENDING ENQUIRY BEFORE EXTRADITION JUDGE.

(1) Conspiracy to defraud is in itself not an extraditable offence between Canada and the United States, but extradition will lie as for a separate crime in respect of any overt act of a conspiracy which constitutes one of the crimes mentioned in the extradition arrangement. (2) The extraditable offence of larceny or participation in larceny is charged sufficiently in an information laid on instituting extradition proceedings therefore, if, following a charge of conspiracy to defraud between the accused and another person and an embezzlement and theft by such other person in pursuance thereof, the information alleges that the accused "did participate in the said offence of embezzlement and theft." (3) Where extradition is sought upon a charge of participation in a theft alleged to have been committed with respect to property of the government of the demanding country, and the demanding country produces, in support of the extradition charge, an indictment found in that country upon a charge of conspiracy, wherein acts of theft are charged as overt acts of the conspiracy, the demanding country is not thereby estopped from treating such overt acts as independent acts of larceny for the purposes of extradition. (4) Where a prisoner is brought before an extradition Judge in pursuance of a warrant of arrest and charged with an extraditable offence, he may be remanded for the purpose of affording the prosecution an opportunity of adducing evidence. (5) A return to a writ of habeas corpus issued pending such remand is good if it discloses an information duly laid before an extradition Judge having jurisdiction over the subject-matter of the enquiry, the appearance of the accused before such Judge and a warrant under the hand and seal of such Judge remanding him into custody until the time fixed for proceeding with the hearing. (6) Semble, the omission to shew in a warrant of remand that the alleged offence was subsequent to the extradition convention which had no retroactive application, is not a ground for holding the detention to be invalid. (Ex parte Greene and Gaynor (No. 2), 7 Can. Cr. Cas. 389, reversed.) United States v. Gaynor; Re Gaynor and Greene (No. 3) (P.C.) 9 Can. Cr. Cas. 205.

[Followed in Re Barracq, 19 Can. Cr. Cas. 483, 5 D.L.R. 771.]

JURISDICTION OF EXTRADITION COMMISSIONERS; LEGISLATIVE POWER.

(1) That part of sec. 5 of the Canadian Extradition Act which purports to empower the Federal Government to appoint extradition commissioners to act judicially in extradition matters within the limits of one province, is within the legislative powers of the Dominion, and does not contravene the exclusive power conferred on provincial legislature respecting the "constitution, maintenance and organization of provincial Courts." (2) A writ of prohibition will not lie to determine the title of a de facto judicial officer, the appropriate proceeding for determining the title to a public office being that of quo warranto. Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 240, affirming 7 Que. P.R. 115.

APPEAL FROM REFUSAL OF WRIT OF PROHIBITION; STAY OF PROCEEDINGS; DISCRETION; HABEAS CORPUS; BAIL PENDING EXTRADITION ENQUIRY.

(1) The Court of King's Bench, sitting at Quebec, will not grant a stay of proceedings pending an appeal taken in the Montreal district to the Court of King's Bench (appeal side) upon the refusal of a writ of prohibition, unless special and serious grounds are shewn therefor. (2) In the Province of Quebec, habeas corpus must be applied for in the judicial district in which the prisoner is incarcerated, and, in the absence from the Montreal district of the Judges of the Court of King's Bench during the term of sittings in Quebec, habeas corpus application cannot be heard in Quebec in respect of prisoners in the Montreal district, but must be brought before a Judge of the Superior Court. (3) Semble, an extradition commissioner has a discretion to admit to bail pending the extradition enquiry the person charged before him; but, if it is proved that the accused is a fugitive from the foreign country demanding him, that fact will have weight, with the other circumstances, against the application. (4) A Judge of the Court of King's Bench of the Province of Quebec has no jurisdiction while sitting at Quebec City to entertain an application for bail, under Cr. Code, sec. 602, of a prisoner in gaol at Montreal, which is in a separate judicial district. (Per Lacoste, C.J.) Re Gaynor and Greene (No. 5), 9 Can. Cr. Cas. 255.

[Followed in Ex p. Goldberry, 10 Can. Cr. Cas. 395.]

APPOINTMENT OF EXTRADITION COMMISSIONERS; LEGISLATIVE POWER; FEDERAL COURT.

(1) That part of sec. 5 of the Canadian Extradition Act which purports to empower the Federal Government to appoint extradition commissioners to act judicially in extradition matters is within the legislative powers of the Dominion Parliament. (2) Assuming that an Extradition Commissioner so appointed is a "Court," that Court is a Federal one and not an inferior tribunal under the supervision of a provincial Superior Court, and article 1003 C. P. (Que.), authorizing writs of prohibition is not applicable to it. (3) The Canadian Extradition Act of 1886 remains in force under the Imperial Order-in-Council of 1888, notwithstanding the addition to the statute in 1889 by the Parliament of Canada of a new section relating to fugitives charged with non-extraditable offences (52 Vict. (Can.) ch. 36). Re Gaynor and Greene (No. 6), 9 Can. Cr. Cas. 486.

SURRENDER ONLY AFTER THE DECISION OF THE "COURT" REMANDING; JURISDICTION OF JUDGE IN CHAMBERS.

It is not essential that a writ of habeas corpus under sec. 16 of the Extradition Act should be returnable in Court, and it is sufficient that the writ is returnable before a Judge sitting in Chambers, if the latter practice is authorized under the general law in force in the province. Re Gaynor and Greene (No. 8), 9 Can. Cr. Cas. 496.

[Referred to in Re Thaw, 22 Can. Cr. Cas. 8, 13 D.L.R. 715.]

EXTRADITION; BAIL AFTER COMMITMENT; JURISDICTION OF A SUPERIOR COURT.

A Judge of a Superior Court may grant bail after commitment by an Extradition Commissioner, but the power should not be exercised except under exceptional circumstances, such as the life of the fugitive being endangered by his close confinement. Re Gaynor and Greene (No. 9), (Que.), 9 Can. Cr. Cas. 542.

APPLICATION FOR PROHIBITION; VALIDITY OF APPOINTMENT OF EXTRADITION COMMISSIONER.

No appeal lies to the Supreme Court of Canada from the refusal by a Provincial Court of a writ of prohibition respecting extradition proceedings for a criminal offence, although the prohibition is sought upon the ground that the Extradition Commissioner was not appointed by competent authority. An application for a writ of prohibition to restrain an Extradition Commissioner from holding an enquiry upon a demand of extradition for larceny is a "proceeding arising out of a criminal charge" within the meaning of sec. 24 (g) of the Supreme Court Act. Re Gaynor and Greene (No. 7), 9 Can. Cr. Cas. 492, overruled; Re Gaynor and Greene (No. 10), 10 Can. Cr. Cas. 21.

PERJURY; FALSE AFFIDAVIT IN COURT PROCEEDING; CIRCUMSTANCES WHERE OATH NOT REQUIRED OR PERMITTED UNDER CANADIAN LAW.

The procedure of the Extradition Act, R.S.C. (1886), ch. 142, applies to offences

made extraditable by a treaty subsequent to the passing of the Act. Falsely swearing in the foreign country to an affidavit verifying a plea in a Court proceeding there, is extraditable as perjury, although it is not shewn that such an affidavit is either permitted or required under Canadian law. Re Collins (No. 1), 10 Can. Cr. Cas. 70.

SUFFICIENCY OF EVIDENCE FOR COMMITTAL; EXCLUSION OF QUESTION OF PROBABILITY OF CONVICTION.

It is not essential to the offence of perjury that the notary or other official should have uttered the words of obligation in administering the oath; such words used by the deponent and accompanied by a request that the affidavit already signed by the deponent should be certified as sworn, will be sufficient. The question of probability of conviction is not one for the consideration of an Extradition Commissioner if he finds sufficient evidence of guilt to justify a committal. Re Collins (No. 2), 10 Can. Cr. Cas. 73.

PERJURY; WARRANT OF COMMITTAL; SHEWING REQUISITES TO JURISDICTION; STATUTORY FORM; PROOF OF FOREIGN LAW.

(1) A warrant of committal for extradition following the statutory form is not objectionable for a failure to shew on its face that the statutory prerequisites of the Commissioner's jurisdiction have been complied with. (2) Where the Extradition Commissioner, after hearing evidence as to the foreign law, has decided that certain facts constitute the extradition crime in the demanding country, such finding will not be interfered with on habeas corpus unless the Court is of opinion that there was no reasonable evidence to support the finding. (3) Foreign law is to be proved in extradition matters by the evidence of experts and is to be dealt with as a question of fact. (4) In determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, and extradition is permitted if there exists the component elements of the imputed offence according to Canadian law. (5) Upon a demand of extradition for perjury it is not necessary to prove that the oath was administered with the formalities which would be essential under Canadian law; it is sufficient if there were in the foreign country such observances as in substance make the administration of an oath and as are there recognized as constituting a valid oath. Re Collins (No. 3), 10 Can. Cr. Cas. 80.

[Referred to in Re Kalke, 13 Can. Cr. Cas. 257; discussed in Re Moore, 16 Can. Cr. Cas. 266.]

FORM OF WARRANT OF COMMITMENT; ADDITIONAL CHARGE LAID BY SUPPLEMENTARY INFORMATION; INCLUDING VARIOUS EXTRADITION OFFENCES IN ONE COMMITMENT; IDENTITY OF THE EXTRADITION CRIME.

(1) A warrant of commitment for extradition is valid as to form if it follows the form provided by the Extradition Act (Can.), sec. 20, without reciting specifically that the commissioner finds upon the evidence a prima facie case. (2) A committal for extradition may properly include a new charge for which a supplementary information was laid pending the extradition enquiry, if the additional charge relates to the same transaction and a prima facie case in respect thereof is made out upon the evidence. (3) Semble, where an information for an extraditable offence is laid in Canada, the commissioner may commit for a higher or lower extraditable offence proved by the evidence and relating to the same subject-matter as that for which the information was laid. (4) Various cognate offences arising from the same transaction may be included in one commitment for extradition. (5) It is not essential to an extraditable offence that it should be described in identically the same terms in both the demanding and the surrendering country, but there must be the essential elements of a like extradition crime in each country. (6) Depositions taken in one of the United States upon proceedings there taken for the inter-state rendition of the accused there found to another State are, if properly authenticated, admissible in evidence in Canada upon a subsequent application for the extradition of the accused from Canada for the same offence. Re Gaynor and Greene (No. 11), 10 Can. Cr. Cas. 154.

[Referred to in Republic of France v. Pengrut, 1 D.L.R. 204, 19 Can. Cr. Cas. 179.]

EVIDENCE TO JUSTIFY; OFFENCE UNDER BOTH FOREIGN AND CANADIAN LAW.

(1) The duty of an extradition Judge in hearing an information for an extraditable offence is to order extradition if the evidence adduced, in the absence of contradiction, is such that a magistrate holding a preliminary enquiry in a similar case should commit for trial. (2) Semble, the extradition Judge must be satisfied that the offence disclosed in the formation is criminal both under Canadian law and under the law of the demanding country and that it is within the extradition treaty. Re Latimer, 10 Can. Cr. Cas. 244.

[Followed in R. v. Wm. Staggs (No. 2), 20 Can. Cr. Cas. 310.]

PRODUCTION OF FORGED INSTRUMENT.

Unless the forged instrument has been lost or destroyed, it must be produced to establish a prima facie case of forgery. A commitment for extradition on a charge of

forging admission tickets is improperly made where no genuine or forged ticket is in evidence on the extradition enquiry, and no facts are shewn to legally excuse the non-production. Re Harsha (No. 1), 10 Can. Cr. Cas. 433.

[Referred to in Re Royston, 15 Can. Cr. Cas. 101; approved in Re Johnston, 12 Can. Cr. Cas. 559; considered in Re Moore, 16 Can. Cr. Cas. 266.]

FOREIGN CONVICTION; CONSPIRACY TO DEFRAUD; INDICTMENT ALLEGING OVERT ACTS OF FRAUD; INSUFFICIENCY OF CONVICTION AS PROOF OF FRAUD.

Proof of an indictment verdict and sentence for conspiracy to defraud will not alone support a commitment in extradition for the fraud itself. United States v. Browne (No. 1), 11 Can. Cr. Cas. 161.

ADMISSIBILITY OF EX PARTE AFFIDAVITS AUTHENTICATED BY FOREIGN STATE; PROOF OF INDICTMENT INADMISSIBLE; CUSTOMS FRAUDS; CUSTOMS OFFICER AN "AGENT."

(1) Ex parte affidavits taken in the foreign state and duly attested and authenticated are admissible in evidence upon an extradition proceeding. (2) Such ex parte affidavits may be sworn and authenticated either before or after the laying of the extradition information. (3) A bill of indictment found in the foreign state against the accused is hearsay evidence only and is not admissible in proof of the prima facie case required to justify a remand for extradition. (4) A customs officer of the United States is an "agent" of the U. S. Government within the Extradition Convention of 1889 and may be extradited from Canada for "fraud by an agent made criminal by the laws of both countries" in respect of fraudulent appraisal of goods for customs duty. (5) Proof of a U. S. statute imposing fine or imprisonment as alternative punishments for frauds by customs officers is evidence of the criminality thereof although the statute does not expressly declare same to be crimes. United States v. Browne (No. 2), 11 Can. Cr. Cas. 167.

DISCHARGE FOR DEFECT IN EVIDENCE; FRESH PROCEEDINGS ON THE SAME CHARGE; RE-ARREST; EXTRADITION INFORMATION; GROUNDS OF BELIEF NOT DISCLOSED.

(1) Upon an extradition enquiry, if the accused is dismissed because of the insufficiency of the evidence, or is discharged on habeas corpus on that grounds after an order of committal made by the extradition Judge, fresh extradition proceedings may be begun de novo with respect to the same offence. (2) The want of evidence may be supplied upon a subsequent re-arrest for the same extraditable offence, and the doctrines of res judicata and former jeopardy do not apply. (3) If the accused is discharged upon the merits and upon the ground that what is charged against him does not constitute an indictable offence, such discharge is final. (4) An extradition information, upon which a warrant of arrest is issued, may be valid although it is made on information and belief only and does not disclose the grounds of belief. Re Harsha (No. 2), 11 Can. Cr. Cas. 62.

[Referred to in Republic of France v. Peugnet, 1 D.L.R. 205, 19 Can. Cr. Cas. 181.]

FALSIFYING WORKMEN'S TIME-ROLL.

Where the basis of a charge of extradition is an alleged falsification of a written document, either the document itself must be produced or a foundation must be laid for secondary evidence of its contents; and a commitment for extradition is invalid as not disclosing a prima facie case unless this has been done. [Re Harsha (No. 1) (1906), 10 Can. Cr. Cas. 433, approved.] Re Johnston, 12 Can. Cr. Cas. 559.

HABEAS CORPUS; ESCAPE AND RECAPTURE OF PRISONER; NEW WRIT OF HABEAS CORPUS AFTER PUNISHMENT FOR ESCAPE.

(1) If a prisoner who sues out a writ of habeas corpus to obtain his release, escapes before judgment on the application, the motion will be dismissed. (2) Where the prisoner had escaped pending habeas corpus proceedings for his release, but was recaptured and sentenced for the escape, he may on being returned into custody on the original charge be granted a second writ of habeas corpus. Re Bartels, 13 Can. Cr. Cas. 59.

[Referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

EMBEZZLEMENT; DEPOSITIONS TAKEN IN DEMANDING COUNTRY; PROOF OF FOREIGN LAW; BRITISH-RUSSIAN TREATY.

A committal for extradition on a charge of embezzlement is not justified on evidence only of errors or irregularities in bookkeeping in books kept by the accused for his employers, such evidence alone not being sufficient to establish a prima facie case of theft or conversion of money. Re Kalke, 13 Can. Cr. Cas. 253.

ARREST ON TELEGRAM; REARREST ON WARRANT AFTER RELEASE; INFORMATION FOR EXTRADITION WARRANT.

(1) An information in extradition may be based upon telegraphic information and belief thereof if the grounds of belief are sufficiently stated and satisfy the extradition Judge that a warrant of arrest should issue. (2) Where an arrest has been illegally made without warrant for an extraditable offence and the prisoner is then released, he may be immediately rearrested upon an extradition warrant of arrest upon the same charge. (3) It is no objection to an extradition warrant that two offences of a cognate character are stated therein. The King v. Rudland; Ex parte Kalke, 14 Can. Cr. Cas. 22.

BRIBERY OF MUNICIPAL OFFICER; STATUTORY OFFENCE UNDER LAWS OF CANADA AND OF DEMANDING STATE.

(1) Article 2 of the Extradition Convention of 1907 amending the Extradition Treaty of 1889 with the U.S.A. by adding the crime of bribery, is retroactive as of the date when the 1889 Treaty took effect. (2) The receiving of a sum of money from contractors with the municipal corporation by the officer of the corporation having the supervision of the contractors' work as a payment made to corruptly influence him in the performance of his official duties, constitutes the offence of bribery by sec. 161 of the Criminal Code of Canada and by the statutes of the State of Ohio, and extradition will be granted therefor in respect of an indictment in Ohio for such offence. Re Cannon, 14 Can. Cr. Cas. 186.

ABORTION; ABETTING OR PROCURING UNLAWFUL OPERATION BY PHYSICIAN.

In extradition proceedings for abortion alleged to have been committed by a physician at the instigation of the accused, it is necessary to produce evidence to prove both that the physician's operation was unnecessary and unlawful and that the accused procured or abetted such unlawful operation. Re McCready, 14 Can. Cr. Cas. 481.

DEPOSITIONS AT HEARING TO BE SIGNED BY JUDGE; AFFIDAVIT OF STENOGRAPHER VERIFYING; OMISSION OF SIGNATURE AND AFFIDAVIT A GROUND FOR DISCHARGE; PROCEEDINGS DE NOVO.

(1) A return filed to a writ of habeas corpus may be amended by leave of the Court or leave may be given to substitute a new return. (2) Deposition taken on the hearing of extradition proceedings must be signed by the extradition Judge in like manner as depositions before a justice are to be signed under Cr. Code, sec. 682. (3) If the depositions taken before the extradition Judge are taken in shorthand by a stenographer, the transcribed depositions must be signed by the Judge and must also be accompanied by the stenographer's affidavit that it is a true report of the evidence. (4) The signature of the depositions by the extradition Judge and the affidavit of the stenographer are pre-requisites under the Extradition Act, R.S.C. sec. 13, to the jurisdiction to commit the accused for extradition and where these requirements have not been fulfilled the prisoner must be discharged on habeas corpus. (5) The discharge of the prisoner for such cause will not be a bar to fresh extradition proceedings being taken against him for the same offence. Re Royston, 15 Can. Cr. Cas. 96.

"GRAND LARCENY"; DOCUMENTS REFERRED TO BUT NOT PRODUCED; AFFIDAVITS TO SHEW FACTS RATHER THAN INFERENCES.

(1) In extradition proceedings charging "grand larceny" committed in the United States and disclosing fraudulent appropriation by a trustee and agent, the Canadian Court may assume that "grand larceny" is a species of larceny within the extradition treaty. (2) Sec. 686 of the Criminal Code is substantially complied with in extradition proceedings where the commissioner at the close of the case for the prosecution calls upon counsel for the accused for his defence, whereupon the argument was proceeded with, without specifically asking the accused if he wished to call any witnesses. (3) Affidavits may be received in extradition proceedings under sec. 16 of the Extradition Act in the discretion of the commissioner, but where the oral evidence alone does not justify a committal, the prisoner will be discharged if the ex parte affidavits and depositions from the foreign state tending to shew the commission of the crime are not supplemented by the documentary proof which the circumstances demand and are defective in not disclosing the source of information as to the conduct of the accused after receiving the money in question which was relied upon to establish a fraudulent appropriation thereof. Re Moore, 16 Can. Cr. Cas. 264.

HABEAS CORPUS; REVIEW OF EVIDENCE.

(1) Upon an application for discharge on habeas corpus of a prisoner held under an extradition warrant, the Court may review the evidence and consider all the circumstances of the case as disclosed by the proceedings below, leading up to the committal order. (2) If it appears that the extradition proceedings are being improperly used by the private prosecutor to collect from the accused the moneys which are the subject of the criminal charge, that the false pretence charged is not satisfactorily proved and that the private prosecutor obtained the request for extradition by false representations to his Government, the Court, on habeas corpus, may review the finding of the extradition commissioner and discharge the prisoner. Re McTier, 17 Can. Cr. Cas. 80.

OFFENCES MADE CRIMINAL BY LAWS OF BOTH COUNTRIES; RETROACTIVITY OF THE EXTRADITION TREATY OF 1906 BETWEEN GREAT BRITAIN AND THE UNITED STATES.

(1) The extradition convention of 1907 amending the extradition treaty of 1889 between Great Britain and the United States by making extraditable "offences, if made criminal by the laws of both countries, against bankruptcy law" is retroactive as of the date when the extradition of 1889 came into force. (2) Extradition will

be ordered for an offence under the Federal Bankruptcy Act of the United States, sec. 29 (b) which enacts that "a person shall be punished by imprisonment for a period not to exceed two years, upon conviction of the offence of having knowingly and fraudulently, while a bankrupt, or after his discharge, concealed from his trustee any of the property belonging to his estate in bankruptcy," such enactment being similar in its terms to sec. 417 of the Canadian Criminal Code, sub-sec. 2, which is in effect a bankruptcy law. The King v. Stone (No. 1), 17 Can. Cr. Cas. 249.

MURDER; SHOOTING POLICE OFFICER; POLITICAL CRIME IN DEMANDING STATE.

(1) Extradition will be ordered to Russia on a charge of murder in shooting a police officer, if the circumstances are such as to make out a prima facie case of murder under Canadian law, although martial law had been proclaimed in the district and the offence would be deemed a political crime and would be tried in Russia by a special tribunal. (2) The fact that the crime would, in the demanding State, be called a political crime and be triable by a special tribunal, does not alone bring it within the exception of "crimes of a political character" contained in the Extradition Treaty with Russia. Re Fedorenko (No. 1), 17 Can. Cr. Cas. 268.

EXTRADITION; TREATY PROVIDING FOR REQUISITION BY DEMANDING COUNTRY; COMMITTAL FOR REQUISITION BEING MADE; DISCHARGE ON HABEAS CORPUS; RUSSIAN EXTRADITION TREATY OF 1886 (20 CAN. GAZETTE, 1918); EXTRADITION ACT, R.S.C. 1906, CH. 155.

(1) As the Extradition Treaty of 1886 with Russia expressly provides for a requisition by the demanding country for the extradition of an accused person, the prisoner committed for extradition without such requisition must be discharged. (2) The provisions of the Canadian Extradition Act are controlled by those of the particular treaty under which extradition is sought. Re Fedorenko (No. 2), 17 Can. Cr. Cas. 271.

[Reversed in [1911] A.C. 18 Can. Cr. Cas. 256.]

BANKRUPTCY LAW; DEFRAUDING CREDITORS; OFFENCES MADE CRIMINAL BY LAWS OF BOTH COUNTRIES.

(1) The extradition convention of 1907 amending the extradition treaty of 1889 between Great Britain and the United States by making extraditable "offences, if made criminal by the laws of both countries, against bankruptcy law" is retroactive as of the date when the extradition treaty of 1889 came into force. (2) Extradition will be ordered for an offence under the Federal Bankruptcy Act of the United States, sec. 29 (b), which enacts that "a person shall be punished by imprisonment for a period not to exceed two years, upon conviction of the offence of having knowingly and fraudulently, while a bankrupt, or after his discharge, concealed from his trustee any of the property belonging to his estate in bankruptcy," such enactment being similar in its terms to sec. 417 of the Canadian Criminal Code, sub-sec. 2, which is in effect a bankruptcy law. (3) It is not necessary that a bankruptcy law intituled as such should be in force in Canada to render the offence as charged extraditable, and if it appears that the elements of the offence charged are similar to those existing under the Criminal Code (in the present case, sec. 417) the offence will be extraditable under the convention of 1907. (4) Semble, the term "bankruptcy law" is used in the convention in a broad, comprehensive and international sense, so as to include both State and provincial systems of bankruptcy or insolvency law, as well as Federal. The King v. Stone (No. 2), 17 Can. Cr. Cas. 377.

[Applied in Re O'Neill, 19 Can. Cr. Cas. 411, 6 D.L.R. 646; followed in Re Weber, 19 Can. Cr. Cas. 515, 6 D.L.R. 805.]

REMAND BY EXTRADITION COMMISSIONER PENDING HEARING; INTERIM APPLICATION FOR HABEAS CORPUS.

(1) A prisoner held pending an extradition enquiry under the warrant of an extradition commissioner will not be released on habeas corpus on the ground that the arrest was made by the same peace officer who laid the charge. (2) The extradition Judge would have jurisdiction over the person of the accused when brought before him, even if the arrest were illegal. (3) Where a peace officer has no personal interest in a case and lays an information solely in discharge of his official duty, there is no objection to the warrant of arrest being executed by the same officer. Stone v. Vallee, 18 Can. Cr. Cas. 222.

TREATY WITH RUSSIA; ARREST WITHOUT FORMAL REQUISITION FROM FOREIGN STATE.

There is no inconsistency between the provisions of the Canadian Extradition Act and the provisions of the treaty with Russia, and treaty Article IX. does not involve that there can be no arrest of a fugitive for the purpose of extradition until there has been a formal requisition under Article VIII. Re Fedorenko (No. 3), Attorney-General for Canada v. Fedorenko, 18 Can. Cr. Cas. 256, reversing 17 Can. Cr. Cas. 271.

JUDICIAL NOTICE OF EXTRADITION TREATIES; EVIDENCE FOR EXTRADITION ORDER.

(1) Judicial notice is to be taken under sec. 8 of the Extradition Act, R.S.C. 1906, ch. 155 of extradition treaties and extradition Orders-in-Council published in the Can-

ada Gazette, the official paper of the Government of Canada, without production in evidence of a copy of the Gazette. (2) In determining whether the evidence upon a demand for extradition is sufficient for a commitment in extradition, the Judge or commissioner may order extradition if the evidence makes out a probable case of guilt by shewing circumstances which raise a presumption against the prisoner; but if, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced in answer, the Judge or commissioner is satisfied that the charge is not sustained and that if the trial were within this jurisdiction, the accused must be acquitted, an order for extradition should be refused. Republic of France v. Peugnet, 19 Can. Cr. Cas. 179, 1 D.L.R. 204. [See also sec. 1128 of the Criminal Code; Girvin v. The King (1911), 45 Can. S.C.R. 167, applied; 14 Halsbury's Laws of England, 412, approved.]

RIGHT OF APPEAL; DISCHARGE ON HABEAS CORPUS.

In the absence of Federal legislation permitting it, an appeal does not lie from an order discharging on habeas corpus a person from custody under a commitment for extradition. [Cox v. Hakes, 15 App. Cas. 506, and Rex v. Carroll, 14 Can. Cr. Cas. 338, 14 B.C.R. 116, followed; Barnardo v. Ford, [1892] A.C. 326, and Re Hall, 8 A.R. (Ont.) 135, distinguished.] Re Tidering, 19 Can. Cr. Cas. 365, 5 D.L.R. 138.

WARRANT ISSUED BY EXTRADITION COMMISSIONER; VALIDITY; MORE THAN ONE OFFENCE CHARGED; REVIEW ON HABEAS CORPUS; BANK OFFICER RECEIVING DEPOSITS WHEN BANK INSOLVENT.

(1) A warrant issued by an Extradition Commissioner is not open to the objection, on an application for a writ of habeas corpus, that he acted merely upon the complaint, without taking any evidence, where, in his reason for his judgment, he sets out the various steps taken by him, since, under the statute, all that is necessary is that as a result of such proceedings, he shall be of the opinion that the warrant should issue. (2) Under sec. 16 of the Extradition Act, R.S.C. 1906, ch. 155, authorizing the receiving in evidence in extradition proceedings of depositions or statements taken in a foreign state on oath, or copies of such depositions and statements and foreign statements thereof, if duly authenticated, an affidavit tending to establish before the Extradition Commissioner the crime charged against a person sought to be extradited does not vitiate the extradition proceedings because such affidavit was taken by questions and answers and then written out in narrative form before being sworn to. (3) It is no objection to a warrant of extradition that it contains more than one charge. (4) The fraudulent compilation and filing of bank returns, is an extraditable offence, under sub-sec. 1 of sec. 153 of the Bank Act, R.S.C. 1906, ch. 29, making any wilful, false, or deceptive statements in such documents indictable. (5) It is without the province of a Court to whom an application is made for writ of habeas corpus directing the discharge of a person extradited to a foreign country to review on such proceedings the decision of the extradition Commissioner if there is evidence justifying the issue of the warrant of extradition, the only duty of such Court in that regard being to decide if any such evidence exists. (6) It is no objection to a warrant for the extradition to a foreign state of a bank officer on a charge of embezzlement of money from the bank, who caused a note endorsed by him to be marked "paid" and to be surrendered upon a part payment of the amount due thereon charging the balance to the bank's interest and discount account, which act was undoubtedly embezzlement under the law of the state to which extradition was demanded, that by sub-sec. (b) of sec. 359 Crim. Code, 1906, such method of getting a note from a bank was theft and not embezzlement. (7) A warrant for the extradition to a foreign state of a bank officer for receiving deposits with knowledge of the insolvency of the bank may be sustained under sec. 405 Crim. Code 1906, providing that every one is guilty of an indictable offence, who, with intent to defraud, by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen or procures anything capable of being stolen to be delivered to any other person than himself, and under sec. 405a of the Code, sec. 6 and 7 and 8 Edw. VII. (Can.) ch. 18, making everyone guilty of an indictable offence who, in incurring any debt or liability, obtains credit under false pretences, or by means of any fraud, though that part of the foreign statute pertaining to the receipt of deposits with such knowledge was amended by striking out the words: "fraudulently and with intent to cheat and defraud any person." [Rex v. Stone (1911), 17 Can. Cr. Cas. 377, applied.] In re O'Neill, 19 Can. Cr. Cas. 410, 5 D.L.R. 646.

REVIEW OF REMAND BY COMMISSIONER: STATUTORY REQUIREMENTS; HABEAS CORPUS.

(1) On an application for a writ of habeas corpus for the discharge from custody of a person who was remanded by an extradition commissioner for extradition to France, the only question for examination is whether the extradition proceedings are in strict conformity with the require-

ments of the treaty of August 14th, 1876, between England and France, of the Imperial Extradition Act, 1870, and of the Canadian Extradition Act, R.S.C. 1906, ch. 155. (2) On an application for a writ of habeas corpus for discharge from custody of a person remanded by an extradition commissioner for extradition to a foreign country, the decision of the commissioner as to the sufficiency of the evidence, where is any evidence at all, as to the identity of the party remanded by him, cannot be reviewed. (3) On an application for a writ of habeas corpus for the discharge from custody of a prisoner remanded by an extradition commissioner for extradition to a foreign country the justice or the propriety of the order of the commissioner in that regard cannot be inquired into. [United States of America v. Gaynor and Green, 9 Can. Cr. Cas. 205; United States v. Gaynor (1905), A.C. 128, followed.] Re Darracq (alias Dutal), 19 Can. Cr. Cas. 483, 5 D.L.R. 771.

ILLEGAL ARREST; DISCHARGE FROM CUSTODY NOT A PREREQUISITE TO REARREST; BANKRUPTCY OFFENCE.

(1) Where the original arrest or imprisonment upon an extradition charge has been illegal as made without warrant upon a request by telegram, it is not necessary that the prisoner should be first discharged from the illegal custody in order to hold him under good process subsequently issued in a criminal matter. (2) Extradition will be ordered for an offence under the Federal Bankruptcy Act of the United States, sec. 29B, which enacts that "a person shall be punishable by imprisonment for a period not to exceed two years, upon conviction of the offence of having knowingly and fraudulently, while a bankrupt, or after his discharge, concealed from his trustee any of the property belonging to his estate in bankruptcy," such enactment being similar in its terms to sec. 417 of the Canadian Criminal Code, sub-sec. 2, which is in effect a bankruptcy law. [R. v. Stone (No. 2), 17 Can. Cr. Cas. 377, followed; R. v. Richards, 5 Q.B. 926, referred to; Hooper v. Lane, 6 H.L.C. 443, distinguished.] Re Webber et al., 19 Can. Cr. Cas. 515, 6 D.L.R. 805.

INTERNATIONAL; STRICT COMPLIANCE WITH TECHNICALITIES OF CRIMINAL PROCEDURE; BANKRUPTCY OFFENCE.

(1) Where two countries have enacted criminal legislation to prevent a certain crime, in respect of which extradition proceedings are instituted in manifest good faith by one of such countries, too much regard should not be paid by the other country in such proceedings to the ordinary technicalities of criminal procedure; and extradition may be ordered notwithstanding a discrepancy between the date of the alleged offence in the information and the date proved by the evidence. (2) The essence of the offence of fraudulent concealment of assets by a bankrupt under the law of the United States is the continuance of the concealment after adjudication of bankruptcy and the appointment of a trustee, whose title relates back to the date of the adjudication, and extradition will not be refused merely on the ground that the act of concealment is alleged to have taken place before the date of the adjudication. (3) The evidence to warrant a committal for extradition need not be such as to justify a conviction at the trial. A prima facie case only need be made. (4) The offence of fraudulent concealment of property by a bankrupt committed in the United States of America and for which extradition may be had from Canada is a continuing offence which may be begun before the date of the bankruptcy adjudication and continued to completion thereafter. United States v. Webber (No. 1), 20 Can. Cr. Cas. 1, 5 D.L.R. 863.

EVIDENCE; HABEAS CORPUS.

(1) A question as to the law of a foreign jurisdiction is one of fact and not of law, and the Court should therefore accept the opinion of an expert in the foreign law in preference to its own upon the construction of a statute of the foreign jurisdiction. (2) The function of a Judge upon the return of a writ of habeas corpus in the case of one who has been committed for extradition is not to sit in appeal from the extradition commissioner, but simply to decide whether he had jurisdiction to order the committal, and evidence offering reasonable grounds of suspicion against the accused will be sufficient for a refusal of his discharge. United States v. Webber (No. 2), 20 Can. Cr. Cas. 6, 5 D.L.R. 866.

INTERNATIONAL; REVIEW OF PROCEEDINGS; OMISSION TO READ STATUTORY STATEMENT; FOREIGN DEPOSITIONS.

(1) In an extradition proceeding under the Extradition Act, the omission of the extradition Judge to read to the accused the statement set forth in sub-sec. 2 of sec. 684, Cr. Code, 1906, is not fatal to the proceedings. (2) A foreign deposition for use in an extradition proceeding must purport to be certified as the original or a true copy thereof by a Judge, magistrate, or officer of the foreign state; and it is not admissible in the extradition proceeding when it appears that the certificate is not given by any such foreign officer competent to certify that the original deposition contains a true record of the evidence given by the deponent. [Extradition Act, R.S.C. 1906, ch. 155, sec. 17, referred to; Can. Cr. Code, R.S.C. 1906, ch. 146, sec. 684, referred to; see also United States v. Webber (No.

1), 5 D.L.R. 863; Re Webber, 6 D.L.R. 805, concerning criminal procedure requirements.] Re William Staggs (No. 1), 20 Can. Cr. Cas. 306, 7 D.L.R. 738.

PERSONS SUBJECT TO EXTRADITION; CRIME UNDER LAWS OF BOTH COUNTRIES.

Extradition will be ordered under the extradition treaties and conventions with the United States of America, only upon its being established that the extradition offence is a crime against the law of the demanding country, and if it had been committed in Canada would be a criminal offence there. [Re Latimer, 10 Can. Cr. Cas. 244, followed.] Re William Staggs (No. 2), 20 Can. Cr. Cas. 310, 8 D.L.R. 284.

WARRANT ON PRIMA FACIE CASE.

If the proofs tendered on an extradition hearing shew a prima facie case against the accused, a committal for extradition is justified. United States v. Wrenn, 21 Can. Cr. Cas. 119, 10 D.L.R. 452.

EXTRADITABLE OFFENCES: FRAUD; BANKER; INDICTMENT; DESCRIPTION OF OFFENCE.

Where the accused has been brought from a foreign country, under extradition proceedings, to answer an alleged extraditable crime, an indictment against him which does not shew an extraditable crime cannot be sustained until after the accused has been returned to or had the opportunity of returning to the foreign country from which he was extradited (Extradition Act, R.S.C. 1906, ch. 155, sec. 32). A variance in charging the offence of making a wilfully false statement in a bank return as fraudulently making such statement will not be permitted where it is necessary, in order to sustain the indictment under extradition laws, that the offense should be one of fraud, and the statute under which the prosecution is based does not make fraud an essential ingredient of the offence thereunder. The president of a bank, on extradition from the United States under a treaty (convention of July 12, 1889), permitting extradition for "fraud" by a banker, when made criminal by a statute, cannot be held under sec. 153 of the Bank Act, R.S.C. 1906, declaring penal the making of any "wilfully false or deceptive statement" in a bank return required by law to be made to the Minister of Finance of Canada, fraud not being an essential ingredient of such statutory offence. R. v. Nesbitt, 21 Can. Cr. Cas. 251, 11 D.L.R. 708.

IMMUNITY FROM PROSECUTION FOR DIFFERENT OFFENCE.

If an extradited prisoner intends to object that the indictment is for a different charge than that on which he was extradited, it is for him to prove the extradition warrant and so place on the record the fact of the variance, so that a court of criminal appeal may take cognizance of it on a case reserved. R. v. McNamara, 22 Can. Cr. Cas. 351, 16 D.L.R. 356.

[Applied in R. v. Buck, 27 Can. Cr. Cas. 427, 35 D.L.R. 55.]

THEFT; RESTITUTION OF MONEY TAKEN FROM PRISONER; IDENTITY.

Where there is no proof of the money found on the prisoner, when arrested, with the money which he is charged in extradition proceedings with having stolen, the extradition Judge should order the return to the prisoner of the money taken from him by the police at the time of arrest. United States v. Tounder, 23 Can. Cr. Cas. 76.

PROOF OF FOREIGN LAW; LARCENY.

An order for extradition to the United States on a charge of larceny of promissory notes is justified where the facts disclosed in the extradition proceedings make out a prima facie case of theft under Canadian law without more in proof that such facts constitute larceny under the foreign law then might be inferred from his indictment in the foreign state for the offence. [Re Murphy, 2 Can. Cr. Cas. 578, 23 A.R. 386; R. v. Watts, 5 Can. Cr. Cas. 246, 3 O.L.R. 368; Porter v. McManus, 25 N.B.R. 215, applied.] Re Deering, 24 Can. Cr. Cas. 133, 24 D.L.R. 818.

[Applied in New York v. Israelowitz, 26 Can. Cr. Cas. 323.]

DEPOSITIONS; REFUSAL OF WITNESS TO TESTIFY; FUGITIVE OFFENDERS ACT.

As a magistrate is expressly empowered by sec. 29 of the Fugitive Offenders Act, 44-45 Vict. Imp., ch. 69 [R.S.C. 1906, ch. 154, sec. 27], to take depositions for the purpose of that Act in the absence of the person accused, he must be held to have the like power to punish a witness for refusing to testify in proceedings so taken in Manitoba in the absence of accused for the purpose of bringing the latter back from England to Manitoba to answer the charge.

[Ex parte Lillywhite, 19 N.Z.R. 510, specially referred to.] R. v. Simpson; Re Whitta, 26 Can. Cr. Cas. 15, 28 D.L.R. 402.

BANKRUPTCY; FRAUDULENT CONCEALMENT OF ASSETS.

Extradition proceedings against the bankrupt for concealment of property in fraud of a bankruptcy trustee are not defeated by the fact that the concealment took place two months prior to the trustee's appointment, as the failure to disclose the prior concealment is in itself a concealment at the later date when the trusteeship became operative. [Re Webber (No. 1), 20 Can. Cr. Cas. 1, 5 D.L.R. 863, and Re Webber (No. 2), 20 Can. Cr. Cas. 6, 5 D.L.R. 866, specially referred to.] Re Goodman, 26 Can. Cr. Cas. 84, 28 D.L.R.

197. Affirmed in 28 Can. Cr. Cas. 254, 29 D.L.R. 725.

BANKRUPTCY OFFENCES; CONCEALING PROPERTY.

Actual concealment of property in anticipation of bankruptcy, and failure to disclose the whereabouts of himself or the property, after the bankruptcy, are sufficient grounds for granting the extradition of the bankrupt, when demanded by a foreign state, upon a charge of fraudulently concealing while bankrupt, from his trustee, property of his estate. It is not necessary that the evidence should be sufficient to justify a conviction. Re Goodman, 26 Can. Cr. Cas. 254, 29 D.L.R. 725, affirming 26 Can. Cr. Cas. 84, 28 D.L.R. 197.

PRELIMINARY HEARING; DISCHARGE; REARREST; FORGERY; FOREIGN LAW.

Under sec. 13 of the Extradition Act (R.S.C. 1906, ch. 155), the Extradition Judge is not to try the fugitive for the offence laid, but merely to conduct a preliminary enquiry in the manner laid down in Part XIV. of the Criminal Code, in order to establish a prima facie case; a discharge of the fugitive as the result of the extradition hearing is no bar to his subsequent arrest for extradition for the same offence. For the purpose of extradition for the offence of forgery, identity of the person charged may be sufficiently established by a comparison of the signature with a document signed by the accused, ex. gr., a bail bond signed before the Judge. [Re Smith, 3 Crim. App. R. 87, followed.] To justify an order for extradition on a charge of forgery, it must appear from the evidence that the act relied upon is forgery not only under the law of the demanding state but also that had it been committed in Canada the act would be punishable as forgery under Canadian law. [Re Staggs (No. 2), 20 Can. Cr. Cas. 310; Ex parte Seitz (No. 2), 3 Can. Cr. Cas. 127, followed.] United States v. Ford and Frary, 26 Can. Cr. Cas. 430, 29 D.L.R. 80.

INDICTMENT; COUNTS WITHIN EXTRADITION ORDER.

The onus lies upon the accused to show on a motion to quash an indictment that the offences therein charged are not offences for which he was extradited and that the indictment is consequently proceeded with in contravention of the Extradition Act; the record in the extradition proceedings may be looked at, as well as the warrant of surrender, to determine the precise offence for which extradition was ordered. [Ex parte Piot, 48 L.T.R. 120; R. v. Butler, 18 N.S. W.R. 146, and United States v. Greene and Gaynor, 146 Fed. Rep. 706.] R. v. Kelly (No. 1), 27 Can. Cr. Cas. 94, affirmed in 27 Can. Cr. Cas. 140, 282; 34 D.L.R. 311.

PROSECUTION FOR DIFFERENT OFFENCE; INDICTMENT; COUNTS; RESERVED CASE.

The inclusion in an indictment of an extradited person of a count charging an additional offence not included amongst those for which he was surrendered by the foreign country is a ground for setting aside the conviction upon the count which had been so added in contravention of the Extradition Act, R.S.C. 1906, ch. 155, sec. 32; but if no evidence was adduced which could be allocated to that count alone and which would not have been admissible on any of the other counts tried along with it, there is no prejudice to the accused as regards his conviction on the other counts to justify the Court of Appeal in interfering with the same on a case reserved. R. v. Kelly (No. 2), 27 Can. Cr. Cas. 140, affirming 27 Can. Cr. Cas. 94; affirmed in 27 Can. Cr. Cas. 282, 34 D.L.R. 311.

EXTRADITION; IMMUNITY FROM PROSECUTION FOR DIFFERENT OFFENCE.

It is usual to describe the offence in an extradition requisition, and in the order for surrender, in the generic words of the extradition treaty, but the trial Court hearing the charge in the demanding country after the surrender may look at the evidence upon which the surrender was ordered for the purpose of deciding the claim of the accused that the offence for which he is being tried is a different one from that on which he was surrendered and for which alone he was subject to trial under the treaty and under the Extradition Act, R.S.C. 1906, ch. 155 sec. 32. The onus of proof on such a claim is upon the accused. [R. v. McNamara, 22 Can. Cr. Cas. 351, 16 D.L.R. 356, 19 B.C.R. 175, and Ex parte Terras, 4 Ex. D. 63, applied; see also R. v. Kelly (No. 3), 27 Can. Cr. Cas. 282, 34 D.L.R. 311, 54 Can. S.C.R. 220.] R. v. Buck, 27 Can. Cr. Cas. 427, 35 D.L.R. 55, reversed in 29 Can. Cr. Cas. 45, 38 D.L.R. 548.

EVIDENCE; INDICTMENT IN FOREIGN STATE.

Where the demand for extradition is not founded on any conviction made in the foreign state, a certified copy of an indictment there found against the accused is not admissible in proof of the prima facie case required to justify a committal for extradition. [United States v. Browne (No. 2), 11 Can. Cr. Cas. 167; Re Browne, 6 A.R. (Ont.) 401; Re Harsha, 10 Can. Cr. Cas. (No. 1), 433, followed.] United States v. Jackson, 28 Can. Cr. Cas. 290.

EXTRADITABLE OFFENCE; LARCENY IN DEMANDING COUNTRY; FALSE PRETENCES IN CANADA.

If the crime for which extradition is asked is a crime against the law of both countries and is in substance to be found in the treaty, although under different

heads, effect is to be given to the claim for extradition, so where the offence is larceny under the foreign law but in Canada is only obtaining money or goods by false pretences, which is likewise an extraditable crime, a committal for extradition on a charge of stealing will stand. [Re Gross, 2 Can. Cr. Cas. 67, 25 A.R. (Ont.) 83, referred to.] Ex parte Thomas, 28 Can. Cr. Cas. 396, 38 D.L.R. 716.

TRIAL FOR OFFENCE ON WHICH EXTRADITION ORDERED.

An extradited person is to be tried for the offence only with which he is charged in the extradition proceedings and for which he was delivered up; this does not cover a distinct offence, though of a similar character, to which the evidence before the foreign extradition commissioner was not directed and which was not included in the charges on which extradition was demanded, although the foreign extradition warrant stated the offence in general terms which might include either of the transactions. Buck v. The King, 29 Can. Cr. Cas. 45, 38 D.L.R. 548, reversing 27 Can. Cr. Cas. 427, 35 D.L.R. 55.

PROOF OF FOREIGN LAW; EVIDENCE ACT; FOREIGN DEPOSITIONS.

The provincial laws of evidence are applicable to extradition proceedings by virtue of the Canada Evidence Act, R.S.C. 1906, c. 145, s. 35, where not inconsistent with federal laws; and in an extradition case in Manitoba the provincial statute R.S.M. 1913, c. 65, s. 32, enables the extradition tribunal to take judicial notice of the laws of any part of the United States of America. (Per CAMERON, J.A., PERDUE, J.A., concurring, in a divided court on affirming the decision of CURRAN, J.) On a demand for extradition the accused is not entitled to adduce evidence that the extradition proceedings are not being taken in good faith. (Per CAMERON, J.A., PERDUE, J.A., concurring, in a divided court.) [Re McTier, 17 Can. Cr. Cas. 80, disapproved; R. v. Delisle, 5 Can. Cr. Cas. 210, distinguished.] The omission of the extradition judge to himself sign the depositions, even if the signature by a duly sworn shorthand reporter is not alone sufficient, will not invalidate the order of committal for extradition. (Per CAMERON, J.A., PERDUE, J.A., concurring, in a divided court, on dismissing a motion to discharge.) Where evidence is taken in the demanding country and the depositions are received by the extradition judge under s. 16 of the Extradition Act, Can., the admissibility of the matter contained in the depositions depends on the foreign law of evidence which it is to be assumed was rightly administered; the extradition judge need not enter into an enquiry as to whether certain formalities had been taken which would have been a prerequisite in a proceeding taken under Canadian law. (Per CAMERON, J.A., PERDUE, J.A., concurring, in a divided court.) [Re Harsha, 10 Can. Cr. Cas. 430, and Re Zossenheim, 20 T.L.R. 121, considered.] Re Rosenberg, 29 Can. Cr. Cas. 309.

SEVERAL OFFENCES; FOREIGN INDICTMENT; FOREIGN LAW; IDENTITY OF ACCUSED; PROOF.

An extradition charge may include more than one offence. [Re O'Neill, 19 Can. Cr. Cas. 410, 5 D.L.R. 646, followed.] Where extradition is demanded to answer a foreign indictment for larceny, proof of which indictment is made before the extradition judge, and the facts disclose an offence which would be an extraditable crime under Canadian law, it may be inferred from the fact of the indictment in the demanding State that such facts constitute larceny under the State law. [Re Deering, 24 Can. Cr. Cas. 133, 24 D.L.R. 818, applied.] The identity of the accused in an extradition proceeding founded on a foreign indictment may be shewn by the production of a photograph of the accused verified in the foreign proceedings; the extradition judge may compare such photograph with the features of the prisoner before him and from such comparison conclude that the prisoner is the identical party who was indicted. State of New York v. Israelowitz, 29 Can. Cr. Cas. 323.

FUGITIVE OFFENDERS ACT; WARRANT OF ARREST; PARTICULARS.

A Canadian magistrate hearing a demand for extradition to another part of the British Empire under the Fugitive Offenders Act, 44-45 Vict., Imp., c. 69 (R.S.C. 1906, c. 154), may legally issue a provisional warrant for the apprehension of the fugitive on the sworn information of some credible person, if in his discretion he sees fit to do so; and this although the information was upon information and belief only; but if he considers it desirable or necessary he may require the evidence of other witnesses. [R. v. Harsha, 11 Can. Cr. Cas. 62, referred to.] An information under the Fugitive Offenders Act, Imp., should disclose the charge with sufficient certainty to enable the accused to know what he is charged with; but an information is not bad on a charge of obtaining money by false pretences in that two surnames are used conjointly without any Christian names, to indicate the defrauded party and without indicating whether or not the names represent a partnership or corporation or merely two individuals. R. v. Harrison, 29 Can. Cr. Cas. 420.

SURRENDER FOR CRIMES COVERED BY TREATY; VALIDITY OF WARRANT OF SURRENDER.

A prisoner having been surrendered to the Canadian Government for a crime covered

by the treaty between Great Britain and the United States, the court has no power to challenge the validity or regularity of the warrant of surrender, issued by authority of the Government of the United States nor has it any right to go behind the said warrant to inquire whether the proceedings upon which it is founded are or are not regular; although it may examine the proceedings abroad to see that a surrender has not been obtained on one charge, and then another or different crime laid and prosecuted in Canada. [See Annotation at end of this case.] R. v. Hall, 30 Can. Cr. Cas. 129, 42 D.L.R. 330. See also 39 D.L.R. 551.

WITHIN BRITISH EMPIRE; HABEAS CORPUS.

Extradition from Canada to another British possession will not be confirmed on habeas corpus unless a prima facie case of guilt is made out to the satisfaction of the court hearing the habeas corpus application; and this confirmation or its refusal should be made irrespective of the decision of the committing magistrate. [R. v. Deliste, 5 Can. Cr. Cas. 210, followed.] Re Harrison, 30 Can. Cr. Cas. 150, 41 D.L.R. 731.

FALSE PRETENCES.

Legality of arrest on telegram upon charge of. 2 Can. Cr. Cas. 43.

Stating nature of the false pretence in indictment. 2 Can. Cr. Cas. 347.

Distinction from "theft." 2 Can. Cr. Cas. 512.

False pretence by conduct. 2 Can. Cr. Cas. 512.

Note on false pretence by conduct. 5 Can. Cr. Cas. 50.

False pretences; Obtaining goods by cheque; Knowledge that cheque will not be paid. 11 Can. Cr. Cas. 281.

False pretences; Cr. Code, sec. 404. 28 Can. Cr. Cas. 68.

MUNICIPAL PROVISION OF WHEAT FOR THE POOR; OBTAINING DOUBLE ORDERS BY FRAUDULENT REPRESENTATIONS.

A municipality having provided some wheat for the poor, the defendant obtained an order for fifteen bushels, described as "three of golden drop, three of Fife, nine of milling wheat." Some days afterwards he went back and represented that this order had been accidentally destroyed, when another was given to him. He then struck out of the first order the words "three of golden drop, three of Fife," and presenting both orders, obtained in all twenty-four bushels. The indictment charged that defendant unlawfully, fraudulently, and knowingly, by false pretences did obtain an order from A., one of the municipality of B., requiring the delivery of certain wheat by and from one C., and by presenting the said order to C., did fraudulently, knowingly, and by false pretences, procure a certain quantity of wheat, to wit, nine bushels of wheat, from the said C., of the goods and chattels of the said municipality, with intent to defraud:—Held, sufficient in substance; not being uncertain or double, but in effect charging that defendant obtained the order, and by presenting it obtained the wheat by false pretences:—Held, also, that the evidence, set out below, was sufficient to sustain the conviction. Regina v. Campbell, 18 U.C.Q.B. 413.

OBTAINING GOODS ON FALSE PROMISE; OBTAINING MORE GOODS THAN WARRANTED.

The prisoner in company with one D., whose note he held, came to the store of H. & F., where an agreement was entered into between the parties, that D. would pay for all the goods furnished by H. & F. to the prisoner, on the amount being endorsed on his (D.'s) note, held by prisoner. The prisoner several times called at H. & F.'s with the note mentioned, obtained goods and the amount endorsed on the note. In July last he called without the note and induced H. & F. to let him have goods on his promising to bring the note down within a day or two to have the amount endorsed thereon. The day after prisoner saw D., and directed him not to pay anything more than the amounts endorsed on the note, and he never after presented the note to have the amount endorsed thereon. On postponement of judgment for decision of this Court on the case, held that the conviction must be annulled, as there was no false representation or pretence of an existing fact, but a mere promise of defendant, which he failed to perform. The Queen v. Bertles (1863), 13 U.C.C.P. 607.

OBTAINING GOODS ON WORTHLESS NOTE; SUFFICIENCY OF INDICTMENT.

Where a person tenders to another a promissory note of a third party in exchange for goods, though he says nothing, yet he should be taken to affirm that the note has not to his knowledge been paid, either wholly or to such an extent as almost to destroy its value:—Held, that on the evidence in this case, set out below, it was properly left to the jury to say whether the note for $100, which defendant gave to the prosecutor for the full amount, had or had not been paid except the value of half a barrel of flour; and that the conviction was warranted. Held, also, that the indictment was clearly sufficient, as it followed exactly the form sanctioned by 18 Vict. ch. 92. Regina v. Davis (1859), 18 U.C.Q.B. 180.

OBTAINING GOODS ON PROMISE TO PAY; REPRESENTATION OF FACT PAST OR PRESENT; SUFFICIENCY OF INFORMATION.

The defendant M. laid an information before the defendant J., a justice of the peace, charging plaintiff with obtaining from him a suit of clothes for one W. under the false pretence that she would pay for the same the following week. The information having been sworn to, J. issued a warrant under which plaintiff was arrested. In an action brought by plaintiff claiming damages for false arrest, the trial Judge gave judgment in favour of the defendant J. on the ground that the notice of action given under R.S. ch. 104 was defective, on account of failure to state the place at which the offence was committed:—Held, (1) The representation that plaintiff would pay for the clothes the following week was not the representation of a fact, either past or present, within the meaning of the Code. (Per Ritchie, J., McDonald, C.J., concurring.) As the information did not allege that plaintiff had been guilty of any crime, the arrest was illegal and made without any authority. Mott v. Mylne (1898), 35 C.L.J. 81, 31 N.S.R. 372.

FRAUDULENTLY OBTAINING MONEY FROM COURT; MISREPRESENTING IDENTITY OF COUNSEL; DISBARRED ATTORNEY.

Defendant was indicted for obtaining by false pretences from M. an order for the payment of $806.69, the property of P., with intent to defraud. It appeared that a suit was pending in Chancery, in which the defendant, who was a solicitor, but had been struck off the rolls, was acting for P. Defendant procured V., his clerk, to write a praecipe in the name of McG., who had acted as counsel on defendant's instructions, for $806.69 of the moneys standing to the credit of the cause, and to sign McG's name to it. V. left it with M., the accountant in Chancery, who prepared a cheque payable to P. or order. Defendant then got one H., a solicitor, to get the cheque from the accountant and sign McG.'s name to the receipt, on which H. handed the cheque to defendant, who got P. to endorse it, and paid P. $400, keeping the rest for costs:—Held, that the defendant was rightly convicted, for he obtained the cheque from the accountant by fraud and forgery, and with intent to defraud him; and he was not the less guilty because P. was entitled to the money, and there was no sufficient proof of intent to defraud P. Regina v. Robert W. Parkinson, 41 U.C.Q.B. 545.

CONSPIRACY TO DEFRAUD INSURANCE COMPANY.

C., a policyholder of a fire insurance company, conspired with H., their local agent, to defraud the company. C. handed in to H., for transmission to the company, an unfounded claim for pretended losses by fire, supported by his (C.'s) statutory declaration, the whole being false to the knowledge of H. Upon this, C. obtained the money through H. from W. & Co., the general agents of the company:—Held, (1) The knowledge of their agent, H., of the falsity of the pretence could not be imputed as the knowledge of W. & Co., or of the company, so as to affect the criminality of C. (2) The fact that C. and H. might have been indicted for conspiracy to defraud was immaterial. Regina v. Clark (1892), 2 B. C.R. 191.

CONTRACT PROCURED BY FALSE PRETENCES; VALUABLE SECURITY; NOTE BEFORE DELIVERY.

The defendant, by untrue representations, made with knowledge that they were untrue, induced the prosecutor to sign a contract to pay $240 for seed wheat. The defendant also represented that he was the agent of H., whose name appeared in the contract. H. afterwards called upon the prosecutor and procured him to sign and deliver to him a promissory note in his, H.'s, favour for the $240. The contract did not provide for the giving of a note, and when the representations were made the giving of a note was not mentioned. The prosecutor, however, swore that he gave the note because he had entered into the contract. The defendant was indicted for that he, by false pretences, fraudulently induced the prosecutor to write his name upon a paper so that it might be afterwards dealt with as a valuable security; and upon a second count, for, by false pretences, procuring the prosecutor to deliver to H. a certain valuable security:—Held, upon a case reserved, that the charge of false pretences can be sustained as well where the money is obtained or the note procured to be given through the medium of a contract as when obtained or procured without a contract; and the fact that the prosecutor gave a note instead of the money, by agreement with H., did not relieve the prisoner from the consequences of his fraud; the giving of the note was the direct result of the fraud by which the contract had been procured, and the defendant was properly convicted on the first count as being guilty of an offence under R.S.C. ch. 164, sec. 78; but that the note before it was delivered to H. was not a valuable security, but only a paper upon which the prosecutor had written his name so that it might be afterwards used and dealt with as a valuable security; and the conviction of the defendant upon the second count could not stand. [Rex v. Danger, Dears. & B.C.C. 307, followed.] Regina v. Rymal, 17 O.R. 227.

ELEMENTS OF THE OFFENCE; ACTING ON THE FALSE ASSERTION; OVERVALUATION.

In order to constitute the offence of receiving any chattel by false pretence, it

must be shewn that the false assertion alleged or complained of, is that by which complainant has been induced to part with his property. The overvaluation of an immovable property given in payment for the chattel obtained by the accused does not constitute a false pretence. R. v. Durocher, 12 Rev. Leg. 697, Que. (1882).

EVIDENCE OF SIMILAR FRAUDS; ADMISSIBILITY.

The defendant was indicted in the first count of the indictment for obtaining from one H. a promissory note with intent to defraud, and in the second count with inducing H. to make the said note with like intent. The evidence shewed that on May 4th, 1887, the defendant's agent called on H. and obtained from him an order addressed to defendant to deliver to H. at R. station, thirty bushels of Blue Mountain improved Seneca fall wheat, which H. was to put on shares, and to pay defendant $240 when delivered, and to equally divide the produce thereof with the holder of the order, after deducting said amount. On 23rd May defendant called, produced the order, and by false and fraudulent representations as to the quality of the wheat, and his having full control of it, its growth and yielding qualities, and that a note defendant requested him to sign was not negotiable, induced H. to sign the note. Evidence was received, under objection, of similar frauds on others, shewing that defendant was at the time engaged in practicing a series of systematic frauds on the community. The defendant was found guilty and convicted:—Held, on a case reserved, that the conviction should be affirmed on the second count, as the evidence shewed that the note was signed by H. not merely to secure the carrying out of the contract contained in the order, but on the faith of the representations made; and it was immaterial that a note was taken when the order called for cash, and, also, that the evidence objected to was properly receivable. Regina v. Hope (1889), 17 O.R. 463.

OBTAINING MONEY UNDER.

The prisoner represented to the prosecutor that a lot of land on which he wished to borrow money had a brick house upon it, and thus procured a loan, when in fact the land was vacant:—Held, that he was properly convicted of obtaining the money under false pretences. Regina v. Huppel (1861), 21 U.C.Q.B. 281.

RECEIVING MONEY TO MAKE CHANGE.

G., the prisoner, and another, were in a boat and they agreed to take M., the prosecutor, to meet a steamer, G. saying the charge would be 75 cents at the steamer. The prosecutor, according to his own account, took out a $2 bill at the steamer, saying he would get it changed. Prisoner said, "I'll change it," upon which the prosecutor handed it to him, and he shoved off with it. Other witnesses represented the prisoner's statement to be that he had change. The prosecutor did not say what induced him to part with the money:—Held, that a conviction could not be sustained. Regina v. Gemmell (1867), 26 U.C.Q.B. 312.

[See Regina v. Campbell, 18 U.C.Q.B. 413.]

WHAT IS "VALUABLE SECURITY."

An indictment for obtaining from A. $1,200 by false pretences, is not supported by proof of obtaining A.'s promissory note for that sum, which A. afterwards paid before maturity. The term "valuable security" used in Consol. Stat. Canada, 1859, ch. 92, sec. 72, means a valuable security to the person who parts with it on the strength of the false pretence; and the inducing a person to execute a mortgage on his property is therefore not obtaining from him a valuable security within the Act. R. v. Brady, 26 U.C.Q.B. 13.

[But see sec. 406, Cr. Code, 1906, and R. v. Burke, 24 O.R. 64.]

OBTAINING GOODS BY; CONTINUING PRETENCE.

(1) To prove a charge of obtaining goods by false pretences where there is a lapse of time between the making of the pretence and the delivery of the goods, there must be a direct connection between them constituting the former a continuing pretence up to the time of delivery. (2) The word "owner" following the signature of the accused in a letter written by him inviting negotiations for the charter of a vessel in his possession and managed by him, does not in itself constitute a representation by the accused that he is the "registered owner." R. v. Harty, 2 Can. Cr. Cas. 103.

INDICTMENT ON NEW CHARGE FOUNDED ON DEPOSITIONS BEFORE MAGISTRATE.

(1) An indictment for obtaining money under the false pretence that the prisoner had in his warehouse certain produce belonging to the person from whom the money was obtained will not be quashed under sec. 641 of the Criminal Code, although the offence for which the accused was committed for trial was that of stealing the produce mentioned, if the facts disclosed on the depositions taken before the magistrate were sufficient to found a charge of false pretences. (2) Where the false pretence was erroneously laid in the indictment as being that there was in store "a large quantity of beans, to wit, 2,680 bushels of beans," instead of that there were in store "2,680 bushels of beans," as appeared from the depositions taken on the preliminary enquiry, the trial Judge may allow an amendment of the indictment to conform with the proof. (3) Although upon the indictment in its original form the charge would be

merely upon a false pretence that there was in store "a large quantity of beans," and the number of bushels would not be required to be proved, the variance by reason of the amendment is not such as would mislead or prejudice the accused in his defence. R. v. Patterson, 2 Can. Cr. Cas. 339.

PRETENCE BY CONDUCT; DEBTOR RECEIVING RENT AFTER INSOLVENCY PROCEEDINGS.

(1) A charge of obtaining money under false pretences may be supported by shewing a false pretence by the conduct and acts of the accused, and such pretence need not be in words or writing. (2) A debtor who has made a judicial abandonment for the benefit of his creditors whereby his property becomes vested in another, and who, knowing that he no longer had any right to receive the rent, presents himself afterwards as landlord to a tenant of the property and receives the rent as he had formerly been accustomed to do, is guilty of a false pretence by his acts and conduct. (3) The question whether the facts disclosed in a case constitute the crime of obtaining money by conduct amounting to false pretences is not a question of law, but an issue of fact within the province of a jury, and cannot be made the subject of a reserved case. R. v. Létang, 2 Can. Cr. Cas. 505.

[Referred to in R. v. Brindamour, 11 Can. Cr. Cas. 322.]

OBTAINING ONLY A CREDIT IN ACCOUNT; ATTEMPT.

On an indictment for the offence of having obtained money by false pretences, the defendants cannot be convicted of the full offence when it is proved that by the discount of their promissory note they had only obtained a credit in account, such credit in account being a thing not capable of being stolen, but they might, if the evidence should establish an attempt to obtain the money, be convicted of such attempt. R. v. Boyd, 4 Can. Cr. Cas. 219.

[Referred to in R. v. Cohen, 19 Can. Cr. Cas. 437, 5 D.L.R. 437.]

FALSE PRETENCE BY CONDUCT.

A person who is present when a false representation is made by another person, acting in conjunction with him, and who knows it to be false, and gets part of a sum of money obtained by such false pretence, is guilty of obtaining such sum of money by false pretences. The Queen v. Cadden, 5 Can. Cr. Cas. 45.

VALUABLE SECURITY; LIEN NOTE.

A lien note is a "valuable security" within the meaning of sec. 360 of the Criminal Code. The King v. Wagner, 6 Can. Cr. Cas. 113.

OTHER SIMILAR ACTS AS EVIDENCE.

Upon a charge of obtaining goods under false pretences, evidence of other similar acts committed by the accused is not admissible in corroboration of the fact that he committed the act charged, but upon due proof of the act charged such evidence may be given in proof of criminal intent or of guilty knowledge. The King v. Komiensky (No. 2), 7 Can. Cr. Cas. 27.

OFFENCE OF OBTAINING GOODS BY; REPRESENTATION OF MATTER OF FACT PAST OR PRESENT; PROMISE OR PROFESSION OF INTENTION NOT INCLUDED; POSSESSION WITHOUT RIGHT OF PROPERTY.

(1) False representations amounting to mere promises or professions of intention, though they induce the defrauded party to part with his property are not false pretences under sec. 358 of the Criminal Code, as they are not representations of a matter of fact either present or past. (2) Where a person is induced by a false representation to part with the possession of goods, but does not part with his right of property therein (ex. gr. in a contract of hire of a chattel), there can be no conviction for obtaining the goods under false pretences. The King v. Nowe, 8 Can. Cr. Cas. 441.

BETTING; DEPOSIT OF POST-DATED CHEQUES WITH STAKEHOLDER; DISHONOUR OF LOSER'S CHEQUE; NO ACCOUNT WITH BANK; OBTAINING EXECUTION OF WINNER'S CHEQUE BY FALSE PRETENCES.

(1) Where two parties enter into a voidable betting or gaming contract, each putting up his own cheque post-dated the day on which the result of the bet would be ascertained, the fact that the loser's cheque was dishonoured because he had no account at the bank will not support a charge that he obtained the execution of the winner's cheque delivered to the stakeholder for a like amount by false pretences with intent to defraud. (2) The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof and is not, in itself, a false representation of a fact past or present. (3) Intent to defraud could not be found because the complainant was legally entitled to withdraw from the voidable contract even after the event upon which the bet was placed. The King v. Richard, 11 Can. Cr. Cas. 279.

ATTEMPT TO OBTAIN MONEY BY FALSE PRETENCES; KNOWLEDGE BY VENDEE OF ATTEMPTED DECEPTION; NO CONVICTION FOR OBTAINING MONEY BY FALSE PRETENCES.

(1) A storekeeper who advertises to sell a drug preparation under the registered trade mark name by which it is commonly known with the intention of passing off to persons calling for the advertised goods, his own similar preparation which he had labelled so as not to infringe the trade mark, may be convicted of an attempt to obtain money by false pretences on proof

that he took the advertised price and delivered his own preparation in carrying out the fraudulent intent, although a conviction for obtaining money by false pretences could not be had as the purchasers in the particular case being conversant with the drug trade knew they were not getting the trade mark goods and were not deceived. (2) Where the purchase is made and the money parted with from a desire to secure the conviction of the seller there is no obtaining by false pretences, but the seller may yet be liable for the attempt. (3) Semble, it is not necessary for the prosecution to shew that the commodity passed off is inferior in quality to the trade mark article, or that it is less in quantity; and the accused may be convicted, although it appears that the ingredients are nearly identical. The King v. Lyons (No. 1), 16 Can. Cr. Cas. 152.

FAITH IN THE FALSE REPRESENTATION; ELEMENTS OF FALSE PRETENCES.

To make out a charge of obtaining money by false pretences it is not sufficient to prove that the false representation was made, and that the person making it got money from the person to whom he made it, but it also must be shewn that it was upon the strength of the representation thus made that the person wronged was induced to part with his money. Re William Staggs (No. 2), 20 Can. Cr. Cas. 310, 8 D.L.R. 284.

CRIMINAL LIABILITY OF COMPANY'S OFFICERS; SECURING CREDIT BY FALSE REPRESENTATION IN A REPORT.

(1) The president of a company is criminally liable for obtaining credit by false pretences, where goods were secured on credit by the company upon false representations contained in a report made by him for the benefit of the company, where he was the largest shareholder in the company, was benefited by the credit obtained and become thereby indebted himself as a shareholder. (2) An officer of a company is criminally liable under art. 69 of the Crim. Code, providing, among other things, that everyone is a party to and guilty of an offence who does an act for the purpose of aiding any person to commit the offence, where on the strength of a false representation in a report made by him with intent to perpetrate the offence of obtaining credit by false pretences, goods were obtained on credit for the company. The King v. Amos Campbell, 19 Can. Cr. Cas. 407, 5 D.L.R. 370.

PURCHASE OF GOODS; CHEQUE IN PAYMENT DISHONOURED.

Where goods are obtained on the faith of the buyer's cheque given in payment therefor, a charge of false pretence of an existing or present fact, as distinguished from a future event, is sustainable, although there may have been funds in the bank to the credit of the drawer at the precise time of delivery of the cheque or of the receipt of the goods, if it be shewn that the drawer issued other cheques at about the same time, the payment of which had been planned to so reduce the fund that the cheque in question would be dishonoured and that the drawer had no credit arrangements with the bank for an overdraft. [See Annotation on False pretence by giving bank cheque, 11 Can. Cr. Cas. 281.] A charge of obtaining goods by false pretences through the giving in payment by his agent of a worthless cheque against the principal's account will lie against the principal if it be shewn that the latter deliberately planned that the cheque should not be paid for lack of funds at his credit in the bank and had resold the goods and applied the proceeds to his own use, and this whether or not the agent was aware of the fraud. [R. v. Garrett, 6 Cox C.C. 260; Adams v. People, 1 N.Y. 173, referred to.] R. v. Garten, 22 Can. Cr. Cas. 21, 13 D.L.R. 642.

FRAUDULENT CONTRACT; STOCK SUBSCRIPTION.

A charge that the accused through false pretences induced the complainant to subscribe for shares and thereby obtained a promissory note and cash in payment therefor is within Code, sec. 405 as charging that the security was obtained through the pretence of a contract fraudulent in fact. R. v. Daigle, 23 Can. Cr. Cas. 92, 18 D.L.R. 56.

PRETENCE WITHOUT EXPRESS WORDS.

False pretences may be founded on the false idea conveyed fraudulently by the accused; it is not requisite that the false pretence should be made in express words. [R. v. Cooper, 13 Cox C.C. 617, 46 L.J.M.C. 219, and Edgington v. Fitzmaurice, 29 Ch. D. 459, referred to.] R. v. Holderman, 23 Can. Cr. Cas. 369, 19 D.L.R. 748.

INDUCING EXECUTION OF VALUABLE SECURITY.

A cheque on a bank is a "valuable security" within the statutory definition of that term under Cr. Code, sec. 2 (40), although not covering the entire fund against which it is drawn, as regards the offence under Cr. Code, sec. 406, of inducing the execution of a valuable security by fraud. [R. v. Wagner, 6 Can. Cr. Cas. 113; R. v. Hope, 17 Ont. R. 463; R. v. Rymal, 17 Ont. R. 227, referred to.] R. v. Prentice, 23 Can. Cr. Cas. 436, 20 D.L.R. 791.

OBTAINING CREDIT; FALSE STATEMENT BY DIRECTOR.

The "prospectus, statement or account," the fraudulent issue of which by a director is made indictable under Cr. Code, sec. 414, where done, inter alia, with intent to induce any person to advance any money to

the company, does not include a statement made to a bank of his private affairs by a director offered by the company as its surety on obtaining a line of credit for the company, where the statement did not concern the financial standing or affairs of the company itself; but if the defendant obtained a credit for himself on his guaranty, although the money was actually paid to the company and he benefited by it, a charge may be laid under Cr. Code, sec. 405A, for obtaining such credit under false pretences, and, semble, that since the enactment of Code, sec. 407A (Code Amendment of 1913), it is an indictable offence for a person knowingly to make any false statement in writing, with intent that it shall be relied upon, respecting his financial condition for the purpose of procuring a loan or credit for a company in which he is interested. [R. v. Campbell, 19 Can. Cr. Cas. 407, 5 D.L.R. 370, and R. v. Boyd, 4 Can. Cr. Cas. 219, considered.] R. v. Cohen, 24 Can. Cr. Cas. 238, 25 D.L.R. 510.

OBTAINING OWN OVERDUE NOTES.

A person may be convicted of obtaining the return to himself of his own promissory notes from the payee if such return is obtained under false pretences, and it is not a ground of defence that the notes were overdue when so obtained. Abeles v. The King, 24 Can. Cr. Cas. 308.

ELEMENTS OF OFFENCE.

The offence of obtaining money by false pretences is complete if at the time they were made the accused knew them to be false and the money was obtained through such pretence, and this notwithstanding that the party defrauded was in the same transaction incurring an indebtedness to the accused for an amount in excess of that fraudulently obtained and that the accused intended to refund the amount out of the larger indebtedness when it became payable. R. v. Martel, 27 Can. Cr. Cas. 316.

FRAUD OF EMPLOYEE; TENDERING UNDER TRADE NAME; OBTAINING REJECTION OF LOWER TENDER.

Where an employee makes representations to his employer to the effect that a tender for the supply of goods to the latter is an actual bona fide one from an independent tenderer, whereas it was in fact, although unknown to the employer, the employee's own tender, submitted in a different trade name through such employee's nominee, the employee may properly be convicted of obtaining by false pretences the additional money which, by means of such tender and his employer's reliance on the same as independently made, he obtained for the goods supplied over and above the amount for which the employer would have obtained them by acceptance of a competitive tender which the employee fraudulently caused to be rejected. [R. v. Cooper, 2 Q.B.D. 610, 46 L.J.M.C. 219, considered; and see annotation on "False Pretences" at end of this case.] R. v. Leverton, 28 Can. Cr. Cas. 61, 34 D.L.R. 514.

DISTINGUISHED FROM THEFT.

The offence is false pretences and not theft when goods are obtained from the owner on a worthless cheque fraudulently drawn by the purchaser in a fictitious name, as the owner consented to the property and possession going to the purchaser whom he knew under no other name than the fictitious one. R. v. Illsley (No. 1), 29 Can. Cr. Cas. 105. See also 29 Can. Cr. Cas. 107, 41 D.L.R. 130.

THROUGH MEDIUM OF CONTRACT; CR. CODE, SEC. 405.

A person who obtains a quotation of a price for a motor-car from the owner thereof and without making any payment or obtaining any legal right or title thereto, offers it for sale as his own while still held in the possession of the true owner, and as a part of the pretended sale transaction obtains money on the faith of his ability to make delivery and give a title to the car, is properly convicted of obtaining money by false pretences through the medium of a contract (Cr. Code, s. 405). R. v. Provost, 29 Can. Cr. Cas. 247.

EVIDENCE; GUARANTY.

A mere promise as to the future conduct of the promisor whereby he obtains money is not a false pretence with Cr. Code, sec. 404. R. v. Gurofsky, 31 Can. Cr. Cas. 59.

FALSE TRADE DESCRIPTION.

JURISDICTION OF MAGISTRATE.

(1) Magistrates have no summary jurisdiction to adjudicate upon a charge under Crim. Code, sec. 448, of selling goods to which a false trade description was applied. (2) Proceedings upon such a charge against a corporation should be instituted by indictment under Crim. Code, secs. 638-639, and not by a preliminary inquiry before a magistrate. R. v. T. Eaton Company, Limited (No. 1), 2 Can. Cr. Cas. 252.

ADVERTISEMENT OF SALE OF GOODS; ORAL EVIDENCE TO CONNECT.

The use of the words "quadruple plate" in an advertisement of sale of silver-plated ware may constitute a false trade description, the application of which is an offence under Crim. Code, sec. 446. It is not necessary that a false trade description under Crim. Code, sec. 446, should be physically connected with the goods or that it should accompany the same, and oral evidence is admissible to connect the description of the goods in the advertisement with the goods afterwards sold. R. v. T. Eaton Company (No. 2), 3 Can. Cr. Cas. 421.

FEES.

See Costs.

FELONY.

Abolition of distinction between felony and misdemeanor. 1 Can. Cr. Cas. 169.

FINE.

See Summary conviction; Summary trial; Imprisonment; Costs; Penalty.

FIRE LAWS.

See also Municipal by-law.

SPREADING FIRE; PRAIRIE FIRE ORDINANCE. (1) The Prairie Fire Ordinance (N.W.T.) in so far as it imposes a penalty on any one causing a fire to run at large on the lands of another, is binding upon a railway company operating under Federal law in respect of fires caused by sparks from locomotives spreading to lands adjoining the railway lands, if no additional duties to those which railway companies are under at common law are imposed on the company. (2) A local legislature has jurisdiction to enact a law for the summary conviction and fine of a railway company for its default in not providing reasonably proper appliances on locomotives for lessening the escape of sparks therefrom, in case a loss has been thereby occasioned, although the railway in question is subject to the Dominion Railway Act; such legislation is provincial as being of a merely local and private nature and as relating to property and civil rights. (3) The local legislature may provide rules of evidence to govern in such cases and may shift the burden of proof upon the railway company of shewing itself within any exception, proviso or condition under which the legislature has declared that it shall not be liable to the penalty. (4) Upon an application to quash a summary conviction made by a justice of the peace, the justice's finding of fact should be treated in the same manner as the verdict of a jury and not interfered with unless it clearly appears that there was no evidence to justify the finding. The King v. Canadian Pacific Railway Company, 9 Can. Cr. Cas. 328. [Overruled in 13 Can. Cr. Cas. 160.]

SPREADING FIRE; PRAIRIE FIRE ORDINANCE. (1) The Prairie Fire Ordinance (N.W.T.) in so far as it imposes a penalty on any one causing a fire to run at large on the lands of another is not binding upon a railway company operating under Federal law in respect of fires caused by sparks from locomotives spreading to lands adjoining the railway lands. (2) A local legislature has no jurisdiction to enact a law for the summary conviction and fine of a railway company operating under the Dominion Railway Act for not providing reasonably proper appliances on locomotives for lessening the escape of sparks therefrom. Canadian Pacific Railway Co. v. The King, 13 Can. Cr. Cas. 160, overruling The King v. C. P. R. (1905), 9 Can. Cr. Cas. 328.

FISHERIES.

Regulations under the Fisheries Act (Canada), Order-in-Council of 12th April, 1902. 5 Can. Cr. Cas. 558.

APPEAL TO SUPREME COURT UNDER THE ACT. An appeal lies to the Supreme Court from a conviction for penalties under the Dominion Fisheries Act, 1868, ch. 60. The Queen v. Todd, 10 N.S.R. 62.

CONVICTION UNDER FISHERIES ACT; FAILURE TO SET FORTH IMPRISONMENT; JURISDICTION TO AWARD IMPRISONMENT. Application on a writ of habeas corpus. In November last the applicant was convicted of an infraction of the Fisheries Act before the agent of the Marine and Fisheries Department. The applicant paid the costs of prosecution and was allowed to go at large till a few days before this application, when he was arrested on a warrant issued in pursuance of the above conviction. The warrant recited the fact that the applicant had been convicted of an infraction of the Fisheries Act, but did not state that the fishery agent had adjudicated on the matter of imprisonment:—Held, that as the warrant did not set forth that the fishery agent had adjudicated on the matter of imprisonment, it did not shew jurisdiction to direct imprisonment and was therefore void. Applicant discharged from custody. Ex parte Taylor (1898), 34 C.L.J. 176.

FISHERY REGULATIONS; POSSESSION OF SMALL STURGEON. Upon a charge under the fishery regulations of having in possession sturgeon under the permitted size, the doctrine of mens rea applies; and a conviction should not be made against the master in respect of the unauthorized possession by the servant, if there is no knowledge or connivance on the master's part in regard thereto. R. v. Vachon, 3 Can. Cr. Cas. 558.

[Followed in R. v. A. & N., 16 Can. Cr. Cas. 382.]

FISHING IN CANADA BY FOREIGNERS; "TEMPORARILY DOMICILED." An appeal lies under Code, sec. 879 from a conviction made under the Fisheries Act, R.S.C. ch. 95, sec. 18, notwithstanding the special appeal provided by that Act. The special appeal, which under the Fisheries Act may be made to the Minister of Marine and Fisheries, may be taken after the disposal of an appeal to a County Court. A

foreigner coming to Canada for successive seasons on fishing trips and occupying for a few weeks only in each year a building he had erected for use as a fishing camp is not a person "temporarily domiciled" in Canada under the Fisheries Act, and the Order-in-Council passed in pursuance thereof. The King v. Townsend; the King v. Murtagh, 5 Can. Cr. Cas. 143.

[Referred to in R. v. Townsend, 35 N.S.R. 403.]

PROVINCIAL FORESHORE LIMITS; DOMINION LICENSE FOR EXCLUSIVE RIGHTS INVALID; FEDERAL REGULATION OF FISHERIES; "TRAP NET" DEFINED.

(1) A fishing net having the usual accessories of a trap net, except that it has not a twine floor or bottom, is none the less a "trap net" within the meaning of the Fisheries Act (Can.). (2) The Dominion Government has no authority to demand a license fee from fishermen for the exclusive right to set nets or traps within certain limits of provincial foreshore waters, and subsec. 7 of sec. 14 of the Fisheries Act, R.S.C. 1886, ch. 95, is consequently ultra vires. (3) The Dominion fishery officers have the right to regulate the kind of nets and traps to be used in the provincial foreshores and to control the manner of fishing, but without compelling the payment of a license fee. (4) A special statutory provision would be necessary to authorize the imposition by the Dominion of a license fee upon fishermen operating in provincial waters if imposed upon the Federal power of so raising a revenue for the general purposes of Canada. The King v. Chandler, 6 Can. Cr. Cas. 308.

FISHERIES ACT (CAN.); UNCERTAINTY IN CONVICTION.

A conviction under the Fisheries Act (Can.) which specifies the offence merely as "illegal fishing," is bad for uncertainty. Ex parte Dixon, 7 Can. Cr. Cas. 336.

LOBSTER CANNING WITHOUT LICENSE; DISTRESS WARRANT NOT ESSENTIAL.

It is not essential that a distress warrant should be issued to collect a fine imposed under the Fisheries Act (Can.) and if the fine is not paid the magistrate may issue a warrant for imprisonment under Code, sec. 739. The King v. Berrigan, 17 Can. Cr. Cas. 329.

TACKLE AND APPLIANCES; FOREIGN SHIP IN CANADIAN WATERS.

Dories used with a fishing vessel are a part of the fishing tackle or appliances of the vessel and proof that the fish were being transferred from her dories to a vessel not permitted to fish in Canadian waters at the point within Canadian jurisdiction, at which the vessel was overhauled, is evidence of illegal fishing within the Customs and Fisheries Protection Act (Canada). The King v. Chlopek, 19 Can. Cr. Cas. 277, 1 D.L.R. 96.

[For other cases, see 1 Canadian Ten Year Digest, 1449-1453.]

REGULATION OF PUBLIC FISHERIES; PENALTIES.

Section 1037 of the Criminal Code authorizing the Governor-in-Council to direct that any fine, penalty or forfeiture be "paid" to a local authority or that "the same be applied" in any other manner deemed best adapted to secure the due administration of the particular law under which it is imposed, is to be construed as applicable only to pecuniary penalties, and does not authorize a regulation under the Fisheries Act, Can., 1914, ch. 8, that fish illegally caught between licensed fishing berths by an unlicensed person shall be the property of the licensee, nor is such a regulation consistent with sec. 80 of the Fisheries Act, 1914. Christian v. Christian, 26 Can. Cr. Cas. 260, 29 D.L.R. 102.

FORCIBLE ENTRY.

PROOF OF TITLE.

On an indictment for forcible entry and detainer of land, evidence of title in the defendant is not admissible. Reg. v. Cokely et al., 13 U.C.Q.B. 521.

LEASE CROWN LANDS; RESTITUTION.

The lease of a Crown reserve having expired, the Court refused a writ of restitution, after a conviction of forcible entry and detainer. R. v. Jackson, Draper's Rep. U.C. 53.

NO ACTUAL FORCE IS NECESSARY TO CONSTITUTE.

Defendants, employees of the Great Western Ry. Co., in obedience to orders from the company, went upon the land a question, then in possession of the Stratford and Huron Railway Co., and occupied by its employees. No actual force was used, but the latter had good reason to apprehend that sufficient force would be used to compel them to leave, and they left accordingly:—Held, that this was a forcible entry within the statutes relating thereto. The Judge at the trial having granted a writ of restitution, held, that such writ is in the direction of the presiding Judge, which had been properly exercised here. Held, also, (1) that under the special facts and documents set out below, the Stratford and Huron Ry. Co. had power to acquire the land in question, and accept a deed thereof. (2) That the deed in question operated as a grant of land, and not merely as a grant of a right of way over it. (3) That the defendants were rightly convicted on the first count of the indictment. Quære, whether the Great Western Ry. Co. had any legal right to enter on the land for the purpose of building a switch, or for

any other purpose, as against the Stratford and Lake Huron Ry. Co., whose deed of the land was first registered. Regina v. Smith et al. (1878), 43 U.C.Q.B. 369.

FORCIBLE ENTRY; INTENT; INTERFERENCE WITH POSSESSION.

To constitute a "forcible entry" on land under the Criminal Code, sec. 89, the act of going upon the land must be done with the intention of taking possession of the land itself. An entry upon the land for the purpose of seizing and taking away chattels thereon is not a "forcible entry" under sec. 89 of the Criminal Code, although made contrary to the will of the occupant and in a manner likely to cause a breach of the peace; and such an entry is a mere trespass. R. v. Pike, 2 Can. Cr. Cas. 314.

APPREHENSION OF BREACH OF PEACE; ABSENCE OF ACTUAL FORCE.

Forcible entry of a dwelling house may consist of an entry made with such threats and shew of force as would, if resisted, cause a breach of the peace, although no actual force was used. The King v. Walker, 12 Can. Cr. Cas. 197.

CRIMINAL OFFENCE; ACTS OF VIOLENCE; LANDLORD'S RE-ENTRY.

(1) To constitute the offence of forcible entry upon land under Criminal Code secs. 102 and 103, the entry must have been made under some circumstances of actual violence or terror. (2) A breach of the peace or apprehension thereof under Criminal Code sec. 102 is not to be anticipated as a natural sequence to a re-entry by breaking in made by landlords upon office premises overheld by their tenant effected at night when neither the tenant nor any of his employees was present, so as to constitute the offence of forcible entry. The King v. Campey, 20 Can. Cr. Cas. 492.

THREATS; EVIDENCE OF TITLE.

To constitute the crime of forcible entry, actual violence is not necessary; if the threats were such as to create a terror which has induced the occupant to leave the premises, the offence is complete; evidence of title in the defendant is not admissible as an answer to the criminal charge. R. v. Moisan, 27 Can. Cr. Cas. 34, 32 D.L.R. 449.

FOREIGNER.

See Aliens; Interpreter.

FOREIGN LAW.

See Extradition; Evidence.

INVALID FOREIGN DIVORCE OF FIRST WIFE.

A foreign divorce obtained by the wife of a British subject domiciled in Canada without service of process on the husband or submission on his part to the jurisdiction of the foreign Court is ineffective to dissolve a marriage performed in Canada, although the wife had some years before applying for the divorce left her husband and taken up her residence in the foreign country. The King v. Brinkley, 12 Can. Cr. Cas. 454.

[Referred to in R. v. Hamilton, 17 Can. Cr. Cas. 413; followed in R. v. Bleiler, 19 Can. Cr. Cas. 250, 1 D.L.R. 878.]

PARENTS DIVORCED BY FOREIGN COURT HAVING JURISDICTION.

Where the Court of a foreign country, in which the husband and wife were then domiciled, granted the wife a divorce and the custody of the child, such divorce decree is effective in Canada on the status of the parties so as to support a conviction of the father under Code sec. 316 for enticing the child while under the age of fourteen years from the custody of the mother. The King v. Hamilton, 17 Can. Cr. Cas. 410.

[Distinguished in Re Mott, 5 D.L.R. 406.]

FORGERY.

Uttering false document. 2 Can. Cr. Cas. 562, 578.

Note on forgery by signing fictitious name. 3 Can. Cr. Cas. 181.

Offence of forgery under Criminal Code. 26 Can. Cr. Cas. 421.

Comparison of handwriting in forgery cases. 30 Can. Cr. Cas. 67.

UTTERING FORGED BANK NOTE OF ANOTHER STATE.

Forging or uttering in this province 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 its charter to issue notes of that description. Reg. v. Brown, 8 N.B.R. 13.

ALTERING FIGURES IN OFFICIAL BOOKS.

The prisoner was a clerk in the office of the comptroller of the city of Newark, New Jersey, U.S.A., his duty being to make proper entry of money received for taxes in the official books of the comptroller provided for that purpose. Having received a sum of money for taxes, he entered the correct amount at first and then erasing the true figures he entered a less sum, with intent to benefit himself by abstraction of the difference between the two, and to deceive the comptroller and the municipality:—Held, that the offence was forgery and that the prisoner had been properly committed for extradition. It is not necessary to constitute the crime of forgery that another's right shall have been actually prejudiced, the possibility of prejudice to another is sufficient; and if the publication be

necessary, the books in question being of a public character, the forged entry in them must be regarded as having been published as soon as made.

Re Hall, 8 A.R. (Ont.) 31.

VALIDITY OF WRITING: ONUS OF PROOF.

On an indictment for feloniously offering, etc., a forged note commonly called a Provincial note, issued under the authority of 29-30 Vict. ch. 10 (D.), for the payment of $5, it appeared that the prisoners had passed off a note purporting to be a Provincial note under the statute, knowing that the figure 5 had been pasted over the figure 1 and the word five over the word one. No evidence was given that the note so altered was a note issued by the Government of Canada, but it was shewn further, that when the attention of the prisoners was called to the alteration they said, "Give it back if it is not good," and that on its being placed on the counter one of them took it up and refused to return it, or substitute good money for it:—Held, that looking at the particular character of the forgery (i.e., an alteration) and the conduct of the prisoners, the onus was on them to dispute the validity of the writing, if a defence; and a conviction was sustained. Regina v. Portis (1876), 40 U.C.Q.B. 214.

INDICTMENT FOR; SUFFICIENCY OF ALLEGATIONS.

In an indictment for forgery the third count alleged that the prisoner afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged instrument in writing, which said last-mentioned forged instrument in writing was as follows:—

"Glandford, January 29, 1864.

"I, John Hostine, do agree to William Carson, of Warstead, Plymp, the full rite and privilege of all the white oke and elm and hickory lying and standing on lot 26, south part, on the third concession Plymp, for the sum of thirty dollars now paid to Hostine by Carson, the receipt whereof is here by me acknowledged.

"John Hostine."

With intent thereby to defraud, he, the said William Carson, at the time he so uttered and published the said last-mentioned forged instrument as aforesaid, well knowing the same to be forged against the form of the statute, in such cases made and provided, and against the peace of our lady and Queen, her crown and dignity. The jury having convicted the prisoner, his counsel moved in arrest of judgment on the grounds:—1st. That the third count (set out above) did not give the instrument, alleged to be forged, any name, description or designation. 2nd. That the instrument set out in the third count was insensible, and that there were no averments explaining it. 3rd. That the third count concluded contra formam statuti, and that there was nothing in it to shew that the offence was against any statute. 4th. That the count was otherwise bad, and bad at common law, and that there was no allegation of intent to defraud any person, and that no judgment could be pronounced upon it. The learned Judge having overruled the objections—upon a case reserved for the opinion of this Court under ch. 112 of Com. Stat. of U.C.:—Held, 1st. That the instrument forged being set out in hœc verba in the indictment, the description of its legal character would be surplusage and unnecessary. 2nd. That under sec. 29 of Con. Stat. of Can. ch. 99, it is not necessary to allege an intent to defraud in an indictment for forgery. 3rd. That the averment of the offence being contra formam statuti was of no importance, for if the offence was one against the statute, it was sufficiently proven, and if not against the statute, but a offence at common law, the allegation was immaterial and unnecessary to be proven. 4th. That the instrument might be construed as an agreement or contract to sell the timber or a receipt for the payment of money, and in either case came within the Stat. 22 Vict. ch. 94. Regina v. Carson, 14 U.C.C.P. 309.

CONSENT TO SPEEDY TRIAL; SUBSTITUTION OF CHARGE.

The prisoner being elected to be tried speedily on the charge of forgery, for which he was committed to trial, and being charged and tried for that offence accordingly, there was not sufficient evidence to convict, but there was evidence upon which he might be convicted of obtaining money by false pretences:—Held, that the Crown could not then substitute a charge for the latter offence for the charge of forgery, upon which the prisoner had elected to be tried. Regina v. Morgan, 2 B.C.R. 329.

SIGNING AND SENDING A TELEGRAM WITH INTENT TO DEFRAUD.

The prisoner at Woodstock, with intent to defraud, wrote out a telegraph message purporting to be sent by one C. at Hamilton to McK. at Woodstock, authorizing McK. to furnish the prisoner with funds which was delivered to McK. and upon the faith of it McK. endorsed a draft for $88, drawn by the prisoner on C., on which the prisoner obtained the money:—Held, that the prisoner was guilty of forgery Regina v. Stewart, 25 U.C.C.P. 440.

ORDER FOR PAYMENT OF MONEY.

A writing not addressed to any one may be an order for the payment of money, if it be shewn by evidence for whom it was intended. In this case the order was for $15 in favour of "bearer or R.R.," and purported to be signed by one B. The prisoner in person presented it to M., representing himself to be the payee, and a creditor of B.:—Held, that it might fairly be inferred

to have been intended for M., and a conviction for forgery was sustained. Reg. v. Parker (1364), 15 U.C.C.P. 15.

ALTERATION OF DOMINION NOTE; RAISING AMOUNT.

Held, that 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 two, wherever that figure occurred in the margin of the note, was forgery, and that the prisoner was rightly convicted therefor. Regina v. Bail (1884), 7 O.R. 228.

CHANGING THE DATE OF A PROMISSORY NOTE.

Held, that the alteration of a promissory note by the holder (by placing the figure 1 before the figure 4 in the date) after it had become due, vitiated the same, and that the amount could not be recovered from either the makers or endorser. Gladstone et al. v. Dew et al., 9 U.C.C.P. 439.

EVIDENCE OF INTERESTED WITNESS.

By sec. 218, R.S.C. ch. 174, "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." The prisoner was indicted for forgery in feloniously uttering a cheque signed by H. J. & Co. on the Quebec Bank, which he had altered from $400 to $1,400. The evidence in support of the forgery was that of J., who though a member of the firm when the cheque was made, had ceased to be such at the time of the trial, and who had been released by his partner from all liability, and disclaimed any interest in the cheque. There was some evidence of the liabilities of the firm to creditors at the time of J.'s withdrawal:—Held (Rose, J., dissenting), that J. was not a person interested, or supposed to be interested, within the meaning of the Act; and his evidence did not require corroboration. Regina v. Hagerman, 15 O.R. 598.

FALSE BANK ENTRIES; BANK CLERK.

Forgery is the falsely making or altering a document to the prejudice of another, by making it appear as the document of that person. A simple lie, reduced to writing, is not necessarily forgery. Consequently where a bank clerk makes false entries in the bank books under his control, for the purpose of enabling him to obtain money of the bank improperly:—Held, that he was not guilty of forgery. Regina v. Blackstone, 4 Man. R. 296.

FORGERY OF CHEQUE; ORDER OR REQUEST.

Held, that an instrument in the following words:

"$3.50. Carick, April 10th, 1863.

John McLean, tailor. Please give Mr. A. Steel to the amount of three dollars and fifty cents, and by doing you will oblige me.

(Signed) Angus McPhail."

Was an order for the payment of money and not a mere request. The Queen v. Steel (1863), 13 U.C.C.P. 619.

FORGERY OF A NOTE BY THE MAKER.

Where the prisoner was indicted for forging a note for $500, having changed a note of which he was the maker from $500 to $2,500, it was held to be a forgery of a note for $500, though the only fraud committed was on the endorser. R. v. McNevin, 2 R.L. (Que.) 711.

FORGERY OF NOTE; UNAUTHORIZED ENDORSEMENT; CORROBORATIVE EVIDENCE.

On an indictment for forgery of the prosecutor's name as endorser of a promissory note, the prosecutor swore that he had not endorsed the note; that it was not his writing; that he had never authorized the prisoner to sign his name to the note, and that he was himself unable to write his name, being in fact a marksman; and a son of his also swore that his father was unable to write his name, and was a marksman. The prosecutor also swore that on other occasions he had endorsed for the prisoner, making his mark, and had sometimes authorized the prisoner to write his name:—Held, that a sufficient prima facie case was thus made out; that the prosecutor's evidence was duly corroborated within the meaning of 32–33 Vict. ch. 19, sec. 54 (D.) and that the onus was then on the prisoner to shew that he was authorized to use or write the prosecutor's name. (Cameron, J., dissenting.) That the part of the prosecutor's evidence which required to be corroborated was not that he could not write, but that on this occasion he was not authorized, and on this point there was no corroboration. (Per Cameron, J.) Regina v. Bannerman (1878), 43 U.C.Q.B. 547.

FORGERY OF CHEQUE; ORDER OF REQUEST.

"Mr. W., please let the bearer, W. T., have the amount of £10, and you will oblige me. B. B. Mitchell":—Held, on an indictment for forgery, to be an order for the payment of money, not a mere request. Regina v. Tuke, 17 U.C.Q.B. 296.

FORGERY OF DEED; AGENT FRAUDULENTLY REPRESENTING TO BE HIS PRINCIPAL; POWER OF ATTORNEY.

The execution of a deed by prisoner in the name of and representing himself to be another, may be forgery, if done with intent to defraud, even though he had a power of attorney from such person but fraudulently concealing the fact of his being only

such attorney, and assuming to be the principal. Re Regina v. Gould (1896), 20 U.C. C.P. 154.

FORGING AN ENDORSEMENT ON A CHEQUE IS FORGING AN "ORDER FOR PAYMENT OF MONEY."

Defendant was found guilty on the first and third counts of an indictment, the last count of which charged him with uttering a forged "order for the payment of money." The evidence was that defendant forged the name W. McF. on the back of a cheque drawn payable to W. McF. or order, and obtained the proceeds, which he appropriated to his own use:—Held, that the cheque when endorsed became an "order for the payment of money" to any one who should present it, and that the conviction on the last count was sustained by the evidence. (McDonald, C.J., and Weatherbe, J., dissented.) The Queen v. Cunningham, 18 N.S.R. 31.

FORGING A BANK NOTE; BANK NOT IN EXISTENCE.

A forged paper purporting to be a bank note is a promissory note within the meaning of the statute; and it is equally so if there is no such bank as that named. Regina v. McDonald, 12 U.C.Q.B. 543.

INDORSEMENT OF A CHEQUE; CONVICTION FOR UTTERING A FORGED ORDER FOR PAYMENT OF MONEY; EVIDENCE IN SUPPORT OF CONVICTION FOR UTTERING A FORGED CHEQUE; EXTRADITION TRIAL FOR OTHER OFFENCES.

Defendant was found guilty on the first and third counts of an indictment, the last count of which charged him with uttering a forged "order for the payment of money." The evidence was, that the defendant forged the name of W. McF. on the back of a cheque drawn payable to W. McF., or order, and obtained the proceeds, which he appropriated to his own use. It was held by the Supreme Court of Nova Scotia that the cheque when endorsed, became an "order for the payment of money" to anyone who should present it, and that the conviction on the last count was sustain by the evidence. The first count of the indictment charged the defendant with uttering a forged cheque. The Supreme Court of Nova Scotia held that the count was not sustained by proof of forgery of the endorsement, and that the conviction on this count must be set aside. A question having been raised at the trial, by demurrer, as to the power of the Court to try or convict the defendant for another offence than that for which he was extradited, and having been decided by the presiding Judge against the defendant, the Supreme Court of Nova Scotia held that it was too late to raise the question by case reserved for the full Court. Queen v. Cunningham, 6 R. & G. 31. On appeal to the Supreme Court of Canada the appeal was allowed:—Held, that evidence of the uttering of a forged endorsement of a negotiable cheque or order is insufficient to sustain a conviction on a count of an indictment charging the uttering of a forged cheque or order. (Per Fournier, Henry and Taschereau, JJ.; Ritchie, C.J., and Strong, J., dissenting.) On the second question reserved, which was "whether the evidence on the part of the Crown is sufficient to sustain a conviction on the first and third counts of the indictment, or on either of those counts, the judgment of the Court below should be reversed, and the prisoner ordered to be discharged." The Queen v. Cunningham (1885), Cassels S.C. Digest, 2nd ed., 194; Coutlee S.C. Digest 402.

JURISDICTION; EVIDENCE.

The Court of Quarter Sessions has no jurisdiction to try the offence of forgery. Semble, that on the evidence, stated below, the testimony of the prosecutor, whose name had been forged to a note, was sufficiently corroborated. Regina v. McDonald (1871), 31 U.C.Q.B. 337.

PROMISSORY NOTE; ALTERING DATE OF MATURITY BY ENDORSEE.

The prisoner was indicted for forgery. The facts appearing in evidence being that a promissory note had been drawn by himself payable two months after date to the order of one T. S. and afterwards endorsed by said S., the prisoner then altered the note from two to three months and discounted it at the Bank of B. &. A. in London, C.W. Upon this fact the jury convicted him of forgery. The motion for a new trial was made under Stat. 20 Vict. ch. 61, on the ground that the forgery or uttering if any, was a forgery of, or the uttering of a forged endorsement (the note having been made by himself) and that there was no legal evidence of an intent to defraud:—Held, that by altering the note in his own possession after it was endorsed, it was a forgery of a note, and not of an endorsement; and, secondly, that the passing of the note to the third party, who was thereby defrauded, was sufficient evidence of an intent to defraud. R. v. Craig, 7 U.C.C.P. 239.

PROMISSORY NOTE; SIGNING NAME OF FICTITIOUS PERSON.

Forgery of an instrument purporting to be a promissory note, may be committed whether the name signed to it is that of an existing, or a fictitious person; provided the name is assumed for a fraudulent purpose. Ex parte Cadby (1886), 26 N.B.R. 452.

UTTERING A FORGED INSTRUMENT.

Defendant was convicted at the Quarter Sessions on an indictment charging that he feloniously did offer, dispose of, and put off a certain promissory note, purporting

to be made by one F. for the sum of £4 10s. with intent to defraud, he, the said defendant, at the time he so uttered and published the said note as aforesaid, then and there well knowing the same to be forged. It appeared that some boys had been amusing themselves with writing promissory notes and imitating persons' signatures, and among them was one with F.'s name. The papers were put into the fire, but this note was carried up the chimney by the draft, and fell in the street, where it was picked up by defendant. A person who was with him at the time said that he thought it was not genuine, and advised him to destroy it; but defendant kept it, and afterwards passed it off, telling the person who took it that it was good:—Held, that upon these facts the defendant was guilty of a felonious uttering; but the conviction was quashed, for the indictment was defective in not stating expressly that the note was forged, or that defendant uttered it as true; and the case should not have been tried at the Quarter Sessions. Regina v. Dunlop (1857), 15 U.C.Q.B. 118. Corroboration of evidence of forgery. 2 Can. Cr. Cas. 544, 546.

SIGNING DOCUMENT BY PROCURATION WITHOUT AUTHORITY.

An indictment may be laid under Criminal Code, sec. 431, for unlawfully and with intent to defraud signing a promissory note by procuration, although the name signed is the name of a testamentary succession or of an estate in liquidation (e.g., "Estate John Doe"), but if the indictment does not disclose the particulars, an order will be made against the Crown to furnish particulars of the names and capacities of the persons representing such estate at the time when the offence is alleged to have been committed, and directing that the defendants be not arraigned until after the particulars have been delivered. R. v. Weir (No. 2), 3 Can. Cr. Cas. 155.

SIGNATURE IN NAME OF NONEXISTENT PERSON.

Where a person passing under an assumed name falsely represents that he is in the employment of a certain firm, and that he is authorized to make a draft upon such firm, his signature in such assumed name to the draft upon the firm, and his fraudulent negotiation of it, constitute forgery, if the credit obtained in negotiating the bill was not personal to himself alone, without relation to his supposed employers, and if the false name, although that of a nonexistent person, was assumed for the very purpose of perpetrating the fraud. Re M. B. Lazier, 3 Can. Cr. Cas. 167.

UTTERING; ALLEGATION OF KNOWLEDGE.

In charging the offence of uttering a forged instrument, the indictment must aver that the defendants made use of or uttered the instrument knowing it to have been forged. A count of an indictment charging the defendant with having, with intent to defraud, unlawfully made use of and uttered a promissory note, alleged to have been made and signed by one of the defendants by procuration, without lawful authority, or excuse and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed. Such a defect is one of substance and cannot be amended under Criminal Code, sec. 629. R. v. Weir (No. 5), 3 Can. Cr. Cas. 499.

[Referred to in R. v. Sand, 8 Can. Cr. Cas. 48; R. v. Henderson, 18 Can. Cr. Cas. 250.]

FALSE DIVIDEND CHEQUE; OFFICER OF CORPORATION.

(1) The officer of a company who fraudulently signs in the Company's name a dividend cheque nominally in favour of a firm of which he is a member, but really for his own benefit, and appropriates the proceeds for his own use upon his own endorsation of the firm name, when neither he nor his firm have any claim to the dividends, may properly be charged either with embezzlement of the money or with theft of the cheque. (2) The officer would be guilty of forgery in fraudulently signing the cheque, really for his own purposes, but purporting to be a dividend cheque and drawn upon an account kept with the company's bankers from which only dividend payments could properly be made. The King v. Rowe, 8 Can. Cr. Cas. 28.

FALSE LETTERS OF INTRODUCTION; INTENT TO PREJUDICE; UTTERING FORGED DOCUMENT; KNOWLEDGE OF FALSITY AND INTENT.

(1) The uttering of a false letter of introduction the signature to which is forged, is an indictable offence under Code, sec. 422 and 424 if the person uttering same knows it to be a false document, and to have been made with intent that it should be acted upon as genuine to the prejudice of any one. (2) The first sub-section of Code, sec. 422 extends the definition of forgery to cases not included in former statutory definitions in Canada of that term, and which would not be forgery at common law. Re Abeel, 8 Can. Cr. Cas. 189.

FORGED BANK NOTE; HAVING IN POSSESSION; COUNTERFEIT TOKEN OF VALUE.

Although the taking possession of or using a counterfeit token of value is an offence under Code, sec. 480, if such counterfeit be also a forged bank note the prosecution may be under Code, sec. 430 for the offence of having a forged bank note in possession knowing it to be forged. The King v. Tutty, 9 Can. Cr. Cas. 544.

PRELIMINARY ENQUIRY; STATEMENT OF THE ACCUSED; OBTAINING SIGNATURE OF ACCUSED TO SAME; USE OF SIGNATURE TO "STATEMENT" IN COMPARISON WITH ALLEGED FORGERY.

(1) Upon a preliminary enquiry it is proper for the magistrate to ask the accused to sign the statement of the accused made under Code, sec. 591, even where the prisoner's answer to the statutory question is "I have nothing to say." (2) The signature of the accused to such statement may be afterwards used against him upon the charge of forgery upon which he was committed, for purposes of comparison of the handwriting with the alleged forgery. The King v. Golden, 10 Can. Cr. Cas. 278.

PRODUCTION OF FORGED INSTRUMENT.

Unless the forged instrument has been lost or destroyed, it must be produced to establish a prima facie case of forgery. Re Hasha (No. 1), 10 Can. Cr. Cas. 433.

[Approved in Re Johnston, 12 Can. Cr. Cas. 559; referred to in Re Royston, 15 Can. Cr. Cas. 101.]

FALSIFYING WORKMEN'S TIME-ROLL.

Where the basis of a charge of extradition is an alleged falsification of a written document, either the document itself must be produced or a foundation must be laid for secondary evidence of its contents; and a commitment for extradition is invalid as not disclosing a prima facie case unless this has been done. Re Johnston, 12 Can. Cr. Cas. 559.

SENDING FALSE TELEGRAM WITH INTENT TO DEFRAUD; MONETARY DAMAGE.

(1) To constitute the intent to defraud which is essential to the offence of sending a telegram in a false name under Code, sec. 475, it must appear that the fraud intended involved something which would injure or prejudice the financial or proprietary rights of the other party. (2) The sending of a telegram containing a true statement of facts, but signed with a false name with intent to have the recipient meet the accused but not involving any monetary loss to anyone, does not come within Code, sec. 475, defining the indictable offence of sending a telegram in a false name with intent to defraud. (3) Semble, where a telegram in a false name is sent from one province for delivery in another with intent to defraud, the prosecution may take place in either province. The King v. Galloway, 15 Can. Cr. Cas. 317.

COMPARISON OF HANDWRITING; VALUE OF EXPERT EVIDENCE.

A witness who testified that the impugned documents were unsigned when handed by him to the prisoner, and that when, a few minutes afterwards, they were handed back to him by the prisoner, they bore the signatures, subsequently found to be forged, is not sufficiently corroborated under sec. 1002 of the Criminal Code, by the evidence of an expert, who, on comparison of the forged signatures with the handwriting of the prisoner, as contained in letters written by the latter, swears that the forgeries are in the prisoner's handwriting, but whose expert testimony is contradicted by the evidence of an expert equally credible examined by the defence. The King v. Henderson, 18 Can. Cr. Cas. 245.

FALSE TICKET; SIGNATURE; CORROBORATION.

A conviction for forgery will be quashed if there is no corroborative evidence under Cr. Code, sec. 1002; quære, whether the false duplication of tickets or due bills with the exception of the signature appearing on the valid tickets is in itself a forgery. [See Annotation on "Forgery" at end of this case.] R. v. Magnolo, 26 Can. Cr. Cas. 419, 32 D.L.R. 510.

PRINCIPAL TO OFFENCE; AIDING AND ABETTING; DEED; DOWER.

A man who procures a woman other than his lawful wife to sign a bar of dower as his wife, although she uses her own Christian name and not that of the lawful wife, in completing a mortgage on his property in which his lawful wife would have a legal claim to inchoate dower is, under Code, sec. 69, a party to her offence of forgery by making a false document knowing it to be false and with intent that it should be acted upon (Cr. Code, sec. 466), and punishable as a principal. United States v. Ford and Frary, 26 Can. Cr. Cas. 430, 29 D.L.R. 80.

PROCURING WOMAN TO JOIN IN DEED AS WIFE; FRAUD ON DOWER.

A deed of conveyance executed by a married man, who procured a woman with whom he cohabited as his common law wife to join therein as his wife, in fraud of the dower rights of his lawful wife, is a "false document" and "forgery" within the meaning of secs. 335 (j) and 466 of the Criminal Code. United States v. Ford and Frary, 26 Can. Cr. Cas. 430, 29 D.L.R. 80.

UTTERING OR ATTEMPTING TO UTTER FORGED PAPER.

A conviction for uttering or attempting to utter a forged document cannot properly be made unless it be shewn that the document in question was really forged; it is not enough to shew that the accused believed it to be forged and yet attempted to pass it. [See Annotation on "Forgery," 26 Can. Cr. Cas. 421.] R. v. Girvin, 27 Can. Cr. Cas. 265, 34 D.L.R. 344.

ACCESSORY TO OFFENCE; PREJUDICE AND MENS REA; CR. CODE, SECS. 69, 70, 466.

R. v. Pariseault, 28 Can. Cr. Cas. 112.

INDICTMENT; DESCRIBING OFFENCE.

A conviction on an indictment for forg-

ing a cheque on a bank is not bad by reason of the indictment charging that the forged cheque was one "made" by the person whose name was signed without authority, instead of describing the cheque as "purporting to be made" by him. The indictment sufficiently charged the crime of forgery to conform with Cr. Code, secs. 852 and 853 as to stating the substance of the offence, and it was open to the prosecution to shew that the forgery consisted of making a false document (Cr. Code, sec. 335 (j)) and not by altering a genuine document (Cr. Code, sec. 466 (2)). [R. v. Stevens, 5 East P.C. 254, distinguished.] R. v. Illsley (No. 2), 29 Can. Cr. Cas. 107, 41 D.L.R. 130. See also 29 Can. Cr. Cas. 105.

FORMER ACQUITTAL.

See Autrefois acquit.

FORMS.

STATUTORY FORM; CONDITIONS OF DISCHARGE; WARRANT OF REMAND.

Where statutory forms are declared to be sufficient by the statute itself, a warrant following the statutory form is good, although it does not mention all of the statutory conditions of discharge. Ex parte Illichie, 11 Can. Cr. Cas. 85.

[Applied in Collette v. R., 16 Can. Cr. Cas. 289.]

FORTUNE TELLING.

Pretended palmistry; Crim. Code, sec. 443, 26 Can. Cr. Cas. 4.

WHAT CONSTITUTES THE OFFENCE.

The statute 9 Geo. II. ch. 5 is in force in this province. By the statute the mere undertaking to tell fortunes constitutes the offence; and a conviction was affirmed where it was obtained upon the evidence of a person who was not a dupe or victim but a decoy. Regina v. Milford (1890), 20 O.R. 306.

DECEPTION AN ESSENTIAL ELEMENT.

Deception is an essential element of the offence of "undertaking to tell fortunes" under sec. 396 of the Criminal Code, and to uphold a conviction for that offence there must be evidence upon which it may be reasonably found that the accused was asserting or representing, with the intention that the assertion or representation should be believed, that he had the power to tell fortunes, with the intent in so asserting or representing of deluding and defrauding others. R. v. Marcott, 4 Can. Cr. Cas. 437.

WRITTEN APPLICATION; CONTRACT NEGATIVING INTENT TO DECEIVE.

Where on a prosecution for undertaking to tell fortunes, it appears that the prediction of the future for which payment was made was expressly stipulated to be only a delineation made pursuant to rules laid down in published works on palmistry, etc., an acquittal should be directed, as the contract negatives any intention to deceive. The King v. Chilcott, 6 Can. Cr. Cas. 27.

PALMISTRY.

An intent to deceive is essential to the offence of fortune telling under Cr. Code, sec. 443, but it is not necessary that the attempted deception should have been successful; a conviction may be supported, although the accused had taken from the persons whose fortunes were told a writing to the effect that they understood that what was being done was merely an examination of the lines of their hands and giving information in respect thereof in accordance with books on the subject of palmistry, if it be found that the taking of such writing was a mere sham and intended to evade the law. [R. v. Marcott, 4 Can. Cr. Cas. 437, 2 O.L.R. 105, followed, R. v. Chilcott, 6 Can. Cr. Cas. 27, cited; and see Annotation at end of this case.] R. v. Monsell, 26 Can. Cr. Cas. 1, 28 D.L.R. 275.

FRAUD.

MAKING FRAUDULENT SALE TO DEFEAT UNREGISTERED EQUITY OF REDEMPTION.

Where the owner of land conveyed to the accused by a deed absolute in form, but intended by both parties to be held only as a security for a loan, and after default in payment of the loan, the accused made and registered a conveyance also absolute in form to a brother who already had notice of the terms of the original conveyance, for the same expressed consideration as was stated in the original conveyance, but the brother did not accept the deed or pay the money, a conviction of the accused under Code, sec. 4241 for fraudulently selling with the intention of defeating the unregistered equity of redemption of the original owner was set aside on the ground that the acts stated did not constitute an offence under that section. The King v. McDevitt, 17 Can. Cr. Cas. 331.

SERVANT'S ENTRIES ON BOOKS WITH INTENT TO DEFRAUD.

For a servant to omit to enter on the books of his employer an account of an agreement made by the former without authority, to set off his personal indebtedness to a third person against the latter's indebtedness to the employer, is not a violation of sec. 415 (*b*) of the Criminal Code, 1906, relating to making or failing to make entries in the books of an employer with intent to defraud; since the servant could not bind his employer by such an agreement in the absence of express authorization to

do so. R. v. Wilson, 22 Can. Cr. Cas. 161, 15 D.L.R. 168.

INTENT TO DEFRAUD; INFERENCE FROM CONDUCT.

Intent to defraud may be predicated from obtaining securities in a cash transaction between brokers in return for a worthless cheque on a bank in which the accused had previously closed his account; a false representation may be by conduct alone and without any oral representation as to the value of the cheque. State of New York v. Israelowitz, 29 Can. Cr. Cas. 323.

FALSIFICATION OF BOOKS; INTENT TO DEFRAUD CREDITORS.

A person who can neither read nor write may be guilty of falsifying books or making a false entry with intent to defraud creditors (Cr. Code, sec. 418) if he procured the commission of the offence or aided and abetted or counselled its commission (Cr. Code, sec. 69); it is a question of fact whether guilty knowledge shall be inferred from his subsequent act in filing an insolvency statement in which false debts were scheduled in accordance with the false entries made by another. R. v. Lackman, 30 Can. Cr. Cas. 400.

MARKS ON MILITARY STORES; CR. CODE, SEC. 436A.

The dishonest application of a government inspection mark to military stores being manufactured for the Government to indicate that they had passed the Government inspectors whereas they had not in fact been passed, in an indictable offence under Cr. Code, sec. 436A, although the stores were in no respect defective. R. v. Rollings, 31 Can. Cr. Cas. 31.

FRAUDULENT REMOVAL.

See Concealment.

EVIDENCE OF REMOVAL OR TAKING; REMOVAL OF PART OF GOODS A MONTH PRIOR TO DATE CHARGED IN COUNT; SEPARATE TRANSACTIONS.

A conviction on a charge of fraudulent concealment of goods with intent to defraud an insurance company will not be set aside because it appears in evidence that a part of the goods had been removed a month before the date of removal of the remainder, which latter removal took place on the date charged in the indictment as the date of concealment. The date of removal is not necessarily the date of concealment, and the conviction would be valid if the accused were still keeping the goods in concealment on or about the date charged in the count, although the removal took place a month prior thereto. On a further count for fraudulent removal of goods with intent to defraud, a removal of part of the goods a month prior to the time of the offence as charged is not to be presumed to be a part of one continuous taking with the removal of the remainder on the date charged. Although evidence of the first taking was admissible to shew the intent on the second taking which constituted the charge against the accused, the Judge should not have told the jury that they could convict for neither the first or the second taking or for both, and the Judge having certified his opinion that the jury were materially influenced by the evidence of the first taking the conviction on the count for fraudulent removal should be set aside. The King v. Hurst, 5 Can. Cr. Cas. 338.

PERSON CONCEALING HIS OWN GOODS TO DEFRAUD FIRE INSURANCE COMPANY; "ANYTHING CAPABLE OF BEING STOLEN."

A person is guilty of an offence under sec. 354 of the Criminal Code, if he fraudulently conceals his own goods for the purpose of obtaining insurance moneys thereon, as if they had been destroyed by fire, and of then keeping the goods for his own use. The gist of the offence created by sec. 354 is the concealment for a fraudulent purpose, and it is not incumbent on the prosecution to shew that the fraudulent purpose was accomplished. The subject matter of the offence under sec. 354, i.e., "anything capable of being stolen," is not restricted to things capable of being stolen by the accused, but includes anything which comes within the definition given in sec. 303 of things capable of being stolen. The Queen v. Goldstaub, 5 Can. Cr. Cas. 357.

BY TENANT; FRAUDULENT REMOVAL OF GOODS TO EVADE DISTRESS FOR RENT.

The offence of fraudulent removal of a tenant's goods to evade distress for rent under R.S.O. ch. 342, does not extend to a removal and surrender of possession taking place after the termination of the tenancy by the landlord's notice to quit. The King v. Davitt, 7 Can. Cr. Cas. 514.

FRUIT MARKS ACT.

Regulations under the Act of 1901. 5 Can. Cr. Cas. 557.

APPLES FRAUDULENTLY PACKED; HAVING IN POSSESSION FOR SALE; MENS REA; "FACED SURFACE," MEANING OF.

(1) It is an offence against the Fruit Marks Act to have in possession for purposes of sale apples packed so that more than 15 per cent of the contents of the barrel is substantially inferior in grade to the faced surface, although the sale actually made was to a purchaser who inspected the bulk and consequently was not defrauded. (2) It is not essential to the offence that there should be a fraudulent intent

on the part of the accused. (3) Semble, the offence is complete although the accused neither knew of the fraudulent packing nor was negligently ignorant of it. The King v. James, 6 Can. Cr. Cas. 159.

FUGITIVE OFFENDERS ACT.

ESCAPE FROM PRISON; RECAPTURE; NECESSITY FOR CONVICTION FOR ESCAPE; IMPRISONMENT IN NEW BUILDING.

A statute provided that "Every one who escapes from imprisonment shall, on being retaken, undergo in the prison he escaped from, the remainder of his term unexpired at the time of his escape, in addition to the punishment which is awarded for such escape." After an escape and before recapture, the penitentiary was changed from one building to another:—Held, 1. (Killam, J., dubitante), that a conviction for an escape was not necessary to imprisonment for the unserved portion of the sentence. 2. That imprisonment in the new building was lawful. Regina v. Peterson, 6 Man. L.R. 311.

FUGITIVE OFFENDERS' ACT; SPECIAL POWER ON HABEAS CORPUS TO REVIEW THE EVIDENCE.

(1) The effect of secs. 9 and 10 of the Fugitive Offenders' Act, R.S.C. ch. 143, is to confer a special power upon the Court hearing a habeas corpus application thereunder to review the evidence upon which the commitment for intercolonial extradition is founded. (2) No certiorari is required in aid of the writ of habeas corpus in cases under the Fugitive Offenders' Act, because the effect of secs. 10 and 17 thereof is to put the Court in possession of the whole of the record and evidence. (3) Extradition from Canada to another British possession will not be confirmed on habeas corpus unless a prima facie case of guilt is made out to the satisfaction of the Superior Court to which the accused makes application for his discharge, irrespective of the decision of the committing magistrate. (4) The enquiry under sec. 10 of the Fugitive Offenders' Act and the power to discharge the accused in trivial cases, etc., is practically unlimited, and the Court on habeas corpus may in the exercise of its discretion order a discharge for any reason which appears to it to be satisfactory. (5) It is not necessary to order intercolonial extradition for the purpose of having a jury determine the controverted facts, if a prima facie case is not made out, and if, in consequence, an acquittal might at a trial be properly directed by the trial Judge. The Queen v. Delisle, 5 Can. Cr. Cas. 210.

EVIDENCE TO WARRANT COMMITMENT; MISAPPROPRIATION OF FUNDS BY OFFICER OF CORPORATION.

(1) The offer of a company who fraudulently signs in the company's name a dividend cheque nominally in favour of a firm of which he is a member, but really for his own benefit, and appropriates the proceeds for his own use upon his own endorsation of the firm name, when neither he nor his firm have any claim to the dividends, may properly be charged either with embezzlement of the money or with theft of the cheque. (2) The officer would be guilty of forgery in fraudulently signing the cheque really for his own purposes but purporting to be a dividend cheque and drawn upon an account kept with the company's bankers from which only dividend payments could properly be made. The King v. Rowe, 8 Can. Cr. Cas. 28.

[Followed in Re M'Tier, 17 Can. Cr. Cas. 82.]

OFFENCE COMMITTED IN ANOTHER BRITISH TERRITORY; WARRANT FROM TERRITORY OF OFFENCE; INDORSEMENT BY JUDGE IN CANADA; CONDITION PRECEDENT TO MAGISTRATE'S ENQUIRY AND REMAND FOR DEPORTATION.

(1) A provisional warrant may be issued by a magistrate under the Fugitive Offenders' Act for the arrest of a fugitive from another British territory for an offence there committed, coming within the provisions of that statute and the magistrate may order remands of the prisoner for a reasonable time pending the arrival of the warrant from the territory of the offence and the endorsement of same by a Judge in Canada, but he cannot proceed before such endorsement with the enquiry and remand for deportation to the territory of the offence. (2) Semble, if the warrant from the territory of the offence has been endorsed by a Judge in Canada after an invalid committal for deportation and the return thereof upon habeas corpus, the prisoner may be rearrested upon same and the magistrate's proceedings may be begun de novo, notwithstanding his discharge under the invalid warrant. The King v. Wishart, 18 Can. Cr. Cas. 146.

GAME PROTECTION.

INTENT TO EXPORT.

The generality of the prohibition contained in the Game Protection Act (B.C.) 1895, sec. 7, against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the province. R. v. Strauss, 1 Can. Cr. Cas. 103.

[Referred to in R. v. Sam Chak (No. 2), 12 Can. Cr. Cas. 508, 42 N.S.R. 384, by Drysdale, J., dissenting.]

HUNTING WITHOUT LICENSE; "HUNT, TAKE OR KILL."

(1) Under a penal statute making it un-

lawful without a license to "hunt, take or kill any animal," a conviction for hunting without a license must specify the kind of animal hunted in like manner as would be required if the conviction were for killing an animal. (2) The word hunt when so used in conjunction with the words "take or kill" is not equivalent to the phrase "hunt for" but implies an actual pursuit. The King v. Oberlander, 16 Can. Cr. Cas. 244.

[Referred to in R. v. Picard, 21 Can. Cr. Cas. 250, 11 D.L.R. 423.]

POSSESSION OF RAW HIDES; INTENT TO EXPORT.

A clause in a provincial statute which contained other provisions for the protection of game within the province, provided: "No person shall at any time purchase, or have in possession with intent to export or cause to be exported or carried out of the limits of this province, or shall at any time or in any manner export, or cause to be exported or carried out of the province, any, or any portion of the (game) animals or birds mentioned in this Act in their raw state":—Held, affirming a conviction of defendant for having deer hides in his possession in their raw state with intent to export same, that, as the preservation of game within the province is within the competence of the Provincial Legislature, the prohibition against export did not render the enactment ultra vires as interference with trade and commerce, such provision being subsidiary and incidental to the general purpose of the statute. Regina v. Boscowitz, 4 B.C.R. 132.

GAME LAWS; PROVINCIAL LAW; INDIAN RESERVE.

The regulation of Indian reserves being under the exclusive jurisdiction of the Dominion Parliament, a Provincial game protection law is not effective, as regards such Indian reserve, to prohibit an Indian there resident from hunting and killing a deer on the reservation for his own use; a conviction under the Game Protection Act, B.C., on a charge brought against an Indian for having venison in his possession without a permit, was therefore quashed. [Madden v. Nelson and Fort Sheppard R. Co. [1899] A.C. 626, applied.] R. v. Jim, 26 Can. Cr. Cas. 236.

GAMING.

Evidence of common gaming house and unlawful gaming; Code amendment of 1900. 3 Can. Cr. Cas. 584, 585.

Licensing law; Regulations prohibiting certain games on licensed premises. 7 Can. Cr. Cas. 318.

Summary trial for keeping a gaming house; Jurisdiction without consent. 9 Can. Cr. Cas. 553.

Gaming houses under the Code. 11 Can. Cr. Cas. 185.

No jurisdiction in Judge of the Sessions of the Peace to summarily try charge of keeping gaming house. 1 Can. Cr. Cas. 321.

Nuisance at common law; Keeping gaming house. 1 Can. Cr. Cas. 293.

Confiscation of money found in gaming house. 1 Can. Cr. Cas. 303.

Betting house offences. 25 Can. Cr. Cas. 128.

Keeping common gaming house. R. v. Do Ling et al., 27 Can. Cr. Cas. 446.

Use of automatic vending machines for gambling. 27 Can. Cr. Cas. 227.

WAGER ON FOOT RACE; NOTICE TO STAKEHOLDER NOT TO PAY; ACTION TO RECOVER DEPOSIT.

A deposit of money with a stakeholder to abide the result of a foot race is not an illegal transaction under Consolidated Statutes (N.B.) ch. 87, sec. 2, and no action will lie against the winner of the bet, who has received the money from the stakeholder after the decision of the event. Seely v. Dalton (1904), 36 N.B.R. 442.

COMMON BETTING HOUSE; BLACKBOARD QUOTATIONS BY TELEGRAPH; FOREIGN RACE-TRACK.

The defendant occupied a tent in a village opened to and frequented by the public, in which there was a telegraph wire to an incorporated race-track in the United States, where horse-racing and betting was legalized. In the tent was a blackboard on which were the names of the horses and jockeys taking part in the race, with the weights and the track quotations, and as the race was being run, an operator called off the progress thereof, giving the name of the winner and of the second and third horses, and marked them on the board. Duplicate tickets were furnished in the tent to applicants, which requested defendant to telegraph one B. at the race-track to place a certain amount of money on a horse named by the applicant at track quotations, and upon transmission thereof, the applicant agreed to pay the defendant ten cents, and that all liability on defendant's part should cease. On the tickets being handed in, one of them was stamped with the date of its receipt and returned to the applicant. The aggregate amount of the money so received was notified by telegram to B. and placed by him before the race with bookmakers on the track, B. paying defendant a percentage on the moneys received for him and ten cents on each application. B. had an agent in another part of the village, whom he furnished with money to pay any winnings by remitting same to him or giving him orders on defendant for stated sums:—Held, that the defendant was properly convicted under sections 197 and 198 of the Code, of keeping a common betting house, the place in question being opened and kept

for the reception of money by defendant on behalf of B. as consideration for an undertaking to pay money thereafter to the depositor on the event of a horse-race. Regina v. Giles, 26 O.R. 586.

GUESSING COMPETITION; SKILL OR CHANCE.

Defendant company, as a means of advertising their soap at an exhibition held at St. John, offered a piano as a prize for the person guessing the correct weight or the nearest to the correct weight of a large cake or block of soap exhibited at the said exhibition. The guessing was free and all persons who desired to guess were provided with coupon tickets, upon which to mark their guesses. The tickets were deposited, or were supposed to be deposited, in a box, and the corresponding coupons retained by the respective guessers. The plaintiff guessed within a shade of the correct weight, and after the soap had been weighed presented her coupon with her guess marked thereon, but the judges could not find her ticket in the box and awarded the prize to another person whose guess was not so near the correct weight as the plaintiff's. Plaintiff afterwards brought an action for breach of contract:—Held, on demurrer to plaintiff's declaration, that the competition was not a lottery within the meaning of the Criminal Code, and that the exercise of judgment required in the guessing was a sufficient consideration to support the contract. Dunham v. St. Croix Soap Co. (1897), 33 Can. Law Journal, 444.

NEWSPAPER GUESSING CONTEST; "MODE OF CHANCE" OR SKILL.

The defendant, being the proprietor of a newspaper, advertised 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 on 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. The defendant was convicted of a contravention of C.S.C. ch. 95:—Held, that as the approximation to the number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposing of property within the meaning of the Act. Reg. v. Dodds, 4 O.R. 390.

BETTING ON RESULTS OF ELECTION; DEPOSITARY OF ELECTION WAGERS.

R.S.C. ch. 159, sec. 9, provides inter alia that "every one who becomes the custodian or depositary of any money . . . staked, wagered or pledged upon the result of any political or municipal election . . . is guilty of a misdemeanour" and a sub-section says that "nothing in this section shall apply to . . . bets between individuals":—Held, reversing the decision of the Court of Appeal, Taschereau, J., dissenting, that the sub-section is not to be construed as meaning that the main section does not apply to a depositary of money bet between individuals on the result of an election; such depositary is guilty of a misdemeanour, and the bettors are accessories to the offence and liable as principal offenders. R.S.C. ch. 145. After the election, when the money has been paid to the winner of the bet, the loser cannot recover from the stakeholder the amount deposited by him, the parties being in pari delicto and the illegal act having been performed. [Reg. v. Dillon (10 Ont. P.R. 352), overruled.] Walsh v. Frederick, 23 Can. S.C.R. 695.

EXERCISE OF JUDGMENT NOT A "MODE OF CHANCE."

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:—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:—Quære, whether defendant should not get the costs of quashing conviction made to test the law in such a case. Regina v. Jamieson (1884), 7 O.R. 149.

BETTING PRIVILEGE OF INCORPORATED ASSOCIATION; SALE OF.

The object of the Legislature in enacting the latter part of sub-sec. 2 of sec. 204 of the Criminal Code, apparently was to reserve the race-courses of incorporated associations as places where bets might be made during the actual progress of a race meeting, without the bettors being subject to the penalties of that section. An agreement for the sale of betting and gaming privileges at a race meeting by an unincorporated association, who are the lessees of an incorporated association, the owners of the race-course, is not illegal. Stratford Turf Association v. Fitch et al. (1897), 28 O.R. 579.

GAMING CONTRACTS; WHAT CONSTITUTES.

Article 1927 of the Civil Code does not differ substantially from 8 and 9 Vict. ch. 109, sec. 18 (Imp.), and renders null and void all contracts by way of gaming and wagering. A broker was employed to make actual contracts of purchase and sale, in each case completely by delivery and payment, on behalf of a principal whose object was not investment, but speculation:—Held, that these were not gaming contracts

within the meaning of the Code. Forget v. Ostigny, [1895] A.C. 318.

INFORMATION; NECESSARY ALLEGATIONS; DEGREE OF PROOF.

Held by Sir M. B. Begbie, C.J., in case stated under 20 and 21 Vict. (Imp.) ch. 43:—(1) That it is not necessary to a conviction under 40 Vict. ch. 33, sec. 4, providing "any person playing in a common gaming house is guilty of an offence," to allege or prove that the game played is an unlawful game, and it appearing in the case stated that cards and instruments of gaming were found in the house, when entered on a warrant, there was prima facie evidence, under sec. 3 of the Act, that the place was a common gaming house, and that the defendant, who was found there, was playing therein. (2) That the allegation in the information that the defendant was playing at an unlawful game was surplusage and could be rejected. 20 and 21 Vict. (Imp.) ch. 43, was not repealed by the Dominion Statute, 37 Vict. ch. 42, and is therefore still in force in British Columbia. Regina v. Ah Pow, 1 B.C.R., Pt. I., 147.

KEEPING A COMMON BETTING HOUSE; WHAT CONSTITUTES.

A bank, telegraph office, and another office were simultaneously opened in a town. Moneys were deposited in the bank by various persons, who were given receipts therefor in the name of a person in the United States, which receipts were taken to the telegraph office, where information as to horse races being run in the United States was furnished to the holders of the receipts, who telegraphed instructions to the person there, for whom the receipts were given to place and who placed bets equivalent to the amounts deposited, on horses running in the races, and on their winning the amounts won were paid to the holders of the receipts at the third office by telegraphic instructions from the person making the bets in the United States:—Held, on the evidence and admissions to the above effect that the defendant, who kept the telegraph office, was properly convicted of keeping a common betting house under secs. 197-198 of the Criminal Code. Regina v. Osborne (1896), 27 O.R. 185.

MAINTAINING CLUB BY PROCEEDS OF COMMON GAMING HOUSE.

The defendants were officers of "The Commercial Club," an institution which was maintained by the proceeds realized by way of "cagnotte" or "rake-off" in card playing:—Held, that the accused fell under the provisions of art. 196, sec. (a) Criminal Code, and the Act amending the same 58 and 59 Vict. ch. 40, and that a "cagnotte" or "rake-off" used for the benefit of the establishment constituted the club a common gaming house. R. v. Brady, 10 Que. S.C. 539.

NECESSARY ALLEGATIONS TO SUSTAIN CHARGE; SURPLUSAGE AVERMENTS.

The defendant was charged under 40 Vict. (D) ch. 33, sec. 4, with "playing at an unlawful game in a common gaming house," etc. Upon a case stated by the magistrate under 20-21 Vict. (Imp.) ch. 43:—Held, that it was not necessary to allege that the defendant was playing "at an unlawful game," and that the introduction of these words in the information was merely surplusage, held, that it was not necessary for the prosecution, in order to convict under this charge, to prove that the accused was playing at an "unlawful game." Held, that 20-21 Vict. (Imp.) ch. 43, was not repealed by the Dominion Statute, 37 Vict. ch. 42, and therefore is still in force in British Columbia. Regina v. Ah Pow, 1 B.C.R. Pt. I., 147.

SELLING PROPERTY BY LOT OR CHANCE.

Section 2 of R.S.C. ch. 159, prohibits the sale of "any lot, card, or ticket, or other means or device for . . . selling or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatsoever." The complainant went to the defendant's place of business and having been told by defendant that in certain spaces on two shelves there were in cans of tea a gold watch, a diamond ring, or $20 in money, he paid $1.00 and received a can of tea, which containing an article of small value, he handed the can back, paid an additional 50 cents and received another can, which also contained an article of small value. He handed this can back also, paid another 50 cents and secured another can, which also contained an article of small value. He then refused to pay any more money, and went away, taking the third can and the article in it with him. On a complaint laid by him before the police magistrate, the defendant was convicted in that he "unlawfully did sell certain packages of tea, being the means of disposing of a gold watch, a diamond ring, $20 in money, by a mode of chance, against the form of the statute," etc.:—Held, that the transaction came within the terms of said sec. 2, so as to make the defendant liable to conviction thereunder; held, also, that the Summary Convictions Act applied to cure any defect in the form of the conviction. Regina v. Freeman (1889), 18 O.R. 524.

DISORDERLY HOUSE; OFFENCE OF KEEPING: CR. CODE, SEC. 783 (F).

Criminal Code, sec. 783 (f), enacting that whenever any person is charged before a magistrate with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house, the magistrate may hear and determine the charge in a summary way, does not apply to the offence of keeping a com-

mon gaming house. R. v. France, 1 Can. Cr. Cas. 321.

[Disapproved in R. v. Flynn, 9 Can. Cr. Cas. 550; approved and followed in R. v. Lee Guey, 13 Can. Cr. Cas. 84, 15 O.L.R. 235, 10 O.W.R. 1060; referred to in R. v. Four Chinamen, 13 O.L.R. 217; followed in R. v. Paquin, 7 Que. Q.B. 322; referred to in R. v. Ah Sam, 12 Can. Cr. Cas. 338.]

FORFEITURE; COLLATERAL ATTACK.

A judgment of forfeiture in criminal proceedings of money found in a common gaming house is not subject to collateral attack in a civil action brought for the recovery of the moneys. O'Neil v. Attorney-General, 1 Can. Cr. Cas. 303.

SEIZURE OF EFFECTS.

For the purpose of seizing money, etc., found in a common gaming house under a statute giving authority to the "chief constable or deputy chief constable," it is not requisite that the officer acting should bear the exact title given in the statute, and it is sufficient if his functions and duties are such as to bring him within the designation there used. O'Neil v. Attorney-General, 1 Can. Cr. Cas. 303.

DEAL DETERMINED BY CHANCES OF THE GAME.

The game of "black jack" is a game of chance, and a place kept or used for playing it, although not kept for gain, is a common gaming house under Cr. Code sec. 196(b). The keeping of a house, room or place for playing a game of chance or mixed game of chance and skill in which the chances of the game are in favour of the player who is the dealer or banker therein for the time being, is an indictable offence under secs. 196 and 198 of the Criminal Code, if the position of dealer or banker passes from one player to another by the chances of the game and not by rotation. R. v. Petrie, 3 Can. Cr. Cas. 439.

[Not followed in R. v. Hung Lee, 21 Can. Cr. Cas. 405, 13 D.L.R. 44.]

GAMING HOUSE; VOLUNTARY ALLOWANCES TO PROPRIETOR.

A room resorted to for the purpose of playing the game of poker is not shewn to be kept "for gain" under Code, sec. 196 (a) by the mere proof that the proprietor who participated in the game on equal terms with the others, was allowed by the consent of the players, and not as a matter of right nor as a condition on which the playing took place, to take small sums from the stakes on several occasions by way of reimbursement for refreshments provided by him to the players, where such sums are not shewn to exceed the cost or value of the refreshments. R. v. Saunders, 3 Can. Cr. Cas. 495.

[Overruled in R. v. James, 7 Can. Cr. Cas. 196, 6 O.L.R. 25.]

GAMING HOUSE; DISCRETION TO REFUSE SUMMARY TRIAL.

The term "disorderly house" in Cr. Code, sec. 783 (f) applies only to those cases which fall within the statutory definition of that term given in Cr. Code, sec. 198. Upon a charge under Cr. Code, secs. 783 and 784 of keeping a "disorderly house" in that the accused is alleged to be keeping a gaming house, the police magistrate has jurisdiction to hear and determine the charge summarily without the consent of the accused, but the exercise of that jurisdiction is discretionary with the magistrate, and he may instead proceed as with a preliminary enquiry, and commit the accused for trial. Ex parte John Cook, 3 Can. Cr. Cas. 72.

[Followed in R. v. Flynn, 9 Can. Cr. Cas. 553; approved in R. v. Ah Sam, 12 Can. Cr. Cas. 538.]

MARGIN CONTRACTS IN STOCKS AND MERCHANDISE.

A broker, who merely acts as such for two parties, one a buyer and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the contracting parties to gamble in stocks or merchandise, is not liable to prosecution under sec. 201, paragraphs (a) and (b), of the Criminal Code of Canada, nor as accessory under sec. 61. R. v. Dowd, 4 Can. Cr. Cas. 170.

COMMON BETTING-HOUSE; HORSE RACING; INCORPORATED ASSOCIATION.

The exemption contained in Code, sec. 204 (2) as to bets made on the race course of an incorporated association during a race meeting is not to be read into secs. 197 and 198 as to the offence of keeping a common betting-house. It is an offence under the Criminal Code to keep a common betting-house whether or not it is kept on the race course of an incorporated association, and is operated only during the actual progress of a race meeting. The King v. Hanrahan, 5 Can. Cr. Cas. 430.

[Distinguished in R. v. Hendrie, 10 Can. Cr. Cas. 303, 306; referred to in R. v. Saunders (No. 1), 12 Can. Cr. Cas. 37.]

LOOKING ON IN COMMON GAMING-HOUSE.

A notice of appeal purporting to be from a summary conviction for "looking on" while another person was playing in a common gaming house is not a good notice of appeal from a conviction for "playing" in a common gaming house. The King v. Ah Yin (No. 1), 6 Can. Cr. Cas. 63.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 36.]

WHAT IS KEEPING "FOR GAIN;" SUBSTANTIAL PROOF UNNECESSARY.

(1) Where all of the evidence went to the jury on a charge of keeping a common gaming house but the trial Judge gave an er-

roneous instruction favourable to the accused as to the meaning of the term "for gain," and the jury acquitted the accused although there was evidence unaffected by such instruction which, if believed, was sufficient for a conviction, an Appellate Court on a case reserved by the prosecution should decline to order a new trial which would place the accused a second time in jeopardy. (2) Where the keeper of a cigar store allowed gaming upon his premises and received the "rake-off," a portion of the stakes, in consideration of his supplying refreshments and cigars to the players, the jury may be instructed that such facts are evidence of keeping the place "for gain" so as to constitute the same a common gaming house, although the amount so received was no more than a reasonable remuneration for the articles supplied. (3) The question in such case is not whether the accused made an actual substantial profit by the gaming, but whether the receipts of his business were increased by sales to persons who resorted to the store for the purpose of gaming. The King v. James, 7 Can. Cr. Cas. 196.

[Referred to in R. v. Phinney (No. 2), 36 N.S.R. 295; R. v. Mah Kee, 9 Can. Cr. Cas. 51; R. v. Mercier, 13 Can. Cr. Cas. 483; followed in R. v. Sala, 13 Can. Cr. Cas. 200.]

SLOT MACHINE; MIXED GAME OF CHANCE AND SKILL.

(1) It is a question of fact and not of law whether the use of a slot machine for selling cigars, whereby customers obtained for the one price a number of cigars varying according to the working of the machine, is or is not a game of chance, a mixed game of chance and skill, or a game of skill only. (2) Where the facts upon which the trial Judge founded his decisions are not certified with a case reserved, the Court of Appeal has no jurisdiction to review the finding of the trial Judge that the use of such apparatus constituted a mixed game of chance and skill, although the record of the trial proceedings was transmitted with the case. The King v. Fortier, 7 Can. Cr. Cas. 417.

FACILITATING BETTING BY ANNOUNCING RESULTS; NEWSPAPER PROPRIETOR'S LIABILITY.

The publication in a newspaper of an advertisement soliciting bets to be placed upon horse races and also of the results from day to day of said races is illegal: and the newspaper proprietor is liable under Code, sec. 197 (d) for the indictable offence of using the newspaper office for the purpose of facilitating the making of bets upon a horse race, and keeping a common betting house within the statutory definition of that offence. The King v. Smallpiece, 7 Can. Cr. Cas. 556.

COMMON GAMING HOUSE; PROOF OF GAIN TO PROPRIETOR; RESORTING FOR THE PURPOSE OF GAMBLING.

(1) Proof that a game with cards, dice and "chips" was being played by several people seated at tables, each player procuring the "chips" from the accused, the proprietor of the place, and handing over to him the money therefor, and that the accused said that the game was "fan tan," and that he was "doing well out of it," is evidence that the game was a game of chance and that the place was being kept by the accused "for gain" under Code secs. 196 and 198. (2) Proof that persons other than those resident at or belonging to the house, room or place at which the proprietor operates for gain a game of chance or a mixed game of chance and skill, were in attendance there and participated in such game is evidence that such persons "resorted" to such place for the purpose of playing such game, and of the place being a common gaming house under secs. 196 and 198 of the Criminal Code. The King v. Mah Kee, 9 Can. Cr. Cas. 47.

[Distinguished in R. v. Lee Woo, 16 Can. Cr. Cas. 215.]

POLICE POWER; SUPPRESSION OF GAMBLING HOUSES; MUNICIPAL BY-LAW; ALLOWING POKER PLAYING FOR MONEY IN PRIVATE HOUSES.

Even if a provincial legislature has authority to authorize municipalities to pass by-laws "for suppressing gambling houses," a municipal by-law assuming to prohibit a person from allowing a game of cards to be played for money in his house is invalid as being in excess of the power delegated. The King v. Spegelman, 9 Can. Cr. Cas. 169.

SUMMARY TRIAL; KEEPING COMMON GAMING HOUSE.

(1) Code, sec. 738 (f), which confers the power of summary trial for the offence of keeping "any disorderly house, house of ill-fame or bawdy house," includes as a "disorderly house" a common gaming house. (2) The definition of the term "disorderly house" contained in Code, sec. 198 (Part XIV. "Nuisances") applies to the same term in Code, sec. 783 (Part LV. "Summary Trials") and the rule "noscitur a sociis" does not apply to the interpretation of the sub-sec. (f) of sec. 783. [R. v. France, 1 Can. Cr. Cas. 321 (Que.) disapproved.] The King v. Flynn, 9 Can. Cr. Cas. 550.

"LOOKING ON" WHILE PLAYING IN PROGRESS; SUMMARY CONVICTION; EVIDENCE OF ACCOMPLICE; CORROBORATION.

A summary conviction based upon the uncorroborated evidence of an accomplice who is shewn to have received money to testify against the accused is properly set

aside on appeal. The King v. Ah Jim, 10 Can. Cr. Cas. 126.

[Distinguished in R. v. Frank, 16 Can. Cr. Cas. 242.]

"BUCKET SHOPS"; GAMING TRANSACTIONS IN STOCKS.

(1) A person who acts as agent for another in managing a branch office for gambling transactions in stocks within Code, sec. 201, knowing that there was no intention of transferring any property or title to property, is liable to conviction as an accessory under Code, sec. 61, although his sole interest in the transactions was in the commissions paid to him for effecting the same. (2) Such agent is also liable under Code, sec. 201, sub-sec. 3, as the keeper of a common gaming house, and upon a speedy trial under Part LIV. of the Code is liable to imprisonment for five years under Code, sec. 951. The King v. Harkness (No. 1), 10 Can. Cr. Cas. 193.

"BUCKET SHOPS"; GAMBLING TRANSACTIONS IN STOCKS.

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HORSE-RACING; INCORPORATED JOCKEY CLUB; LEASE OF BETTING PRIVILEGES; ACQUIESCENCE OF DIRECTOR OR PRESIDENT OF CLUB.

The lease by an incorporated jockey club of the betting privileges at the race-tracks of the club with the knowledge and acquiescence of the club's president in the making of the lease and in the use of the covered betting enclosure by bookmakers exercising its privileges but without his taking part otherwise in the betting or in the management of the enclosure, does not involve the club's president in criminal liability as the keeper of a common betting house under Code, secs. 197 and 198. The King v. Hendrie, 10 Can. Cr. Cas. 298.

[Referred to in R. v. Saunders (No. 1), 12 Can. Cr. Cas. 37.]

GAMING HOUSE; GAME OF "DARTS;" UNEQUAL CHANCES OF PLAYERS; PROPRIETOR'S ADVANTAGE.

The proprietor of a place in which a cane and ring game is carried on under conditions which make the chances of the proprietor much more favourable than that of the customer is properly convicted of keeping a gaming house under Cr. Code secs. 196 and 198. The King v. Russell, 11 Can. Cr. Cas. 180.

GAMING HOUSE; GAME OF "DARTS;" UNEQUAL CHANCES OF PLAYERS; PROPRIETOR'S ADVANTAGE.

The proprietor of a place in which the game known as "darts" is carried on under conditions which make the chances of the proprietor much more favourable than that of the customers, is properly convicted of keeping a gaming house under Criminal Code secs. 196 and 198. The King v. Cashen, 11 Can. Cr. Cas. 183.

BETTING; DEPOSIT OF POST-DATED CHEQUES WITH STAKEHOLDER; DISHONOUR OF LOSER'S CHEQUE.

(1) Where two parties enter into a voidable betting or gaming contract, each putting up him own cheque post-dated the day on which the result of the bet would be ascertained, the fact that the loser's cheque was dishonoured because he had no account at the bank will not support a charge that he obtained the execution of the winner's cheque delivered to the stakeholder for a like amount by false pretences with intent to defraud. (2) The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof and is not, in itself, a false representation of a fact past or present. (3) Intent to defraud could not be found because the complainant was legally entitled to withdraw from the voidable contract even after the event upon which the bet was placed. The King v. Richard, 11 Can. Cr. Cas. 279.

COMMON BETTING HOUSE; RACE MEETING OF AN INCORPORATED ASSOCIATION; EXEMPTION AS TO BETTING, INAPPLICABLE TO OFFENCE OF KEEPING A BETTING HOUSE; BOOKMAKER'S BOOTH A "PLACE."

(1) A movable betting booth used by a bookmaker at a race track for the purpose of public betting is a "place" within sec. 227 of the revised Criminal Code 1906, and the bookmaker using it is properly

convicted of keeping a common betting house. (2) The exception, contained in sec. 235 of the Criminal Code 1906 relating to betting and pool-selling, whereby bets made on the race course of an incorporated association during a race meeting are exempt from its provisions, does not extend to the offence under Code, sec. 227 of keeping a common betting house. The King v. Saunders (No. 1), 12 Can. Cr. Cas. 33. [Affirmed in the King v. Saunders (No. 2), 12 Can. Cr. Cas. 174.]

COMMON BETTING HOUSE; PLACE FOR BETTING; BETTING BOOTH; RACE COURSE OF INCORPORATED ASSOCIATION.

(1) A movable booth used on the race-course of an incorporated racing association for the purpose of making bets is an "office" or "place" used for betting between persons resorting thereto as defined in sec. 227 of the Revised Criminal Code, and the bookmaker using it is properly convicted of keeping a common betting house. (2) Sub-sec. 2 of sec. 235 Revised Criminal Code, which exempts from the provisions of the main section (dealing with the recording or registering in bets, etc.), bets made on the race-course of an incorporated association does not apply to the offence of keeping a common betting house. Saunders v. The King; The King v. Saunders (No. 2), 12 Can. Cr. Cas. 174; The King v. Saunders, 12 Can. Cr. Cas. 33, affirmed.

[Distinguished in The King v. Moylett, 13 Can. Cr. Cas. 279, 281.]

GAMING HOUSE; "DISORDERLY HOUSE, HOUSE OF ILL-FAME OR BAWDY HOUSE."

(1) A gaming house is a "disorderly house" within the phrase "disorderly house, house of ill-fame or bawdy house" as used in sec. 774 of the Revised Code. (2) A charge of keeping a gaming house may be the subject of a summary trial without the consent of the accused. [Ex parte Cook, 3 Can. Cr. Cas. 72, approved.] The King v. Ah Sam, 12 Can. Cr. Cas 538.

KEEPING DISORDERLY HOUSE, HOUSE OF ILL-FAME OR BAWDY HOUSE; COMMON GAMING HOUSE NOT INCLUDED.

(1) The offence of keeping a common gaming house is not included in the term "keeping any disorderly house, house of ill-fame or bawdy house" as used in Code, secs. 773 and 774, and is not a subject of "summary trial" other than by a city or town magistrate acting under sec. 777 upon the consent of the accused. (2) Although a common gaming house is a "disorderly house" for the purposes of indictment under Code, sec. 228, it is not so as to the offence of vagrancy in keeping or being an inmate of a disorderly house under Code, sec. 238 (j), and the meaning of the words "disorderly house" as used in the latter section as well as in Code, sec. 773 is governed by the rule "noscitur a sociis" and is therefore restricted to houses of the same class or kind as houses of ill-fame or bawdy houses. (3) The magistrate in this case having a general jurisdiction under Code, sec. 777 to try the charge with the consent of the accused but no jurisdiction to convict as he did on a trial had without such consent, the case should be remitted for a new trial and the accused should be again brought before the magistrate to elect for or against summary trial. The King v. Lee Guey, 13 Can. Cr. Cas. 80.

[Discussed in R. v. Nar Singh, 14 Can. Cr. Cas. 456; specially referred to in R. v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276.]

KEEPING COMMON GAMING HOUSE.

An hotelkeeper who permits gambling in his hotel for the purpose of advancing the sale of drinks to the players for which purpose a rake-off is taken in the game is properly convicted of keeping a common gaming house. The King v. Sala, 13 Can. Cr. Cas. 198.

[Referred to in R. v. Mercier, 13 Can. Cr. Cas. 483.]

RACE-COURSE; BOOKMAKERS AMONGST SPECTATORS; NO BOOTHS OR FIXED PLACES OF BUSINESS.

Bookmakers conducting betting operations with the public upon horse-races at the race-course of an incorporated racing association, and who in so doing move around with the public and have no exclusive rights to any portion of the grounds nor any booth, tent, stand or other fixed place of business, are not thereby guilty of keeping a common betting house under Code, sec. 228. Saunders v. The King (1907), 12 Can. Cr. Cas. 174, distinguished; The King v. Moylett, 13 Can. Cr. Cas. 279.

[Distinguished in The King v. Johnston, 16 Can. Cr. Cas. 379.]

GAMING AND BETTING; DISTINCTION BETWEEN; PERSONAL BETS ON STREETS.

The mere taking of personal bets with individuals on horse-races is not "gaming," and the admission of the accused that he made his living principally by making such bets in the streets is not sufficient on which to convict him of vagrancy under Code, sec. 238 (1). The King v. Ellis, 15 Can. Cr. Cas. 379.

KEEPING COMMON GAMING HOUSE; FAILURE TO PROVE UNLAWFUL PLAYING FOR MONEY.

(1) On a seizure, under a search warrant, for gaming instruments under Code, sec. 641 of articles used for playing "fan tan," but without finding any money employed in connection with the game, the prosecution must shew that the method of playing was within the prohibition of Code, sec. 226 as to games of chance and mixed games of chance and skill as "fan tan" is not per se an unlawful game. (2) Code,

sec. 985 does not apply to shift the onus of proof from the prosecutor, unless it appears that the game being played was an unlawful one. (3) The confession of another person arrested with the accused in a gaming house case, but not jointly charged, is not admissible on the trial of the accused; such person should be called as a witness for the prosecution if it is desired to prove the facts which he professes to confess. The King v. See Woo, 16 Can. Cr. Cas. 213.

COMMON GAMING HOUSE; PLAYING POKER IN HOTEL ROOM.

(1) A game of poker with incidental betting not conducted in a place declared to be a common gaming house under Cr. Code, sec. 226, is not illegal. (2) The playing of poker games with money stakes at various times by the same persons in a room ordinarily used for other purposes will not constitute the place a common gaming house under Code, sec. 226, if none of the players were exclusively bankers in the game, nor had exclusive rights to the room, nor were the chances of the game more favourable to one player than to another. Rose v. Collison, 16 Can. Cr. Cas. 359.

PROPRIETOR OF SHOP TAKING BETTING CUSTOMERS TO PUBLIC STREET TO MAKE BETS WITH HIM; "PLACE," MEANING OF.

A person with a fixed place of business at which other persons find him when desirous of making bets on foreign horseraces is criminally liable in respect of betting arrangements there instituted, although the actual bargain of betting was made in each case on the public street adjacent to such place of business, the participants purposely going to the street with the intention of making the bets elsewhere than in a common betting house as defined by sec. 227 of the Cr. Code 1906. [The King v. Moylett (1907), 13 Can. Cr. Cas. 279, distinguished.] The King v. Johnston, 16 Can. Cr. Cas. 379.

BETTING; WILFULLY AND KNOWINGLY DESPATCHING BETTING INFORMATION.

The local manager of a telepragh company is not criminally liable in respect of the despatch of telegrams by his company's operators from the race-track giving information relating to betting, contrary to Code, sec. 235 (h), unless it is shewn that he wilfully and knowingly caused them to be sent. The King v. Hogarth, 18 Can. Cr. Cas. 272.

PUBLISHING OR SELLING RACING INFORMATION INTENDED FOR USE IN BETTING AND POOL SELLING.

(1) The gist of the offence under Cr. Code, sec. 235 (as amended in 1910) of publishing or selling information "intended for use in" betting or pool selling, is the intention of the accused; and a newsdealer or newsboy, if himself without criminal intent, would not be guilty under that section although the printer or publisher of the newspaper in question had intended that the racing information in it should be used in connection with the prohibited betting. (2) The onus is upon the prosecution to prove the unlawful intent. (3) When the evidence is as consistent with innocence as with guilt, there should not be a conviction. The King v. Luttrell, 18 Can. Cr. Cas. 295.

BETTING HOUSE OR GAMING HOUSE; DISTINCT OFFENCES.

Keeping a common gaming house and keeping a common betting house, either of which are declared to constitute the indictable offence of keeping a disorderly house by the same section of the Criminal Code (Cr. Code 1906, sec. 228) are distinct offences. The King v. Mah Sam, 19 Can. Cr. Cas. 1.

PLAYING AND LOOKING ON.

Playing and looking on in a gaming house are separate and distinct offences under Code, sec. 229 and a conviction in the alternative is not validated by sec. 725. (Per Perdue and Richards, J.J.A.; Howell, C.J., contra, and Cameron, J.A., expressing no opinion.) The King v. Toy Moon, 19 Can. Cr. Cas. 33.

IMPERIAL ACTS; APPLICATION TO PROVINCES; FAN TAN; PRESUMPTION; SEARCH; OBSTRUCTION.

As the English statutes passed in the reign of Geo. II. prohibiting gaming and lotteries deal with offences merely mala prohibita, and not mala in se, they do not extend proprio vigore to Canada. Fan tan is not a game that is unlawful per se. Although a bank is kept in the game of fan tan, which is one of mixed chance and skill, it is not within the prohibition of secs. 226 and 228 of the Crminal Code, unless one player acts as banker to the exclusion of the others. [The Queen v. Petrie (1900), 3 Can. Cr. Cas. 439, not followed.] It is only implements used in playing such games as are unlawful per se that are within the purview of sec. 985 of the Criminal Code 1906, which declares that certain paraphernalia and instruments used in playing any unlawful game found in a place suspected of being used as a common gaming house, shall, on a trial under secs. 228 and 229 of the Code, be prima facie evidence of the fact that such place was used as a common gaming house. In the absence of evidence that a constable was armed with a warrant when he was prevented from, obstructed or delayed in entering a place supposed to be used as a common gaming house, or that the person obstructing him knew that he was a constable, no presumption arises under secs. 985 and 986 of the Criminal Code, 1906, that such place was used as a

common gaming house. R. v. Hung Gee (No. 1), 21 Can. Cr. Cas. 404, 13 D.L.R. 44. See also 21 Can. Cr. Cas. 411, 13 D.L.R. 6.

[Referred to in R. v. Hing Hoy, 28 Can. Cr. Cas. 229, 36 D.L.R. 765; considered in R. v. Knowles, 22 Can. Cr. Cas. 66, 13 D.L.R. 773.]

KEEPING GAMING HOUSE; CONVICTION FOR; WHEN SUSTAINED; PRESUMPTION; RESISTING OFFICER.

Where the circumstances create no statutory presumption under Cr. Code, secs. 985 and 986 a conviction under sec. 228 of the Criminal Code for keeping a common gaming house cannot be sustained in the absence of evidence that a "bank" was kept by one or more of the players exclusive of the others, or that there was a gain to accrue to the accused from permitting the gaming to be carried on. The prima facie presumption that a place is a common gaming house created by sec. 985 of the Criminal Code from the finding by officers of certain implements of gaming therein, arises only when the officer enters the place under a warrant or order. The fact that an officer on seeking admittance to a place suspected of being a common gaming house, finds the door locked does not constitute a wilful prevention, obstruction or delay of his entrance sufficient to raise the prima facie presumption created by sec. 986 of the Criminal Code that the place was used as a common gaming house; the presumption is created only when something active is done amounting to a wilful obstruction or prevention. R. v. Jung Lee, 22 Can. Cr. Cas. 63, 13 D.L.R. 896.

[Followed in Perron v. Senecal, 24 Can. Cr. Cas. 358.]

AUTOMATIC GUM-VENDING MACHINE; FREE CHECKS WITH PURCHASES.

To constitute gaming the result must be uncertain, and a charge of gaming is not established where a slot machine from which chewing gum is sold automatically at the ordinary cost of five cents per packet distributes in addition free checks varying in number with each sale but indicated to the customer before he deposits his coin, although these checks are redeemable elsewhere for goods or may, at the customer's option, be replayed in a section of the machine on the chance of more checks or a blank. [R. v. Fortier, 17 Can. Cr. Cas. 423, applied.] R. v. Langlois, 23 Can. Cr. Cas. 43.

POOL SELLING; BETTING; JURISDICTION OF POLICE MAGISTRATE.

A person charged before a Police Magistrate with contravention of sec. 235 of the Criminal Code (as re-enacted by 9 & 10 Edw. VII. ch. 10, sec. 3), dealing with betting, wagering, pool-selling, etc., has the right to elect to be tried by a jury, and cannot without his consent be tried summarily by the Police Magistrate. R. v. Helliwell, 23 Can. Cr. Cas. 146, 18 D.L.R. 550.

RESISTING SEARCH; COMMON GAMING HOUSE.

Where windows are barred and special efforts made to hide what is going on in a building used by Chinamen as a clubhouse in which it was rumoured gambling was being carried on, such cause of suspicion may be shown in justification of a warrant of search under Cr. Code, sec. 641 in a civil action against the chief constable; it is not a sufficient ground for removing the suspicion or for shewing the grounds of suspicion unreasonable, to prove that only members of the club had access to the premises, and this part from any necessity for finding that there had been any infraction of the law in the manner of conducting the club. [R. v. Hung Gee, 21 Can. Cr. Cas. 404, 13 D.L.R. 44, cited; and see R. v. Jung Lee, 22 Can. Cr. Cas. 63, 13 D.L.R. 896, 5 O.W.N. 80.] Wah Kie v. Calgary and Cuddy, 23 Can. Cr. Cas. 325, 19 D.L.R. 378; affirmed in 23 Can. Cr. Cas. 383, 20 D.L.R. 351.

PREMIUM SLOT MACHINES; GUM-VENDING.

Where there is evidence justifying the magistrate in finding that a slot machine used for vending gum is a mere subterfuge and a pretence and that the real object of the machine was to get the customer to continue to play the machine in the hope of winning certain discs given gratis with the gum at irregular intervals and which would be taken in lieu of cash for goods at the tobacco store where the slot machine was operated and that the disc feature of the machine was by reason of the possibility of a comparatively large return from the play the incentive for placing money in the slot, a conviction under Code, sec. 228, may be supported for keeping a common gaming house in maintaining for gain the place to which persons resorted for the purpose of playing at a game of chance. [See contra R. v. Langlois (Que.), 23 Can. Cr. Cas. 43.] R. v. Stubbs, 24 Can. Cr. Cas. 60, 21 D.L.R. 541.

[Reversed in 24 Can. Cr. Cas. 303, 25 D.L.R. 824; approved in R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503.]

GUM-VENDING MACHINE; PREMIUMS; CHANCE.

A person does not keep a common gaming house under Cr. Code, secs. 228 and 986, because of the maintenance of a chewing-gum vending machine with a varying premium feature automatically operated in connection therewith whereby the exact result of the next operation of the machine is indicated immediately following its last operation; the fact that the inducement is thereby held out that in some future play of the machine the operator may receive some-

thing more than an adequate return for his money, does not introduce the element of chance essential to constitute the crime. [R. v. Langlois, 13 Can. Cr. Cas. 43, referred to.] R. v. Stubbs (No. 2), 24 Can. Cr. Cas. 303, 25 D.L.R. 424; reversing 24 Can. Cr. Cas. 60, 21 D.L.R. 541.

[Distinguished in R. v. Berry, 27 Can. Cr. Cas. 278, 34 D.L.R. 573; considered in R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D.L.R. 441; referred to in R. v. Gerasse, 26 Can. Cr. Cas. 246, 29 D.L.R. 523; R. v. Smith, 26 Can. Cr. Cas. 398, 30 D.L.R. 587; disapproved in R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503.]

AUTOMATIC GUM VENDING MACHINE; FREE TRADE CHECKS WITH PURCHASES.

An automatic vending machine is properly held to be a contrivance for unlawful gaming where in addition to the chewing gum or other article obtainable from the machine on deposit of a coin there is issued in some cases along with the article purchased one or more trade checks redeemable in goods at the store where the machine is kept and which may at the customer's option be replayed into the machine on the chance of more trade checks or a blank; the element of gaming remains notwithstanding the fact that the number of trade checks, if any, at the next operation of the machine is indicated in advance to the person using it as in addition to the fixed quantity of chewing gum given for the five cent coin the operator obtains the opportunity of winning the trade checks indicated and the benefits incident thereto or in case of drawing a blank with his purchase he received the benefit of a fresh turn of the indicator and the chance that the machine would indicate trade checks along with the next purchase were he to repeat the operation with another coin. [R. v. Langlois (1914), 23 Can. Cr. Cas. 43; R. v. Stubbs (No. 2) (1915), 24 Can. Cr. Cas. 303, 25 D.L.R. 424, disapproved; R. v. Stubbs (No. 1), 24 Can. Cr. Cas. 60, 21 D.L.R. 541, approved.] A charge of keeping a common gaming house is maintainable against the proprietor of a cigar store who keeps in the store an automatic gum vending machine operated as a nickel-in-the-slot device where the machine issues trade checks along with certain purchases and not with others, in such a manner as to constitute a contrivance for unlawful gaming, if the keeper of the store was entitled to a share of the profits from the operation of the machine although the machine belonged to another who alone had the keys with which to open it. Semble, that the Criminal Code, sec. 986, as amended 1913, has the effect of making it prima facie evidence that a room or place is a common gaming house if it is found fitted or provided with any means or contrivance for unlawful gaming, by a constable who enters by consent of the proprietor and without any search warrant or order under Cr. Code, sec. 641, as amended 1913; and it is not necessary for the prosecutor to prove there was any resorting to the place (Cr. Code, sec. 226 (*a*)) as part of their prima facie case where the provisions of Cr. Code, sec. 986, apply. R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503.

[Referred to in R. v. Berry, 27 Can. Cr. Cas. 278, 34 D.L.R. 573; Bareham v. The King, 26 Can. Cr. Cas. 211, 31 D.L.R. 431; R. v. Gerasse, 26 Can. Cr. Cas. 246, 29 D.L.R. 523; R. v. Smith, 26 Can. Cr. Cas. 398, 30 D.L.R. 587.]

BETTING-HOUSE; SEARCH ORDER; FINDING OF BETTING SLIPS.

That the place was kept as a common betting-house may be inferred from the finding, as the result of a search order under Cr. Code, sec. 641, of numerous betting slips on defendant's person when arrested and of bank books found on search of his personal belongings where he lived, which disclosed continuous deposits of large amounts from month to month, quite out of proportion to his cigar store business, and as to which the defendant offered no explanatory evidence, particularly where he had said, after his arrest, that he had been "too long in the game." [See Annotation on "Betting-house Offenses" at end of this case.] R. v. Johnson, 25 Can. Cr. Cas. 124.

"GAMBLING MACHINE;" GUM VENDING.

The term "gambling, wagering or betting machine" as used in Cr. Code, sec. 235, sub-sec. (*b*) (Code Amendment of 1913) is not restricted by its context to apparatus for the recording of bets or wagers or pool selling; any "gambling machine" is within the prohibition of sub-sec. (*b*) as enacted by 3 Geo. V., Can., ch. 13, sec. 13, and this will include an automatic gum vending machine so contrived as to entice patrons to gamble by holding out the chance of getting, along with the gum for a five cent coin, something worth much more under a process of chance drawing. Where an automatic gum vending machine is worked so as to give the customer along with a package of chewing gum a blank or a varying number of disks or trade-checks available for being replayed into the machine, and the manifest object is to induce people to gamble by enticing them with the chance of getting something of much larger value than the coin deposited by repeated operations of the machine, it is none the less a gambling machine because each operation of it causes to be displayed the chance result which will follow the next deposit of either coin or disk. [R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503, 34 O.L.R. 467, referred to; see also R. v. Stubbs (No. 1), 24 Can. Cr. Cas. 60, 21 D.L.R. 541, and R. v.

Stubbs (No. 2), 24 Can. Cr. Cas. 303, 25 D.L.R. 424.] Bareham v. The King, 26 Can. Cr. Cas. 211, 31 D.L.R. 431.

AUTOMATIC GUM VENDING MACHINE; ELEMENT OF CHANCE.

Despite the fact that an automatic gum vending machine, into which coins are placed and from which gum and trading checks are obtained, indicates in advance of each operation precisely what will be obtained, it is a gambling device, if, on each occasion the customer works it, there is the element of chance on the combination for the succeeding operation which will result and this notwithstanding that the proprietor has given notice that there is no assurance of more than one operation of the machine to any customer and that the right to discontinue is reserved. [Rex v. Stubbs, 24 Can. Cr. Cas. 303, 25 D.L.R. 424; Rex v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503, referred to.] R. v. Gerasse, 26 Can. Cr. Cas. 246, 29 D.L.R. 523.

"GAMING MACHINE."

An automobile vending machine so equipped that the repeated operation thereof introduces the element of chance and offers the inducement to hazard further deposits of coin in the hope of getting out of the varying returns something of much more value than the money deposited, is a gaming machine the keeping of which for use is in contravention of the Criminal Code. (Per Macdonald, C.J.A., and Galliher, J.A., in an equally divided Court, affirming the decision below.) [R. v. Stubbs, 24 Can. Cr. Cas. 303, 25 D.L.R. 424, 9 A.L.R. 26, and R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503, 34 O.L.R. 467, considered; see also R. v. Gerasse, 26 Can. Cr. Cas. 246, 29 D.L.R. 523; Bareham v. The King, 26 Can. Cr. Cas. 211, 25 Que. K.B. 354, 31 D.L.R. 431.] R. v. Smith, 26 Can. Cr. Cas. 398, 30 D.L.R. 587.

[Referred to in R. v. Berry, 27 Can. Cr. Cas. 278, 34 D.L.R. 573.]

CLUB; "KEEPER;" WANT OF PERSONAL GAIN.

A bona fide club where members frequently play games of chance and skill, and form a pool from the money staked to expend for refreshments supplied to them by the club, is not a common gaming house within the definition of sec. 226 of the Code, and the steward should not be convicted as a "keeper" under sec. 228 of the Code if he derives no personal gain from the money so voluntarily contributed for refreshments. [R. v. James, 7 Can. Cr. Cas. 196, distinguished.] R. v. Riley, 26 Can. Cr. Cas. 402, 30 D.L.R. 584.

[Distinguished in R. v. Ham, 29 Can. Cr. Cas. 431.]

COMMON GAMING HOUSE; RESTAURANT.

Playing cards to determine who shall pay for drinks, food or cigars for the use of the players is gaming; and a restaurant keeper who knowingly permits such to be done in his restaurant is guilty of keeping a common gaming house. [R. v. James, 7 Can. Cr. Cas. 196, 6 O.L.R. 35, referred to.] R. v. Bloomfield, 27 Can. Cr. Cas. 45.

GAMING HOUSE; INCORPORATED CLUB; OFFICIALS AS "KEEPERS."

The secretary and treasurer in active control and management of an incorporated social club which maintains for gain a common gaming house for its members are punishable under Cr. Code, sec. 228 (2), as amended in 1913, as keepers of a disorderly house, although the real owner and keeper was the incorporated club. R. v. Merker and Daniels, 27 Can. Cr. Cas. 113.

AUTOMATIC SLOT MACHINE; PROVINCIAL LICENSE.

The fact that slot machines are licensed in Quebec Province, under the authority of the Act 5 Geo. V. (1915), ch. 23 (Que.), has not the effect of making the use of them legal if operated for gambling prohibited by criminal law. [See Annotation on "Use of automatic vending machines for gambling," at end of this case.] R. v. Bernier, 27 Can. Cr. Cas. 225, 33 D.L.R. 640.

AUTOMATIC VENDING MACHINE; TRADE CHECKS WITH PURCHASES.

The maintenance of an automatic vending machine so contrived as to issue in irregular and varying quantities at intervals of its operation certain tokens called "trade-checks" which could be replayed into the machine with the chance of gaining more trade-checks will make the person in charge of the premises criminally responsible for permitting the place to be used as a common gaming house (Cr. Code, secs. 228 and 228A) if such trade-checks have a value by reason of their being exchangeable for goods and the occupant of the premises permits two persons to repeatedly operate the machine by way of gaming and knowing that they have arranged that the trade-checks received by both in return for the coins each of them has deposited shall go to the one receiving the larger number of trade-checks. [R. v. Stubbs (No. 2) 24 Can. Cr. Cas. 303, 25 D.L.R. 424, 9 A.L.R. 26, distinguished: R. v. O'Meara, 25 Can. Cr. Cas. 16, 25 D.L.R. 503, 34 O.L.R. 467, and R. v. Smith, 26 Can. Cr. Cas. 398, 30 D.L.R. 587, referred to; see also R. v. Bernier, 27 Can. Cr. Cas. 225, and Annotation to same.] R. v. Berry, 27 Can. Cr. Cas. 278, 34 D.L.R. 573.

KEEPING COMMON GAMING HOUSE; PROOF OF GAIN.

A conviction for the indictable offence of "keeping" a common gaming house (Cr. Code, sec. 228) based upon the playing of a game of chance by others in a store op-

erated by the defendant can be maintained against the latter only in the event of its being proved that he participated in the rake-off of the game or otherwise obtained a gain by permitting such gambling on his premises. [Regina v. Saunders, 3 Can. Cr. Cas. 495, referred to; but see Cr. Code, sec. 228A (Code Amendment of 1913) as to summary conviction of an occupier who knowingly permits premises to be used for the purposes of a disorderly house.] R. v. Charlie Yee, 27 Can. Cr. Cas. 441.

ELEMENT OF CHANCE; GAMING HOUSE; PRESUMPTION; SEARCH.

There must be evidence or admissions to shew that the game being played is one in which there was the element of chance before a magistrate can find the place to be a common gaming house under Cr. Code, sec. 226. The fact that money, buttons and chips were found on a police raid does not make out a prima facie case where there was no proof that the game of fan tan was an unlawful one. (Per Stuart, J.) Where sec. 985 of the Criminal Code is relied upon to create a statutory presumption from the finding of instruments of gaming used in playing any unlawful game, the search order or warrant should be proved by its production. [See Annotation, 24 Can. Cr. Cas. 443.] The provisions of Code, sec. 226, sub-sec. (*b*) as to what constitutes a common gaming house notwithstanding that there is no proof of gain by the keeper, do not apply to a game in which, though a bank is kept, the chances of being banker are equal to all the players. (Per Beck, J., concurring in quashing the conviction.) [R. v. Hung Gee (No. 1), 21 Can. Cr. Cas. 404, 13 D.L.R. 44, referred to; R. v. Petrie, 3 Can. Cr. Cas. 439, 7 B.C.R. 176, approved by Beck, J., and disapproved by Harvey, C.J.] R. v. Hing Hoy, 28 Can. Cr. Cas. 229, 36 D.L.R. 765.

FAN TAN; BENEFIT OF CLUB; DISORDERLY HOUSE.

Fan tan is a mixed game of chance and skill, and when it is played in a club with others than members participatng in the game and a rake-off is taken to the uses of the club from their winnings in like manner as from the winnings of members, the place is a disorderly house within Cr. Code, secs. 226A and 229. [R. v. Brady, 10 Que. S.C. 539, applied; R. v. Riley, 26 Can. Cr. Cas. 402, 30 D.L.R. 584, 23 B.C.R. 192, distinguished.] R. v. Ham, 29 Can. Cr. Cas. 431.

GOLD AND SILVER MARKING ACT.

LEGISLATIVE POWER TO PROHIBIT THE MARKING OF CERTAIN WARRANTIES; GOLD PLATING AND SILVER PLATING.

(1) It is within the legislative powers of the Dominion Parliament to enact as a part of legislation intended to protect the public against fraud that it shall be a criminal offence for a dealer in watch cases or other plated ware to apply a mark to plated goods purporting to guarantee that the plating would last for a specified time or to advertise to that effect; and the prohibited offence may be made a crime and punished as such, regardless of the question of intent to deceive the public and regardless of the fairness or truth of the warranty. (2) Subsection (b) of sec. 16 of the Gold and Silver Marking Act, 7 and 8 Edw. VII. (Can.) ch. 30, is intra vires. The King v. Lee, 18 Can. Cr. Cas. 480.

NINE KARAT MARK ON GOLD RINGS; CONCEALMENT.

It is an offence under the Gold and Silver Marking Act, 1908, 7-8 Edw. VII. (Can.) to have in possession with intent to sell the same, rings marked as of nine karat gold unless nine twenty-fourths of the weight of the ring, including that of the cement inclosed in the inner part of the ring, is of gold; and the nine twenty-fourths proportion does not apply to the gold and alloy only in the article but to all that part of the article which has the appearance of and is likely to be the subject of fraudulent sales on the representation that it is throughout of the quantity indicated by the mark. The King v. Austin, 19 Can. Cr. Cas. 70.

GRAIN LAWS.

GRAIN SHIPMENT; ALLOTMENT OF RAILWAY CARS; STATUTORY REGULATIONS IN MANITOBA AND N.W.T.; MANITOBA GRAIN ACT, 1900 (CAN.).

A railway station agent within the Inspection District of Manitoba to which the Manitoba Grain Act, 1900 (Can.), applies, is guilty of an infraction of that statute if he allots cars to the elevator companies having grain elevators at a shipping point in preference to the unfilled prior order of a private applicant for a single car duly entered in the order book pursuant to sec. 58 of that Act. The King v. Benoit, 6 Can. Cr. Cas. 351.

GRAND JURY.

Note on the constitution of a grand jury; Number necessary to the finding of a true bill. 1 Can. Cr. Cas. 213.

Question of unsworn evidence before. 1 Can. Cr. Cas. 444.

Procedure in Nova Scotia. 3 Can. Cr. Cas. 587.

Swearing witnesses before. 6 Can. Cr. Cas. 306.

What evidence receivable before. 6 Can. Cr. Cas. 306.

Initialling names of witnesses sworn. 6 Can. Cr. Cas. 404.

Defective organization of grand juries; When proceedings void apart from Code, sec. 656. 8 Can. Cr. Cas. 284.

Omission to send depositions to, in Nova Scotia. 8 Can. Cr. Cas. 59.

Secrecy of proceedings of grand juries. 9 Can. Cr. Cas. 132.

Objection to member of grand jury; Procedure; Motion to quash indictment. 9 Can. Cr. Cas. 121.

Private prosecutors; Recognizance to prosecute; Preferring indictment before grand jury. 10 Can. Cr. Cas. 214.

COMPLAINANT'S AGENT MEMBER OF GRAND JURY; PREJUDICE.

The defendants were indicted for conspiracy to prevent C. from recovering his rents. W., an agent for C., was on the grand jury which found the bill. A motion was made to quash the indictment because of W.'s presence on the grand jury, it being urged that his position was such as to prejudice him against the accused, and, therefore, to render him incompetent to be on the grand jury:—Held, that W. was incompetent, and that the indictment must be quashed. (Per Peters, J.) R. v. Gorbet, 1 P.E.I. 262.

CONSTITUTION OF.

In the Province of Quebec, where the number of grand jurors to be summoned had been reduced to twelve, a sheriff by mistake summoned twenty-four grand jurors, but only twelve were called; eleven of them were duly sworn and were held to constitute a grand jury, the other juror called being excused on account of illness and not being sworn. R. v. Poirier, 7 Que. Q.B. 483.

DISQUALIFICATION OF; INTEREST.

Defendant was indicted for riot during which the Orange Lodge had been attacked and damaged. On the grand jury which found the bill against defendant were some Orangemen, though it did not appear that beyond being members of the association they had any personal interest in the hall. The case for the Crown was closed when counsel for defendant moved to quash the indictment on the ground that the Orange grand jurors were disqualified to act on the grand jury in a case where the defendant was charged with riot causing damage to property in which Orangemen were interested:—Held, that the Orangemen, as such, were not disqualified to act as grand jurors. R. v. Collins, 2 P.E.I.R. 249.

VALIDITY OF PANEL; RELATIONSHIP OF JURYMEN TO OFFICER MAKING ARREST.

A sheriff had summoned twenty-four grand jurors, but in his list there was the name of B., whom he had intended to summon but he did not, and he had omitted to add the name of C., who had been summoned, whose name was, however, added to the list by the clerk of the Court. Twenty-two jurors, including C., were sworn, all of whom had been duly summoned:—Held, that the panel was valid. It is no ground for quashing the indictment that some of the grand jury were related to the officers who arrested the prisoners; neither is a sheriff disqualified from summoning and selecting a grand jury because he directed the arrest. The inclusion of the names of unqualified persons in the petit jury panel is not a ground of challenge to the array. Where the sheriff had summoned twenty-six persons as petit jurors, and the Judge struck off the last five names on the list: Held, that the summoning of the additional number did not vitiate the panel, and that the last five names were properly struck off. On the trial of a criminal case the Attorney-General demurred to a challenge to the array, and the demurrer was overruled, whereupon the Judge allowed him to withdraw his demurrer and traverse. Held (Weldon, J., dissenting), that this was a matter in the discretion of the Judge, which ought not to be the subject of review, but that so soon as the demurrer was held good, the panel was thereby quashed, and the whole should have been entered on the record. (Per Weldon, J.) R. v. Mailloux, 3 Pugs. (N.B.) 493.

QUALIFICATIONS; AFFINITY OF GRAND JUROR TO DEFENDANT; HOSTILE OPINION OF JUROR; VARIANCE IN NAMES OF PANEL AND VENIRE.

A true bill being found against defendant for libel, defendant moved to have same quashed on three several grounds. 1st. That one of the grand jurors who found the bill was of affinity to defendant in the seventh degree. 2nd. That the names of two persons on the jury were not the same as those contained in the panel annexed to the venire facias. 3rd. That one of the grand jurors had, previously to the finding of the indictment, expressed an opinion as to the defendant's guilt, hostile to the defendant, and from ill-will:—Held, that the first ground alleged was not sufficient to quash an indictment, and that from the evidence before him the second and third grounds were also insufficient. (Per Peters, J.) R. v. Lawson, 2 P.E.I. 398.

NUMBER FOR PANEL; NUMBER TO FIND TRUE BILL.

(1) It is within the power of a Provincial Legislature to fix the number of the grand jurors, who should compose the panel, that being part of the organization or constitution of the Court. (2) A Provincial Legislature has no power to fix the

number of grand jurors necessary to find a good bill of indictment that being a matter of criminal procedure and exclusively within the powers of the Dominion Parliament. R. v. Cox, 1 Can. Cr. Cas. 207.

[Referred to in R. v. Fouquet, 10 Can. Cr. Cas. 255, 14 Que. K.B. 91; R. v. Hayes, 11 B.C.R. 8; R. v. Hayes (No. 2), 9 Can. Cr. Cas. 106; approved in R. v. Walton, 11 Can. Cr. Cas. 206.]

PANEL NOT EXCEEDING THIRTEEN; ABSENCE OF JUROR.

In provinces where the grand jury has been reduced to thirteen jurors or less, the failure of some of the summoned jurors to attend will not invalidate a bill to which at least seven of the jurors in attendance agree. R. v. Girard, 1 Can. Cr. Cas. 216.

[Followed in R. v. Fouquet, 10 Can. Cr. Cas. 255, 19 Que. K.B. 91; referred to in R. v. Hayes, 11 B.C.R. 8; R. v. Cox, 2 Can. Cr. Cas. 215; R. v. Hayes (No. 2), 9 Can. Cr. Cas. 106.]

DUTIES OF FOREMAN.

The provisions of the Criminal Code, sec. 645, requiring the foreman of the grand jury to initial upon the bill of indictment the names of witnesses sworn is directory only and not imperative. R. v. Buchanan, 1 Can. Cr. Cas. 442.

[Referred to in R. v. Hayes (No. 2), 9 Can. Cr. Cas. 112.]

INDICTMENT; INITIALLING NAMES OF WITNESSES.

Cr. Code, sec. 645, which enacts that the foreman, or some member of the grand jury acting for him, shall initial on the bill of indictment the name of each witness sworn and examined, and which requires that the name of every witness examined, or intended to be examined, shall be endorsed on the bill, is directory only; and the omission to so initial does not invalidate the indictment. R. v. Townsend (N.S.), 3 Can. Cr. Cas. 29.

[Applied in R. v. Holmes, 6 Can. Cr. Cas. 392, 9 B.C.R. 296; followed in R. v. Buchanan, 12 Man. L.R. 193, 196; referred to in R. v. Hayes, 11 B.C.R. 14; R. v. Hayes (No. 2), 9 Can. Cr. Cas. 112.]

PRACTICE AS TO SUMMONING.

An order of a Superior Court to a coroner to summon a grand jury need not shew on its face all the facts which made it necessary that a coroner, instead of the sheriff, should be directed to summon the jury. Where a grand jury has been summoned by a sheriff who is disqualified from acting because of his relationship to a prosecutor, a new grand jury may be summoned on a venire to a coroner, without formally discharging the jury summoned by the sheriff or disposing of the indictment found by it. The indictment found by the sheriff's grand jury is in such case void, and it is open to the coroner summoning another jury to summon persons already summoned by the sheriff. There is at common law inherent power in a Superior Court of criminal jurisdiction to order one or more grand juries to be summoned. The sheriff or coroner may be directed by the one order to summon both a grand and a petit jury. R. v. McGuire, 4 Can. Cr. Cas. 12.

[Referred to in R. v. Hayes, 11 B.C.R. 17; R. v. Hayes (No. 2), 9 Can. Cr. Cas. 115.]

PROCEDURE ON SWEARING IN THE GRAND JURORS; ALL JURORS TO BE IMPANELLED WHEN FOREMAN SWORN.

(1) The swearing in of a grand jury should take place after its members are duly impanelled; and the foreman's oath should be sworn in the presence of the other grand jurors, they being afterwards sworn to observe the same oath. (2) Where the grand jurors were called and answered to their names and then the juror selected as foreman was impanelled alone and sworn, after which the other jurors were called from amongst the spectators to the box and were sworn to observe their foreman's oath, their proceedings are invalid and an indictment found by them should be quashed on motion. The King v. Belanger, 6 Can. Cr. Cas. 295.

CONSTITUTION OF; INSUFFICIENCY OF NUMBER ACTUALLY SUMMONED.

(1) In the Province of British Columbia it is imperative that thirteen jurors should be summoned for service on the grand jury, although seven of those appearing are sufficient to constitute a grand jury. (2) Where the sheriff summoned only twelve grand jurors and omitted to summon the thirteenth because he was informed that the latter had become demented, seven of such twelve do not constitute a grand jury, and are not competent to find an indictment. (3) Objection to the "constitution" of the grand jury are by Code, sec. 656 restricted to cases where the accused are prejudiced by the irregularity, but this limitation does not apply where a grand jury was never legally constituted. The King v. Hayes, 7 Can. Cr. Cas. 453.

[Relied on in R. v. Hayes (No. 2), 9 Can. Cr. Cas. 105; referred to in R. v. Kelly, 9 Can. Cr. Cas. 132.]

CHOOSING GRAND JURY.

(1) It is not necessary that the prisoner should be present in Court when the grand jury is sworn. (2) The grand jury is at liberty to examine the Crown witnesses in any order they see fit, and the examination of a single one of them constitutes neither an irregularity nor an illegality, when it is admitted that this witness was in a position to establish full admissions on the part of the prisoner. The King v. Mathurin, 8 Can. Cr. Cas. 1.

CONSTITUTION OF; IMPROPER MODE OF SELECTION; PROVINCIAL STATUTE PROVIDING FOR REPLACING ONLY SIX ON PREVIOUS JURY LIST; DRAFTING TWELVE NEW JURORS; INVALIDITY OF INDICTMENTS FOUND.

Where the provincial statute governing the selection of jurors requires that only the first six names on the previous grand jury list shall be omitted, and that six new selections be made to fill their places, the drawing of twelve new men as grand jurors is ineffectual to constitute a grand jury, and an indictment brought in by them while assuming to act as a grand jury must be quashed on motion. The King v. Donald McDougall, 8 Can. Cr. Cas. 283.

GRAND JUROR'S ALLEGED INTEREST IN SUBJECT-MATTER OF PROSECUTION; WHETHER RIGHT OF CHALLENGE; OBJECTION TO THE "CONSTITUTION" OF THE GRAND JURY.

(1) An objection that a member of the grand jury by which the indictment was found, was not indifferent as between the Crown and the accused because of an alleged interest in the subject-matter of the prosecution and was therefore disqualified from acting as a grand juror in respect of such indictment, is not an objection to the "constitution" of the grand jury which must be raised by motion to quash the indictment under Code, sec. 656. (2) The objection to the individual grand juror not being one relating to his statutory qualification under the provincial jury law, cannot be raised by motion to quash, and there is no right to challenge a grand juror. (Per Martin, J.) The King v. Hayes (No. 2), 9 Can. Cr. Cas. 101.

GRAND JUROR ADMITTED TO JURY ROOM WITHOUT BEING SWORN; NON-PARTICIPATION IN THE PROCEEDINGS; EXCLUSION; RECONSIDERATION OF BILL.

(1) The presence in the grand jury room of an unauthorized person summoned as a grand juror but not impanelled, during the deliberations of the grand jury will not invalidate an indictment then under consideration, if such person was excluded from the grand jury before the presentment, unless it be shewn that the accused was thereby prejudiced. (2) On discovery that a person summoned as a grand juror and coming into Court with the grand jury to present an indictment had not been sworn and had been admitted to the grand jury room during their deliberations, the Court may exclude such persons and direct the grand jury to retire to reconsider the bill without requiring the grand jurors to be resworn. The King v. Kelly, 9 Can. Cr. Cas. 130.

PRIVATE PROSECUTOR; LEAVE TO PROSECUTOR'S COUNSEL TO GO BEFORE GRAND JURY.

(1) A prosecutor bound over at his own request to prefer an indictment after the discharge of the accused on a preliminary enquiry, is only permitted to appear by counsel before the grand jury when the practice of the Court so authorizes; and the practice in the district of Montreal requires a formal application to the Court for permission. (2) The accused may apply for security for costs under Code, sec. 595 (4) at the time of the prosecutor's application for leave to go before the grand jury. The King v. Hoo Yoke, 10 Can. Cr. Cas. 21.

CONSTITUTION OF.

Where eleven grand jurors answered their names when the roll was first called but only ten were empanelled and sworn (one having failed to answer on the second calling), the grand jury is properly constituted in a province where the panel is not more than thirteen. The King v. Fouquet, 10 Can. Cr. Cas. 255.

SELECTION AND SUMMONING; FEDERAL LEGISLATIVE POWER; ADOPTION OF PROVINCIAL LAWS; TALESMAN FROM PETIT JURY PANEL TO COMPLETE GRAND JURY PANEL.

(1) The selection and summoning of grand jurors are items of procedure in criminal matters and are, therefore, within the jurisdiction of the Federal Parliament. (2) Federal jurisdiction has been exercised by Code, sec. 622 (1), the effect of which is that the various provincial laws on the subject are adopted. (3) It is not necessary in Ontario that all of the seven out of twelve grand jurors who may find a true bill should have been on the original grand jury panel; some of them may be talesmen named by the sheriff from the petit jury panel under the Ontario Jurors Act to make up the quorum in default of twelve of the summoned grand jurors being in attendance. The King v. Walton, 11 Can. Cr. Cas. 204.

CONDUCT OF PROCEEDINGS; REMITTING BILL IRREGULARLY FOUND.

Where a grand jury improperly brought in a true bill without calling any witnesses merely upon perusal of the depositions taken at the preliminary enquiry before a magistrate, and such fact is brought to the notice of the Court by the omission to initial the names of any witnesses whose names were endorsed on the bill of indictment, the Court has a discretionary power to remit the case to the same grand jury to find on the bill on proper evidence only, and the grand jury is not necessarily disqualified from acting because of having read and considered the depositions. The King v. Thurstan, 20 Can. Cr. Cas. 505.

GRIEVOUS BODILY HARM.

See also Assault.

Aggravated assault; Summary trial; Note. 4 Can. Cr. Cas. 163.

MALICIOUSLY INFLICTING.

In order to constitute "grievous bodily harm" it is not necessary that the injury should be either permanent or dangerous; and an injury is within the meaning of the term if it be such as seriously to interfere with comfort or health. R. v. Archibald, 4 Can. Cr. Cas. 159.

CONVICTION AND COMMITMENT; DESCRIBING THE OFFENCE; UNNECESSARY TO STATE THAT AN ACT WAS "UNLAWFULLY" DONE.

A conviction for inflicting grievous bodily harm under Code, sec. 242 which provides a punishment for the person "who unlawfully wounds or inflict any grievous bodily harm upon any other person" need not state that the act was done "unlawfully," that term in the section being referable only to the offence of wounding. The King v. Treadwell, 5 Can. Cr. Cas. 461.

NUMBER SUMMONED.

Under schedule B of the B.C. Jurors Act, R.S.B.C. 1911, ch. 121, not more than thirteen persons need be summoned by the sheriff to act as grand jurors. R. v. Bonner, 21 Can. Cr. Cas. 442, 13 D.L.R. 162.

INDICTMENT; NUMBER REQUISITE.

Where a true bill was brought in by a grand jury consisting of twelve jurors which number, as the law then stood for that district, was the minimum for bringing in a bill, the proceedings will not be invalidated because the grand jury had not been instructed by the court as to the number required for that purpose, where no proof is produced that the twelve were not unanimous. R. v. Spintlum (No. 1), 22 Can. Cr. Cas. 483, 15 D.L.R. 778.

HABEAS CORPUS.

Discharge where conviction by "de facto" Judge. 1 Can. Cr. Cas. 528.

Enlargement of proceedings to allow return of fresh warrant. 1 Can. Cr. Cas. 220.

Form of return, by constable with warrant of arrest. 1 Can. Cr. Cas. 209.

Form of return by jailer. 1 Can. Cr. Cas. 540.

Limitation of right as regards commitment of County Judge's Criminal Court. 1 Can. Cr. Cas. 546.

Nova Scotia Act. 1 Can. Cr. Cas. 539.

Ontario Act, how far valid. 1 Can. Cr. Cas. 211, 213, 455.

Ontario legislation regarding. 1 Can. Cr. Cas. 207, 211, 213, 455.

Quebec Act of, application to party admitted to bail. 1 Can. Cr. Cas. 169.

Return of amended conviction. 1 Can. Cr. Cas. 217, 219.

Return of fresh warrant of commitment where first disclosed no offence. 1 Can. Cr. Cas. 365.

Habeas Corpus Act of 1866, 29-30 Vict. (Province of Canada). 1 Can. Cr. Cas. 455.

Exclusion as regards convictions by "Court of Record;" Note on question of jurisdiction. 2 Can. Cr. Cas. 306.

Issuing writ of; Ontario practice; Signature by Judge. 3 Can. Cr. Cas. 551.

Note on invalid commitments; Regularity of conviction. 5 Can. Cr. Cas. 66.

Special powers under Fugitive Offenders' Act; Inter-colonial extradition. 5 Can. Cr. Cas. 210.

Note on habeas corpus; Successive applications. 5 Can. Cr. Cas. 245.

Practice in habeas corpus proceedings; Note. 6 Can. Cr. Cas. 212.

Right to, notwithstanding plea of guilty; Commitment not disclosing offence. 8 Can.

Commitment in default of distress; Irregularity; Cr. Code, secs. 872, 875. 9 Can. Cr. Cas. 562.

Habeas corpus in matters of jurisdiction; Note. 10 Can. Cr. Cas. 140.

Habeas corpus; Remand; Successive applications or appeal. 11 Can. Cr. Cas. 4.

Application; Affidavit of prisoner; Practice. 9 Can. Cr. Cas. 394.

Procedure in habeas corpus. 22 Can. Cr. Cas. 17.

CONVICTION BY COURT OF RECORD; RECEIVING STOLEN GOODS; POWER TO IMPRISON.

The prisoner was convicted before a County Judges' Criminal Court on a charge of receiving stolen goods, knowing them to have been feloniously stolen, and was sentenced to imprisonment. On an application for habeas corpus:—Held, that the Court was a Court of Record, and that under R. S.O. ch. 70, sec. 1, there was therefore no right to the writ. Held, also, that the Judge had power to imprison. Held, also, that if an indictment for stealing certain articles be sustainable as to some of the articles stolen, the conviction is good, although the indictment may contain any number of articles as to which an indictment could not be sustained. Regina v. St. Denis (1875), 8 P.R. (Ont.) 16.

REVIEW OF HABEAS CORPUS PROCEEDINGS BY APPELLATE COURTS.

Section 51 of the Supreme and Exchequer Court Act does not interfere with the inherent right which the Supreme Court of Canada, in common with every Superior Court, has incident to its jurisdiction to enquire into and judge of the regularity or abuse of its process, and to quash a writ of habeas corpus and subsequent proceedings thereon when, in the opinion of the Court, such writ has been improvidently issued by

a Judge of said Court. The said section does not constitute the individual Judges of the Supreme Court of Canada separate and independent Courts, nor confer on the Judges a jurisdiction outside of and independent of the Court, and obedience to a writ issued under said section cannot be enforced by the Judge but by the Court, which alone can issue an attachment for contempt in not obeying its process. (Fournier and Henry, JJ., dissenting.) The words of sec. 51 expressly giving an appeal when the writ of habeas corpus has been refused or the prisoner remanded, must be attributed to the excessive caution of the legislature to provide all due protection to the subject in the matter of personal liberty, and not to an intention to deprive the Court of the right to entertain appeals from and revise, rescind and vary orders made under this section. (Per Strong, J.) The right to issue a writ of habeas corpus being limited by sec. 51 to "an enquiry into the cause of commitment in any criminal case under any Act of Parliament of Canada," such writ cannot be issued in a case of murder, which is a case at common law. (Fournier and Henry, JJ., dissenting.) Query, Is sec. 51 of the Supreme and Exchequer Court ultra vires? Semble, that when a Judge in a province has the right to issue a writ of habeas corpus returnable in term as well as in vacation, a Judge of the Supreme Court might make the writ he authorizes returnable in said Court in term as well as immediately. (Fournier and Henry, JJ., dissenting.) An application to the Court to quash a writ of habeas corpus as improvidently issued may be entertained in the absence of the prisoner. (Henry, J., dissenting.) After a conviction for a felony by a Court having general jurisdiction over the offence charged, a writ of habeas corpus is an inappropriate remedy. If the record of a Superior Court, produced on an application for a writ of habeas corpus, contains the recital of facts requisite to confer jurisdiction it is conclusive and cannot be contradicted by extrinsic evidence. (Henry, J., dissenting.) A return by the sheriff to the writ setting out such conviction and sentence and the affirmation thereof by the Court of Error is a good and sufficient return. If actually written by him or under his direction the return need not be signed by the sheriff. (Henry, J., dissenting.) Re Sproule, 12 Can. S.C.R. 140.

SUFFICIENCY OF AFFIDAVITS; COMMITMENT IN DEFAULT OF SURETIES TO KEEP PEACE; POWERS OF JUDGE IN CHAMBERS.

Held, 1st, that the affidavit upon which an order for a writ of habeas corpus is moved should be entitled in one or other of the Superior Courts. Held, 2nd, that as a general rule the affidavit should be made by the prisoner himself, or some reason, such as coercion, etc., shewn for his not making it. Held, 3rd, That it is discretionary with the Judge to whom the application is made to receive an affidavit of a different kind. Held, 4th, that it is sufficient to return to a writ of habeas corpus a copy of the warrant under which the prisoner is detained, and not the original. Held, 5th, that a commitment in default of sureties to keep the peace should shew 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. Quære. Can a Judge in Chambers rescind his order of a habeas corpus, or quash the writ itself, on the ground that it issued improvidently? Quære also. Has a Judge in Chambers power, by summons, to call upon the prosecutor or magistrate to shew cause why a writ of habeas corpus should not issue instead of at once ordering the issue of the writ? In Re William Ross, 3 P.R. (Ont.) 301.

ONE WRIT ONLY; RIGHT OF APPEAL TO COURT OF APPEAL.

A person confined or restrained of his liberty is now limited to only one writ of habeas corpus to be granted by a Judge of the High Court returnable before himself or before a Judge in Chambers, or before a Divisional Court, with a right of appeal to the Court of Appeal, whose judgment is final; and where no such appeal is taken, the judgment which might have been appealed against becomes final and conclusive, and may be placed as res judicata. (Judgment of MacMahon, J., affirmed.) Taylor v. Scott, 30 O.R. 475.

CONVICTION OF OFFICIAL FOR FRAUDULENT ENTRIES; UNCERTAINTY OF COMMITMENT; FAILURE TO STATE DAY OF SENTENCE AND NATURE OF CRIME.

The Judges of the Supreme Court of this Province have the exclusive right to issue writs of habeas corpus to enquire into the legality of the imprisonment of a person confined in the Dominion penitentiary at Dorchester, though he was committed there by the Court of another Province. (Tuck, J., dissenting.) S. was tried by the Supreme Court of Nova Scotia in March, 1884, upon an indictment containing counts at common law, charging him as a public officer with making false and fraudulent entries and returns, and with fraudulently destroying public papers, and also containing counts charging similar acts as an offence under 41 Vict. ch. 7, sec. 67. He was found guilty, and upon the 14th April, 1884, sentenced to four years' imprisonment in the Dorchester penitentiary upon the counts charging the offence as at common law—judgment being respited upon the other counts. The warrant under which he was committed to the penitentiary was in the following words:—

"Province of Nova Scotia,

"Halifax, S.S. Supreme Court, 188—

"To the Warden or Governor of the Penitentiary at Dorchester, in the Province of New Brunswick:

"Whereas, Robert Stather, of Halifax, was, during the March sitting of the Supreme Court at Halifax, indicted for making fraudulent entries and fraudulent returns, and was found guilty upon said indictment, and thereupon sentenced by the Court to be imprisoned at hard labour in the penitentiary at Dorchester for the space of four years.

"Now, therefore, these are to require and command you to receive the said Robert Stather into your custody, and him to detain in the said penitentiary for the said period of four years in conformity with the terms of his said sentence, and for which this shall be your sufficient warrant.

"Dated at Halifax, this 14th day of April, A.D. 1884.

"S. H. Holmes,
L.S. "Clerk Cor."

The Penitentiary Act, 46 Vict. ch. 37, directs that a copy of the sentence taken from the minutes of the Court by which the prisoner was tried, certified by the Judge or the clerk of the Court, shall be delivered to the warden of the penitentiary with any prisoner committed to his custody:—Held, that the warrant under which S. was committed to the penitentiary was not a compliance with the statute and did not authorize the warden of the penitentiary to detain S. (Per Allen, C.J., Wetmore, Palmer and Fraser, JJ.) That as the warrant did not state the day the prisoner was sentenced, the time when his term of imprisonment commenced and would expire was uncertain, and the warrant therefore defective. (Per Allen, C.J., Wetmore and Fraser, JJ.) That the warrant did not shew that S. was convicted of any crime, the mere "making of fraudulent entries and fraudulent returns," as alleged in the warrant being no offence at common law or by statute, and that his imprisonment was, therefore, illegal. (Per Palmer, J.) That as the Penitentiary Act did not require the offence to be mentioned in the warrant to commit the prisoner, the omission of such a statement did not render it void—it being the warrant of a Superior Court. 2. That it should be presumed, in the absence of anything to the contrary, that the facts existed which made the acts charged a criminal offence. 3. That the omission to state the date of the sentence in the warrant of commitment was only an irregularity, and did not render the warrant void. (Per King, J.) Ex parte Stather (1886), 25 N.B.R. 375.

PRELIMINARY ENQUIRY; ISSUANCE OF WRIT; REMAND TO CUSTODY FOR FURTHER INVESTIGATION.

A writ of habeas corpus should not issue where the accused is in custody pending a preliminary investigation before a magistrate during a remand to enable the prosecution to supply evidence in support of the charge. Regina v. Cox (1888), 16 O.R. 228.

CANADA TEMPERANCE ACT; DEFAULT OF PAYMENT OF FINE; ARREST ON SUNDAY.

On Sunday, January 10th, Archibald Frecker was arrested on a warrant of commitment issued by the Parish Court Commissioner for the parish of Chatham in the county of Northumberland, in default of payment of a fine for violation of the Canada Temperance Act, and was sent to gaol:—Held, that the arrest being on Sunday, was void, and that prisoner must be forthwith discharged from custody. The order was made exempting the gaoler from liability. Ex parte Frecker (1897), 33 C.L.J. 248.

CERTIORARI; CONVICTION FOR THEFT AT QUARTER SESSIONS; ABSENCE OF JUDGE OR COUNSEL.

A habeas corpus will not be granted to bring up a prisoner under sentence of conviction at the Quarter Sessions for larceny; nor a certiorari to remove such conviction, for there can be no certiorari after judgment. It is no objection that neither the Judge of the district Court nor any barrister was present when the conviction was made. Regina v. Crabbe (1854), 11 U.C.Q.B. 447.

CONVICTION FOR ASSAULT ON PEACE OFFICER; FINE AND IMPRISONMENT; EXCESS OF SENTENCE.

M. was convicted at the County Court sittings of having assaulted a peace officer, and the presiding Judge imposed a fine of $50, and also sentenced M. to one month in gaol. Sec. 263 of the Cr. Code provides that "everyone is guilty of an indictable offence and liable to two years' imprisonment who assaults any public or peace officer, etc." A habeas corpus order to shew cause why M. should not be released on the ground that both fine and imprisonment could not be awarded, was obtained: on the return of the writ it was held that sec. 958 of the Cr. Code gave such power. Ex parte McClements (1895), 32 C.L.J. 39.

AFFIDAVITS IN REPLY NOT ALLOWED.

Affidavits in reply not allowed to be produced, on the ground that an application for habeas corpus could be renewed of right to any Judge. In re James William Black, Cong. Dig. 614.

APPEAL IN CASES OF.

Re Bowack (1892), 2 B.C.R. 222.

CERTIORARI IN AID; ABSENCE OF NOTICE TO MAGISTRATE OR RECOGNIZANCE.

A conviction once regularly brought into, and put upon the files of, the Court is there for all purposes; and that a defendant may move to quash it, however or at whosoever instance it may have been brought there. Where, therefore, on an application for a habeas corpus, under R.S.O. ch. 70, a certiorari had issued, and in obedience to the conviction had been returned, the conviction was quashed on motion, though there had been no notice to the magistrate, or recognizance. [Regina v. Leveeque, 30 U.C.Q.B. 509, distinguished.] Regina v. Wehlan, 45 U.C.Q.B. 396.

CONCLUSIONS OF MAGISTRATE FROM EVIDENCE WILL NOT BE ENQUIRED INTO.

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," 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, held, no objection that there was no evidence to warrant the conviction, for when a proper commitment is returned to a habeas corpus, and there was evidence, the Court will not enter into the question whether the magistrate has drawn the right conclusion from it. Semble, that on such an application affidavits cannot be received to sustain objection to the conduct of a magistrate in dealing with the case before him: but that such conduct may furnish ground for a criminal information. Quære, with regard to some of the objections, whether the Court, on such an application, can go behind the warrant of commitment. Regina v. Munro, 24 U.C.Q.B. 44.

CONVICTION UNDER FISHERIES ACT; FAILURE TO SET FORTH IMPRISONMENT.

Application on a writ of habeas corpus. In November last the applicant was convicted of an infraction of the Fisheries Act before the agent of the Marine and Fisheries Department. The applicant paid the costs of prosecution and was allowed to go at large till a few days before this application, when he was arrested on a warrant issued in pursuance of the above conviction. The warrant recited the fact that the applicant had been convicted of an infraction of the Fisheries Act, but did not state that the Fisheries agent had adjudicated on the matter of imprisonment:—Held, that as the warrant did not set forth that the Fishery agent had adjudicated on the matter of imprisonment, it did not shew jurisdiction to direct imprisonment and was therefore void. Applicant discharged from custody. Ex parte Taylor (1898), 34 C.L.J. 176.

CERTIORARI; CONVICTION UNDER CANADA TEMPERANCE ACT; REFUSAL BY BAILIFF OF PENALTY AND COSTS; DEFECTIVE WARRANT OF COMMITMENT.

A prisoner having been convicted of an offence under the Canada Temperance Act, an application for her release was made under a habeas corpus, and a writ of certiorari was also issued:—Held, that the writ of certiorari must be superseded, and following Regina v. Wallace, 4 O.R. 127, that such writ cannot issue merely for the purpose of examining and weighing the evidence taken before the magistrate. Held, also, that it was not necessary to serve a minute of the conviction on the defendant, as sec. 51 of 31 and 32 Vict. ch. 31 (D.) only requires such service in case of an order, and that defendant must take notice of the conviction at her peril. Held, also, that when a distress warrant has been issued and returned, the truth of the return cannot be tried upon affidavits. It was alleged, but denied, that the bailiff had refused to receive the penalty and costs. Held, however, that his duty was to execute the warrant of commitment and that he had no authority to receive such payment. The warrant of commitment which was not issued until after the return of the distress warrant, was dated the 14th June, and the distress warrant was not returned before the 17th June. Held, that the warrant of commitment need not be dated at all if not issued too soon. It was alleged, also, that too large a sum had been charged for costs; but, held, lastly, that the conviction being regular on its fact, and not shewing any excess of jurisdiction, such an irregularity (even if it existed) could not be enquired into on the present application. The prisoner was, therefore, remanded. Regina v. Sanderson, 12 O.R. 178.

DUTY OF SUPERIOR COURT TO EXAMINE PROCEEDINGS BEFORE COMMITMENT.

The 29 and 30 Vict. ch. 45 had in view and recognizes the right of every man committed on a criminal charge to have the opinion of a Judge of a Superior Court upon the cause of his commitment by an inferior jurisdiction. The Judges of the Superior Courts are bound, when a prisoner is brought before them under that statute, to examine the proceedings and evidence anterior to the warrant of commitment, and to discharge him if there does not appear sufficient cause for his detention. The evidence in this case warranted the magistrate in requiring bail. Reg. v. Mosier (1867), 4 P.R. (Ont.) 64.

MALICIOUS WOUNDING; FORM OF CONVICTION; TERM OF IMPRISONMENT.

On motion to discharge prisoner on habeas corpus on conviction before a police magistrate, the 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:"—Held, that the addition of the words "with intent to do grievous bodily harm" did not vitiate the conviction, and that the prisoner might be lawfully convicted of the statutory misdemeanour of malicious wounding. Held, also, that imprisonment at hard labour for a year was properly awarded under 38 Vict. ch. 47 (D.) Regina v. Boucher (1879), Cassels S.C. Dig. 181, 4 Ont. App. R. 191.

ILLEGAL COMMITMENT; PAPERS ON APPLICATION.

On a petition for habeas corpus complaining of an illegal commitment, there should be a copy of the commitment, or an affidavit that it was applied for and refused. Ex parte Pollock (1881), Ramsay's Cas. (Que.) 187.

ILLEGAL SENTENCE; WRIT OF ERROR.

A prisoner after trial for an indecent assault was sentenced to the county jail for two years. A writ of habeas corpus was taken out on the ground that the Judge had no power to sentence to the jail for two years, and it was contended that the habeas corpus would lie, there being no writ of error here:—Held, that the matter could not be enquired into on habeas corpus, and that a writ of error lies in this province. Re D. C. Ferguson, 24 N.S.R. 106.

APPEAL FROM JUDGE IN CHAMBERS TO COURT OF APPEAL.

Under R.S.O. ch. 70, sec. 1, the writ of habeas corpus may be made returnable before "the Judge awarding the same or before a Judge in chambers for the time being, or before a Divisional Court;" and by sec. 6 an appeal is given from the decision of the said Court or Judge to the Court of Appeal:—Held, that the right of appeal must be exercised in the manner provided by the statute, and therefore an appeal from a Judge in Chambers must be to the Court of Appeal. Re Harper, 23 O.R. 63.

JUDGE IN CHAMBERS; JURISDICTION TO GRANT.

A Judge in Chambers, under orders of 1853, may grant a writ of habeas corpus. Regina v. Arscott (1885), 9 O.R. 541. [See Re Paton, 4 Gr. 147.]

JUDGE IN CHAMBERS; POWER TO GRANT.

Powers of Judge in Chambers with reference to writs of habeas corpus. Regina v. Arscott (1885), 9 O.R. 541. [See Re Sproule, 12 Can. S.C.R. 140.]

PRACTICE; DISCHARGE OF PRISONER WITHOUT BEING BROUGHT UP.

It is a usual, convenient and established practice that a rule nisi to shew cause why a writ of habeas corpus should not issue should also require cause to be shewn why, in the event of the rule being made absolute, the prisoner should not be discharged without the actual issue of the writ of habeas corpus and without his being personally brought before the Court; but in order that the rule may be made absolute in this form, the magistrate, the keeper of the prisoner, and the prosecutor should all be served with the rule nisi or at least be represented on its return. The Queen v. Farrar (1890), 1 Terr. L.R. 306.

RECOVERY OF PENALTIES UNDER ACT; SUCCESSIVE WARRANTS OF EXECUTION.

The defendant L., a magistrate, had convicted the plaintiff for being the keeper of a bawdy house, and sentenced her to six months' imprisonment. Plaintiff, after undergoing two days' imprisonment, was released on bail, pending an appeal to the sessions. The appeal was dismissed and plaintiff subsequently arrested upon a warrant issued by the defendant L. under advice of defendant H., the county crown attorney. Upon return to habeas corpus she was discharged from custody under the latter warrant, upon the ground that it did not take into account the two days' imprisonment she had suffered prior to her appeal. Thereupon she was detained under a third warrant, on which nothing turned, and she was again arrested under a fourth warrant issued by defendant L. upon the original conviction. In an action brought by the plaintiff for the penalty of £500 awarded by sec. 6 of the Habeas Corpus Act, 31 Car. II., ch. 2:—Held, that sec. 6 of the Habeas Corpus Act, 31 Car. II., ch. 2, has no application to a case in which the prisoner is confined upon a warrant in execution. Held, also, that the warrant in execution, issued by the convicting justice upon the discharge of the prisoner from custody for defects in the former warrant, was the legal order and process of the Court having jurisdiction in the cause. Semble, that the warrant issued after the dismissal of the appeal by the sessions, which followed the original conviction in directing imprisonment for six months, without making allowance for the two days' imprisonment already suffered, was not open to objection. Regina v. Arscott (1885), 9 O.R. 541, dissented from. Arscott v. Lilley, 11 O.R. 153, 14 A.R. 297.

RETURN TO WRIT; INVALIDITY OF WARRANT: AMENDMENT.

Held, (1) That a warrant reciting a coroner's inquisition and stating the offence as follows: That J. C. "stands charged with having inflicted blows on the body of the said D. F.," and not shewing the place where the blows, if any, were inflicted, or the offence, if any, was committed, is bad. (2) That the person to whom a writ of habeas corpus is directed, commanding him "to return the cause of taking and detainer," must return the original and not

merely a copy of the warrant. (In re Ross, 10 U.C.L.J. 183, to the contrary, doubted.) Quære, (1) As to the power of a Judge sitting in Chambers, on an application by a prisoner for his discharge on a bad warrant, to remand him, and in aid of the prosecution to order the issue of a certiorari to bring up the deposition, etc. (2) As to the power of a Court or Judge, upon reading the deposition, to amend a bad warrant of a coroner, or issue a new one for the purpose of detaining a prisoner in custody. Re Carmichael, 10 U.C.L.J. 325.

REVIEW OF EXTRADITION PROCEEDINGS; RIGHT TO SECOND APPEAL.

The prisoner was remanded for extradition by the Chancery Division of the High Court of Justice, which on appeal to this Court was affirmed, the Court being equally divided. A second writ of habeas corpus was thereupon obtained, and the prisoner brought before the Common Pleas Division, when he was again remanded, whereupon he again appealed to the Court, which appeal was dismissed with costs, as under such circumstances a second appeal could not be entertained. (Per Hagarty, C.J., Spragge, C.J.O., concurring.) The prisoner having already appealed to this Court from the judgment of the Chancery Division, he must abide by the legal result of such appeal, viz., the dismissal of it and consequent affirmance of the decision appealed from, and he could not again ask the interference of this Court on the same state of facts. The grounds for the technical rule of practice of the House of Lords on an equal division have no existence in other appellate tribunals, although in the particular case, the Appellate Court is the Court of last resort. The effect of an equal division in this Court, as in a Court of first instance, is simply that the rule or motion drops or the appeal is dismissed, and the judgment below remains undisturbed, but is not considered as a binding authority. (Per Burton and Patterson, JJ.A.) The Act 29-30 Vict. ch. 45 apparently substituted the right of appeal in habeas corpus cases for successive applications from Court to Court. Patterson, J.A., by the effect of the Judicature Act, a decision of any one division is a decision of the High Court, this matter had therefore been already disposed of on the former appeal. Re Hall, 8 Ont. App. R. 135.

REVIEW OF JUDGMENT OF COURT OF RECORD; MAGISTRATE'S PROCEEDINGS UNDER SPEEDY TRIALS ACT.

A district magistrate acting under the Speedy Trials Act, acts as a Court of Record for all the purposes of the trial, and the proceedings connected therewith or relating thereto, although he does not retain the record, but files it in the Court of General Sessions, really before this Court in the rural districts. Being a Court of Record his judgment cannot be enquired of on habeas corpus. It may on writ of error which the Court of Queen's Bench has, by statute, authority to grant, as also it has as an indictment of its general powers, the right to issue a certiorari to bring up the record. Ex parte O'Kane, Ramsey's Cas. (Que.) 188.

SUCCESSIVE APPLICATIONS; SCOPE OF STATUTE; RIGHT OF APPEAL.

(1) A person imprisoned may make fresh application for a habeas corpus to every Judge or Court in turn, who are each bound to consider the question independently. Statutes to be construed favourably to personal liberty. (2) An appeal lies in cases of habeas corpus. Re Bowack (1892), 2 B.C.R. 222.

COURT OF RECORD; REVIEW.

Habeas corpus proceedings do not lie to enquire into the validity of a conviction made at a County Judge's Criminal Court as the latter is a Court of record. R. v. Murray, 1 Can. Cr. Cas. 452.

[Referred to in Ex parte Goldsberry, 10 Can. Cr. Cas. 392, 397.]

DETENTION FOR FURTHER ENQUIRIES.

Cr. Code, sec. 752, providing for further detention of the accused pending any further proceedings or enquiries directed, is to be applied only to cases where the habeas corpus issues in the same province in which the warrant of arrest or of commitment is made. R. v. Defries, 1 Can. Cr. Cas. 207.

EVIDENCE; PROOF OF A FACT EXTRINSIC TO THE RETURN.

Proof by affidavit is admissible in habeas corpus proceedings to shew that the commitment took place on a Sunday, as proving an extrinsic fact in confession and avoidance of, but not contradicting the return. R. v. Cavelier, 1 Can. Cr. Cas. 134.

AS TO FELONIES.

A provincial statute prior to Confederation, providing for the discharge from imprisonment in default of an indictment of an accused person committed for a "felony" will apply equally to cases which were misdemeanours before the abolition by the Criminal Code of Canada of the distinction between felony and misdemeanour. R. v. H. B. Cameron, 1 Can. Cr. Cas. 169.

RETURN; REQUISITES OF.

(1) Where sentence has been passed by a Court having general jurisdiction of the case such as the County Judge's Criminal Court has in cases of theft, and the prisoner is detained in custody thereunder, the authority of the Court to pass the sentence need not be set out by the jailer upon the return to a writ of habeas corpus. (2) If the return is of a warrant of commitment by the County Judge's

Criminal Court for theft, which, however, does not specify such facts as would shew on its face that the theft was of such a nature as to give jurisdiction to the County Judge's Criminal Court to impose the imprisonment stated, still the prisoner cannot be discharged upon habeas corpus. R. v. Burke, 1 Can. Cr. Cas. 539.

[Referred to in Ex parte Toldsberry, 10 Can. Cr. Cas. 392, 397.]

HABEAS CORPUS AFTER COMMITTAL FOR TRIAL; DUTY OF JUDGE UPON.

The duty of the Judge under a writ of habeas corpus is to examine whether the committing magistrate has jurisdiction, whether the committal is legal, and whether any crime known to the law is alleged to have been committed, but not to enquire into or revise the magistrate's decision as regards its propriety or impropriety on the merits. The Queen v. Gillespie, 1 Can. Cr. Cas. 551.

[Referred to in R. v. St. Clair, 2 Can. Cr. Cas. 553.]

PROCEEDINGS OF A "COURT OF RECORD;" TRIAL BY POLICE MAGISTRATE WITH CONSENT.

A police magistrate trying a prisoner with his own consent for an offence triable at a Court of General Sessions, does not constitute a "Court of Record" within the meaning of the Ontario Habeas Corpus Act. The exception contained in the Habeas Corpus Act, R.S.O. 1897, ch. 83, as to convictions or orders of a Court of Record, Court of Oyer and Terminer, or general gaol delivery, or Court of General Sessions of the Peace, only bars the granting of a writ or habeas corpus in respect of a Court of Record not specifically named in such exception, when such Court of Record is not inferior to or less principal than the High Court of Justice. R. v. Gibson, 2 Can. Cr. Cas. 302.

SUPPLEMENTARY RETURN OF FRESH WARRANT.

The return to a writ of habeas corpus should be brought into Court and there read before it is filed, and a supplementary return of a second warrant of commitment intended to remedy a defect in the first warrant may be read in conjunction with the return of the first warrant as together constituting the return to the writ. Re Murphy, 2 Can. Cr. Cas. 562, 578.

[Referred in Re Harsha (No. 1), 10 Can. Cr. Cas. 451; Re Royston, 15 Can. Cr. Cas. 98.]

IMPOSING TERMS ON ORDERING DISCHARGE.

The Court may as a condition to a prisoner's discharge on habeas corpus impose the term that he shall undertake that no action shall be brought by him against any person in respect of the prosecution and conviction or of his imprisonment thereunder. R. v. Horton, 3 Can. Cr. Cas. 84.

IN PROVINCE OF QUEBEC.

Under ch. 95 of the Revised Statutes of Lower Canada of 1861, which is still in force, the Superior Court has jurisdiction to issue a writ of habeas corpus, and decide upon it upon the petition of a person kept in jail in virtue of a conviction in a criminal matter. The Court cannot on a writ of habeas corpus revise on its merits the decision of the Judge who has pronounced the conviction, nor adjudge on the culpability of the petitioner. R. v. Bougie, 3 Can. Cr. Cas. 487.

[Referred to in R. v. Poirier, 31 Que. S.C. 68; R. v. Janneau, 12 Can. Cr. Cas. 361; relied on in R. v. Weir, 8 Que. P.R. 400.]

CO-ORDINATE JURISDICTION OF SUPREME COURT.

The jurisdiction of a Judge of the Supreme Court of Canada in matters of habeas corpus is not an appellate jurisdiction over Provincial Courts, nor does it extend further than to give such Judge equal and co-ordinate power with a Judge of the Provincial Court. R. v. Patrick White, 4 Can. Cr. Cas. 430.

CERTIORARI IN AID; AMENDING CONVICTION.

The Court may on certiorari amend a summary conviction under the powers conferred by Code, secs. 883 and 889, whether the certiorari is one preliminary to a motion to quash the conviction, or is in aid of a writ of habeas corpus. R. v. Murdock, 4 Can. Cr. Cas. 82.

[Approved in R. v. McKenzie, 12 Can Cr. Cas. 441, 41 N.S.R. 184; referred to in Collette v. R., 16 Can. Cr. Cas. 281, 290, 19 Que. K.B. 134; R. v. Lee, 4 Can. Cr. Cas. 420.]

IN NOVA SCOTIA; ORDER OF PROTECTION.

In discharging a prisoner in habeas corpus proceedings under ch. 181, Revised Statutes of Nova Scotia, an order of protection in respect of a civil action by the prisoner, can be made only in favour of the jailer and not in favour of the magistrate and prosecutor. R. v. Keeping, 4 Can. Cr. Cas. 494.

FOLLOWING A CERTIORARI.

Where it appears on the return to a certiorari that the convicted person is in close custody, the Court may order a habeas corpus and hear together the motion to quash the conviction and the motion for the prisoner's discharge. R. v. Spooner, 4 Can. Cr. Cas. 209.

[Discussed in R. v. Ames, 10 Can. Cr. Cas. 82, 87, 5 Terr. L.R. 498; referred to in R. v. McKenzie, 12 Can. Cr. Cas. 444, 41 N.S.R. 129, 187.]

GROUNDS; REFUSAL OF WARRANT FOR WITNESS.

The erroneous decision of a magistrate as to whether or not a defaulting witness was bound to attend his Court in respect of a trial for an offence against a provincial statute without prepayment of witness fees, and as to the liability of such witness to arrest, is not reviewable upon habeas corpus although the accused was deprived of such witness's testimony through the refusal of the magistrate to issue a warrant for his arrest. R. v. Clements, 4 Can. Cr. Cas. 553.

ORIGINAL CONVICTION IN LIEU OF WARRANT OF COMMITMENT.

Where the conviction itself was lodged with the gaoler as his authority for the detention in lieu of a warrant of commitment, the Judge before whom the prisoner is brought upon habeas corpus may properly order the further detention of the prisoner for a limited time until a warrant in due form can be obtained from the magistrate. The King v. Morgan, 5 Can. Cr. Cas. 63, affirmed in 5 Can. Cr. Cas. 272, 3 O.L.R. 356.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238; referred to in R. v. Frejd, 18 Can. Cr. Cas. 113.]

WARRANT OF COMMITMENT; DELAY OF EXECUTION.

Semble, an unreasonable delay in issuing a warrant of commitment may be a ground for discharge on habeas corpus if the delay works an injustice to the defendant. Ex parte Doherty, 5 Can. Cr. Cas. 94.

PROCEEDINGS CERTIFIED WITHOUT CERTIORARI; DISCHARGE ON HABEAS CORPUS; SUBSEQUENT MOTION TO QUASH.

A motion to quash a summary conviction cannot be entertained by a Superior Court without a writ of certiorari for that purpose and a return to such writ. Where on a habeas corpus application the magistrate is directed by an order to return the proceedings relating to the imprisonment and thereupon returns under such order the information, depositions and conviction, such conviction is not by reason thereof brought under the jurisdiction of the Superior Court for the purpose of a motion to quash the same. The King v. MacDonald (No. 2), 5 Can. Cr. Cas. 279.

[Inapplicable in R. v. Smith, 16 Can. Cr. Cas. 428; distinguished in R. v. Broadfoot, 17 Can. Cr. Cas. 76.]

SUMMARY CONVICTION; APPEAL; SUBSEQUENT HABEAS CORPUS PROCEEDINGS.

The decision of the Court of General Sessions or County Court in appeal from a summary conviction is final and conclusive, and a Superior Court has no jurisdiction to interfere by habeas corpus. The King v. Beamish, 5 Can. Cr. Cas. 388.

SUCCESSIVE APPLICATIONS.

An application for the prisoner's discharge on the return of a writ of habeas corpus may after refusal by one Judge in Chambers, be renewed before another Judge in Chambers, and the latter may grant a discharge notwithstanding its refusal by a Judge of co-ordinate jurisdiction. The King v. Laura Carter, 5 Can. Cr. Cas. 401.

[Referred to in Re Burke (No. 2), 20 Can. Cr. Cas. 162, 7 D.L.R. 25.]

COUNTY COURT JUDGE'S CRIMINAL COURT: COURT OF RECORD; ILLEGAL SENTENCE.

Habeas corpus does not lie to correct a sentence of imprisonment passed by a County Court Judge's Criminal Court alleged to be for a time longer than is authorized. The proper mode of procedure is by case reserved or by appeal under Part LII. of the Code. The King v. Kavanagh, 5 Can. Cr. Cas. 507.

[Referred to in Ex parte Goldsberry, 10 Can. Cr. Cas. 392, 397, 27 Que. S.C. 434.]

JURISDICTION OF COUNTY COURT JUDGE IN NOVA SCOTIA; COSTS AGAINST INFORMANT.

A person made a respondent to an application for a habeas corpus in a criminal matter who does not appear of record to be the prosecutor, and who does not appear on the application, is not liable in Nova Scotia for costs on the discharge of the prisoner in the habeas corpus proceedings, although the conviction in question was for stealing his property. Quære, whether a County Court Judge in Nova Scotia has power, as a Master of the Supreme Court to entertain habeas corpus application. The Queen v. Bowers, 6 Can. Cr. Cas. 100.

JURISDICTION IN PROVINCE OF QUEBEC; JUDICIAL DISTRICTS.

(1) In the Province of Quebec, when there is a Judge duly authorized then within the limits of the judicial district in which the applicant for a writ of habeas corpus is imprisoned on a criminal charge, a Judge sitting in another district has no jurisdiction to entertain the application even on the consent of the Crown. (2) The Court of King's Bench sitting in appeal either at Montreal or Quebec has jurisdiction to grant a writ of habeas corpus in respect of a prisoner confined in any district within the division for which the sittings are being held. Ex parte Tremblay, 6 Can. Cr. Cas. 147.

[Followed in Ex parte Goldsberry, 10 Can. Cr. Cas. 295.]

RETURN; TWO WARRANTS OF COMMITMENT FOR SAME OFFENCE.

Where a return to a writ of habeas corpus, or to an order of the nature of such writ, specifies two warrants of commitment for the same offence, and neither the second warrant nor such return declares the second

warrant to be in substitution for or in amendment of the first which is irregular and bad, the prisoner should be discharged. The King v. Venot, 6 Can. Cr. Cas. 209.

[Referred to in R. v. Johnston (No. 1), 11 Can. Cr. Cas. 8.]

JUSTICE PROCEEDING WITH TRIAL INSTEAD OF PRELIMINARY ENQUIRY; WANT OF JURISDICTION.

Where a justice, having no summary jurisdiction over the offence charged other than to hold a preliminary enquiry and commit for trial, has himself tried and convicted the accused, no order should be made in habeas corpus proceedings for the further detention of the accused and his return to the justice's Court for a preliminary enquiry. The King v. Blucher, 7 Can. Cr. Cas. 278.

[Discussed in R. v. Frejd, 18 Can. Cr. Cas. 113; approved in R. v. Alexander, 21 Can. Cr. Cas. 473, 13 D.L.R. 385.]

COSTS NOT ASCERTAINED IN COMMITMENT; SEVERANCE; COMMITMENT VALID IN PART.

A commitment by a tribunal of inferior jurisdiction may be severable, and where imprisonment is ordered for a term and a further term in default of payment of a fine and costs, the prisoner is not entitled to his release on habeas corpus during the first term because of the costs not being ascertained in the commitment, but leave will be reserved in him to reapply at the expiration of the first term. The King v. Carlisle, 7 Can. Cr. Cas. 470.

[Applied in R. v. Collette, 16 Can. Cr. Cas. 281, 291, 19 Que. K.B. 132.]

DEFECT APPARENT UPON WARRANT OF COMMITMENT; COSTS AGAINST PROSECUTOR ON DISCHARGING ACCUSED.

(1) A justice of the peace not having the powers of two justices (Code, sec. 782), has no jurisdiction to hold a "summary trial" under Part LV. of the Cr. Code. (2) Where concurrent proceedings are taken by certiorari and habeas corpus in the Province of Quebec, and the writ of habeas corpus is maintained upon an objection appearing upon the face of the commitment, the order for costs against the prosecutor in respect thereof should not include the costs incurred upon the writ of certiorari. The King v. Coté, 8 Can. Cr. Cas. 393.

IRREGULARITY IN CAPTION; WARRANT OF COMMITMENT; EXECUTION IN ANOTHER COUNTRY WITHOUT ENDORSEMENT; CONVEYING PRISONER TO FIRST COUNTY.

(1) The Court will not upon habeas corpus enquire into any irregularity in the caption. (2) Where a warrant of commitment was issued in one county against the accused who was not then in custody, and he was arrested thereunder in another county without any endorsement of the warrant, and was brought back to the county in which the warrant issued, and there imprisoned as the warrant directed, the irregular arrest is not a ground for releasing the accused on habeas corpus. The King v. Whiteside, 8 Can. Cr. Cas. 478.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 203; R. v. Walton, 10 Can. Cr. Cas. 275; Re Harsha (No. 1), 10 Can. Cr. Cas. 441; R. v. Wishart, 18 Can. Cr. Cas. 161.]

MATERIAL UPON APPLICATION FOR WRIT; PRISONER'S AFFIDAVIT OR EVIDENCE OF HIS COERCION REQUIRED.

An application for a writ of habeas corpus must be accompanied by the affidavit of the prisoner, or by evidence that he is so coerced that his affidavit cannot be obtained. The Queen v. Black, 8 Can. Cr. Cas. 465.

MINOR CHILD; DETENTION IN REFORMATORY SCHOOL ON FATHER'S ORDER; WRIT ISSUED ON PETITION OF MINOR.

(1) A father, having under the law of the Province of Quebec the care of his minor children, may, with the consent of the management of the school, place his child in a reformatory school authorized for the commitment under Cr. Code, sec. 956 of youthful offenders; and the detention of the child for purposes of discipline and subject to release by the father at any time, will not be interfered with by habeas corpus issued on behalf of the child by his mother. (2) A writ of habeas corpus to test the legality of a child's detention is not irregular because issued on the petition of the child himself who is under disability to bring action in respect of civil rights. Re A. B., 9 Can. Cr. Cas. 390.

WARRANT OF COMMITMENT NOT ALLEGING A CONVICTION; RECORD OF CONVICTION NOT ADMISSIBLE TO SUSTAIN; CR. CODE, SEC. 886.

(1) A prisoner detained under a warrant which is in form one of committal for trial but which charges an offence punishable only on summary conviction, will be discharged on habeas corpus. (2) Although there may in fact have been a summary hearing and summary conviction thereon, if the warrant of commitment returned as the cause of detention, is bad on its face in not alleging that the defendant has been convicted, a formal conviction cannot be received to remedy the defeat as Code, sec. 886 applies only to cases in which the warrant alleges a conviction. The Queen v. Lalonde, 9 Can. Cr. Cas. 501.

COMMITMENT FOR WANT OF DISTRESS; WARRANT NOT SHEWING INSUFFICIENCY OF DISTRESS, OR THAT DISTRESS WOULD BE RUINOUS; INVALIDITY; CURATIVE SECTIONS NOT APPLICABLE; RETURN TO HABEAS CORPUS; AFFIDAVIT TO GAOLER.

(1) A warrant of commitment for want of distress upon a summary conviction is invalid and will be quashed, if it recites only default in payment of the fine, and does not shew on its face either a return of the distress warrant and that no sufficient distress was found or that a distress was dispensed with under Code, sec. 875 upon an adjudication thereunder. (2) An affidavit of the gaoler verifying a copy of the warrant claimed as the cause of detention may be accepted as a return to a writ or order of habeas corpus. The King v. Skinner, 9 Can. Cr. Cas. 558.

[Referred to in R. v. Ching Chow, 1 D.L.R. 275, 19 Can. Cr. Cas. 176.]

NO ENQUIRY INTO ALLEGED ILLEGALITY OF ARREST AND TRANSPORTATION FROM FOREIGN COUNTRY; NEW WARRANT OF DETENTION SUBSEQUENT TO ISSUE OF WRIT OF HABEAS CORPUS; DUTY TO REMAND.

The Court will not enter into an enquiry upon habeas corpus as to whether the prisoner brought before a justice and remanded by him for an offence committed in Canada was arrested in the United States and brought back to Canada without an extradition warrant. The prisoner must be remanded in custody on the return of a writ of habeas corpus if the return shews a proper warrant or other legal cause of detention although of later date than the writ to which the return is made. The King v. Walton, 10 Can. Cr. Cas. 269.

[Referred to in R. v. Wishart, 18 Can. Cr. Cas. 161.]

JURISDICTION; IMPRISONMENT UNDER A LEGAL CONDEMNATION; ANCILLARY WRIT OF CERTIORARI.

(1) The Judges of the Quebec Superior Court of the district or division where a person is imprisoned have jurisdiction over a petition for habeas corpus. (2) The remedy by habeas corpus not being open to one who is imprisoned under sentence of a competent Court having general jurisdiction of the case, he cannot, on the return of a warrant shewing such sentence, demand an ancillary writ of certiorari for the production of the record in the case in which the sentence was pronounced. Ex parte Goldsberry, 10 Can. Cr. Cas. 392.

CONVICTION ON INDICTMENT; CERTIFICATE OF SENTENCE TO PENITENTIARY; DATE OF SENTENCE; TRIAL IN ANOTHER PROVINCE; NO ENQUIRY INTO REGULARITY OF INDICTMENT.

The Courts of a province in which is situate a penitentiary common to that and another province, should not enquire on habeas corpus into the validity of an indictment upon which the prisoner was tried in the other province and sentenced to imprisonment in such penitentiary. If the certificate of sentence to imprisonment in a penitentiary is irregular for omission of the date of sentence, leave may be given on a habeas corpus motion to return an amended certificate correcting the omission. The King v. Wright, 10 Can. Cr. Cas. 461.

[Followed in McCrea v. Watson, 37 N.B. R. 627.]

AMENDED CONVICTION AND COMMITMENT; SUBSTITUTION ON MOTION FOR HABEAS CORPUS; APPEALS IN HABEAS CORPUS.

(1) Leave may be given on the hearing of a habeas corpus application to substitute an amended conviction and an amended commitment for the invalid conviction and commitment attacked whether the defect in the first be one of form only or one of substance. (Per Mathers, J.) (2) There is no appeal to the Full Court of King's Bench in Manitoba from the decision of a single Judge of that Court refusing a motion for a habeas corpus to discharge a prisoner from custody, but successive applications for the writ may be made to each Judge. (Per Dubuc, C.J., and Richards, J.) The King v. Barre, 11 Can. Cr. Cas. 1.

QUASHING WRIT; POWERS OF JUDGE; DIRECTIONS TO INFERIOR COURT.

The Judge before whom a writ of habeas corpus is returned, and who quashes it on the ground that the petitioner is in custody under a sentence legally pronounced by a competent tribunal, has no power to direct such tribunal to execute a part of the sentence (in this case the penalty of whipping) which had been suspended in connection with the issue of the writ. The King v. Goldsberry, 11 Can. Cr. Cas. 159.

[Discussed in R. v. Frejd, 18 Can. Cr. Cas. 114.]

IRREGULAR WRIT; NONCOMPLIANCE WITH STATUTORY DIRECTIONS; ABSENCE OF JUDGE'S SIGNATURE.

An objection in matter of form to a writ of habeas corpus upon the ground that it had not been countersigned by the Judge, or that the marginal reference to the Habeas Corpus Act had been omitted, cannot be raised after the return of the writ and production of the prisoner. United States v. Browne (No. 2), 11 Can. Cr. Cas. 167.

JURISDICTION OF SUPREME COURT OF CANADA; CANADA TEMPERANCE ACT; CONVICTION; "CRIMINAL CASE."

(1) A commitment on conviction for an offence against Part II. of the Canada Temperance Act is a commitment in a criminal case and a Judge of the Supreme Court of Canada has power to issue a writ of habeas corpus. (2) On application to a Judge of the Supreme Court of Canada for a writ of habeas corpus he may refer

the same to the Full Court which has jurisdiction to hear and dispose of it. Re Placide Richard, 12 Can. Cr. Cas. 204.

DETENTION IN AN ASYLUM; PRISONER ACQUITTED ON ACCOUNT OF INSANITY.

A warrant may be issued by the Lieutenant-Governor of the Province for the detention in an asylum of a prisoner acquitted on account of insanity at the time of the offence (Revised Criminal Code, sec. 969), although found sane at the time of trial. Re Alexandre Duclos, 12 Can. Cr. Cas. 278.

SUMMARY CONVICTION; CERTIORARI WITHOUT HABEAS CORPUS NOT A PROCESS FOR DISCHARGE OF PRISONER.

Where a person summarily convicted is in custody under the conviction, habeas corpus is the appropriate remedy by which to obtain his discharge for an irregularity appearing on the face of the proceedings, and an order for discharge will not be made in certiorari proceedings taken without a writ of habeas corpus. The King v. Goulet, 12 Can. Cr. Cas. 365.

[Referred to in R. v. Dagenais, 18 Can. Cr. Cas. 290.]

FIRST APPLICATION PREMATURE; GROUNDS AVAILABLE ON FIRST APPLICATION RES JUDICATA.

(1) After a return to a writ of habeas corpus and an order refusing discharge thereunder, a second writ of habeas corpus may afterwards be granted if the circumstances have altered, ex. gr., on the expiry of a term of imprisonment which was current on the first application. (2) On the second motion to discharge no objection should be considered which might have been taken upon the first application. The King v. Robinson, 12 Can. Cr. Cas. 447.

[Referred to in Re Bartels, 13 Can. Cr. Cas. 64; R. v. Graves (No. 2), 16 Can. Cr. Cas. 349; R. v. Mitchell, 19 Can. Cr. Cas. 119.]

DUTY OF COURT TO EXAMINE DEPOSITIONS NOTWITHSTANDING RETURN OF CONVICTION REGULAR ON ITS FACE.

The Ontario Habeas Corpus Act, R.S.O. 1897, ch. 83, sec. 5, makes it necessary, where a certiorari in aid has been granted to consider the depositions and proceedings returned in order to ascertain whether there is any evidence to sustain the conviction, even where the conviction is regular in form. The King v. Farrell, 12 Can. Cr. Cas. 524.

[Followed in R. v. Simmons, 14 Can. Cr. Cas. 6; R. v. Lorenzo, 16 Can. Cr. Cas. 21; referred to in Ex parte Monohan, 17 Can. Cr. Cas. 53; R. v. Mecellette, 15 Can. Cr. Cas. 18.]

EXTRADITION; NEW WRIT OF HABEAS CORPUS AFTER PUNISHMENT FOR ESCAPE.

(1) If a prisoner who sues out a writ of habeas corpus to obtain his release, escapes before judgment on the application, the motion will be dismissed. (2) Where the prisoner had escaped pending habeas corpus proceedings for his release, but was recaptured and sentenced for the escape, he may on being returned into custody on the original charge be granted a second writ of habeas corpus. Re Bartels, 13 Can. Cr. Cas. 59.

[Referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

CERTIORARI IN AID; PROCEEDINGS ANTERIOR TO WARRANT.

(1) Where the depositions returned with a certiorari in aid of habeas corpus disclose no evidence whatever as to a material fact essential to the offence, the case will not be remitted to the justices to take evidence on the point omitted (2) Under the Ontario Habeas Corpus Act, the Court is bound on the return of a writ of habeas corpus to examine the proceedings anterior to the warrant and to discharge the prisoner if the proceedings do not authorize the detention. The King v Brisbois, 13 Can. Cr. Cas. 96.

[Followed in R. v. Simmons, 14 Can. Cr. Cas. 6; distinguished in Dubue v. Maclaren, 2 R. 37, S.C. 67; R. v. Dubue, 15 Can. Cr. Cas. 360; referred to in R. v. Warlow, 14 Can. Cr. Cas. 118; R. v. Leach, 14 Can. Cr. Cas. 387; R. v. Teasdale, 16 Can. Cr. Cas. 62; R. v. Broadfoot, 17 Can. Cr. Cas. 71; R. v. Battista, 21 Can. Cr. Cas. 1.]

DISCHARGE; PROTECTION ORDER; CONDITION THAT NO ACTION BE BROUGHT; ONTARIO PRACTICE.

(1) Where the prisoner is entitled as of right to his discharge on habeas corpus, ex. gr., where the proceedings disclose no criminal offence, no terms should be imposed to prevent the prisoner from bringing an action against the magistrate and the private prosecutor. (2) Sec. 1131 of the Code which enables the Court on an application to quash a "conviction, order or other proceeding" of a justice, to grant a protection order as a condition of the order to quash, does not extend to an application by way of habeas corpus in Ontario to discharge the accused from custody as the discharge has not the effect of quashing the conviction. The King v. Lowery, 13 Can. Cr. Cas. 105.

[Referred to in R. v. Teasdale, 16 Can. Cr. Cas. 60; discussed in R. v. Graves (No. 2), 16 Can. Cr. Cas. 340.]

ORDER DISCHARGING ON HABEAS CORPUS DOES NOT REVERSE CONVICTION; DISCHARGE ON HABEAS CORPUS.

(1) An order on habeas corpus discharging the prisoner from custody on the ground that the conviction is invalid is not res adjudicata as against the prosecutor or his agent or representative not served with

notice of the application nor attending thereon, and he may notwithstanding such decision plead said conviction and urge its validity in defence of a civil action brought in respect of its enforcement. (2) An order on habeas corpus discharging a prisoner from custody on the ground that the conviction is invalid does not determine the validity of the conviction for any purposes other than the habeas corpus motion; and the conviction itself stands until quashed on certiorari or otherwise formally reversed or vacated. (Per Russell and Drysdale, JJ.) [The King v. Johnston (No. 2), 11 Can. Cr. Cas. 10, disapproved.] Johnston v. Robertson, 13 Can. Cr. Cas. 452.

EXTRADITION; AFFIDAVIT IN SUPPORT OF APPLICATION.

Where the prisoner is a foreigner unable to speak English, a habeas corpus application may be founded on an affidavit by some one acting on his behalf instead of the prisoner's personal affidavit. The King v. Rudland; Ex parte Kalke, 14 Can. Cr. Cas. 22.

ARREST ON TELEGRAM IN ANOTHER PROVINCE; RETURN TO HABEAS CORPUS.

Where the accused was arrested for an offence alleged to have been committed in another province in respect of which a warrant of arrest had been there issued and notified by telegram to the police department at the place of arrest, the accused is not entitled to be discharged on habeas corpus in respect of the irregularity of his arrest if the original warrant in due form and duly endorsed is returned in answer to the writ. The King v. Lee Chu, 14 Can. Cr. Cas. 322.

ADJOURNMENT OF MOTION TO DISCHARGE.

Where a habeas corpus has been granted without a certiorari in aid, the Crown opposing should be granted an adjournment of the motion to discharge pending a return to a certiorari granted the Attorney-General. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

INTERPRETING AT TRIAL; CLAIM THAT EVIDENCE AND PROCEEDINGS NOT UNDERSTOOD.

A foreigner has no absolute right at his trial for a criminal offence to have the evidence interpreted in a language which he understands, and a magistrate's conviction and commitment is not subject to attack on habeas corpus on a claim that the attempted interpretation was defective or inefficient. The King v. Mecklette, 15 Can. Cr. Cas. 17.

[Followed in The King v. Sylvester, 19 Can. Cr. Cas. 302; referred to in R. v. Walker, 16 Can. Cr. Cas. 97; R. v. Pfister, 19 Can. Cr. Cas. 93.]

EXTRADITION; OMISSION OF SIGNATURE AND AFFIDAVIT A GROUND FOR DISCHARGE; AMENDMENT OF RETURN TO HABEAS CORPUS.

(1) A return filed to a writ of habeas corpus may be amended by leave of the Court or leave may be given to substitute a new return. (2) The signature of the depositions by the extradition Judge and the affidavit of the stenographer are prerequisites under the [tradition Act, R.S.C. sec. 13, to the jurisdiction to commit the accused for extradition and where these requirements have not been fulfilled the prisoner must be discharged on habeas corpus. (3) The discharge of the prisoner for such cause will not be a bar to fresh extradition proceedings being taken against him for the same offence. Re Royston, 15 Can. Cr. Cas. 96.

PRIOR REFUSAL OF DISCHARGE ON SAME STATE OF FACTS; PROVINCIAL QUASI-CRIMINAL OFFENCE; LEGISLATIVE CONTROL OF HABEAS CORPUS RESPECTING SAME.

Where the prisoner is held in custody on conviction for a quasi-criminal offence declared by provincial legislation the habeas corpus procedure in respect thereof is subject to the same legislative authority. (2) The Divisional Court of the High Court of Justice has no jurisdiction in habeas corpus except as provided by statute or statutory rules. (3) A prisoner in the Province of Ontario, in which provision is made for appealing from a remand on habeas corpus, is not entitled to take out as an alternative to an appeal a fresh habeas corpus before another Judge or Court on the same state of facts on which a discharge has already been refused. The King v. Miller (No. 2), 15 Can. Cr. Cas. 156.

[Discussed in Kokolides v. Kennedy, 18 Can. Cr. Cas. 497; referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

APPEAL; NEW COURT OF APPEAL; APPOINTMENT OF JUDGES DELAYED UNTIL AFTER DATE OF STATUTORY SESSION; REMAND OF PRISONER.

Where a case has been reserved and set down for hearing for the date fixed by statute for a session of the Court of Appeal, the fact that no Judges had been appointed to that Court and that the prisoner has consequently had no opportunity of having his appeal heard, is not a ground for discharge on habeas corpus. The King v. Prasiloski, 15 Can. Cr. Cas. 299.

SUMMARY TRIAL; DEFECTIVE COMMITMENT; CERTIORARI TO ATTORNEY-GENERAL; SUBSTITUTING AMENDED COMMITMENT.

(1) On the return of a habeas corpus, leave may be given the Crown to file an amended warrant of commitment in place of the alleged defective commitment, and the prisoner may be remanded under the substituted commitment if in due form with-

out determining the objections taken to the first warrant. (2) The Ontario Habeas Corpus Act does not abridge the right of the Attorney-General to a writ of certiorari. The King v. Macdonald, 16 Can. Cr. Cas. 121.

ORDER ON HABEAS CORPUS FOR AN AMENDED COMMITMENT AND DETENTION MEANWHILE.

(1) A commitment in respect both of the imprisonment imposed in a summary conviction for the offence and of the costs of an unsuccessful appeal therefrom is severable, and if the unexpired term under either has been legally awarded it will constitute an answer in habeas corpus. (2) Where there is a valid summary conviction, but the commitment issued to enforce the same is irregular, the Court on habeas corpus may, under Code, sec. 1120, order a proper commitment to be issued by the justice to supersede the prior warrant, and may direct the prisoner's detention until the new warrant has been issued. Collette v. The King, 16 Can. Cr. Cas. 281.

REFUSAL TO DISCHARGE; APPEAL.

Habeas corpus proceedings in respect of a conviction under the Ontario Liquor License Act do not constitute an "action" within the definition of that term contained in the Ontario Judicature Rules, and Consolidated Rule 777 does not apply to confer a right of appeal to a Divisional Court. [R. v. Teasdale (1910), 16 Can. Cr. Cas. 53, not followed.] The King v. Graves (No. 2), 16 Can. Cr. Cas. 318.

[Considered in R. v. Coote, 17 Can. Cr. Cas. 331; followed in R. v. Matheson, 20 Can. Cr. Cas. 154.]

HABEAS CORPUS; EXAMINING PROCEEDINGS ANTERIOR TO CONVICTION.

The Court hearing a habeas corpus motion may, subject to statutory restrictions, examine the proceedings anterior to the conviction and warrant; and if the proceedings are insufficient to justify the detention may release the prisoner, although the conviction on its face is regular. The King v. Broadfoot, 17 Can. Cr. Cas. 71.

TRIAL AND CONVICTION WITHOUT PRELIMINARY TRIAL AS TO SANITY.

Where it appears on a habeas corpus motion that the prisoner was insane at the time of his trial and conviction by a magistrate, and that no preliminary trial on the question of sanity was held prior to putting him on his defense, although the convicting magistrate knew that proceedings were pending for his committal as a lunatic, an order will be made for his discharge in respect of the criminal conviction. The King v. Leys, 17 Can. Cr. Cas. 198.

SUMMARY TRIAL; DISCHARGE OF ACCUSED ON HABEAS CORPUS.

(1) Notwithstanding sec. 791 of the Cr. Code, a conviction and commitment upon a summary trial for an indictable offence may be reviewed on habeas corpus. (2) The prisoner will be discharged if the conviction on a plea of guilty is upon a charge which does not disclose a criminal offence. (3) Where the information for having received stolen property did not charge that the accused knew the same to have been stolen, a criminal offence is not disclosed and the accused will be discharged on habeas corpus although he pleaded guilty. The King v. Leschinski, 17 Can. Cr. Cas. 199.

[Specially referred to in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; referred to in R. v. Johnson, 20 Can. Cr. Cas. 10, 5 D.L.R. 523.]

HABEAS CORPUS PRACTICE; WRIT AT COMMON LAW AND UNDER THE HABEAS CORPUS ACT.

(1) A writ of habeas corpus either at common law or under the Habeas Corpus Act, does not issue as a matter of course; it must be grounded on an affidavit of a probable reasonable ground for the complaint, and it must be made by or on behalf of the prisoner. (2) It is not the practice to set out in the writ of habeas corpus the grounds of objection to the detention, nor is it usual to set them out in a rule for the writ when the rule is first issued ordering a return of the cause of detention. (3) The prisoner has a right to be personally present at the argument for his discharge and the waiver of his personal attendance in custody is not to be imposed as a term by the Court but permitted only at the prisoner's request as where he is unable to supply conduct money. (4) In the Province of Prince Edward Island it is sufficient to serve notice of motion for discharge under the writ of habeas corpus on the committing magistrate and the prosecutor; it is not necessary to notify the Attorney-General before or at the time of the issue of the writ. Re McMurrer (No. 1), 18 Can. Cr. Cas. 41.

ARREST FOR INDICTABLE OFFENCE; JUSTICES WITH POWER ONLY TO HOLD PRELIMINARY ENQUIRY MAKING CONVICTION ON PLEA OF GUILTY; SENTENCE AND COMMITMENT TO PRISON; INVALIDITY.

(1) Where the accused was arrested for an indictable offence and brought before two justices having jurisdiction only to hold a preliminary enquiry into the charge and to commit for trial if a prima facie case was proved, and the justices in excess of their jurisdiction accepted a plea of guilty and sentenced the accused as upon a conviction, the Court on habeas corpus will quash the warrant of commitment, but may also, if satisfied that the ends of justice require it, remand the accused to be taken from the prison and brought again before

the justices for the purpose of a preliminary inquiry into the charge. (2) Such power of remand is authorized by Code, sec. 1120 and the prisoner is, notwithstanding the illegal conviction and commitment, a person "in custody, charged with an indictable offence." (3) Sec. 1120 of the Code does not apply to such a case, but the Court has power, apart from that section, upon discharging the prisoner from custody under the illegal conviction, to remand him to his former custody upon his arrest for the crime so that the preliminary enquiry may be proceeded with. (Per Meredith J.A., differing on this point.) The King v. Frejd, 18 Can. Cr. Cas. 110.

IMMIGRATION ACT (CAN.); DEPORTATION.

The Superior Court of the Province of Quebec has no jurisdiction to revise, annul or modify an order made by the Minister of Agriculture or by a public officer pursuant to the provisions of the Immigration Act (Canada) respecting the deportation of an immigrant; and a writ of habeas corpus asked for that purpose will be refused. Robinson v. Regimbal, 18 Can. Cr. Cas. 478.

CONCURRENT PRELIMINARY HEARINGS.

That the magistrate proceeded with the hearing of the evidence on preliminary enquiries for two offences at the same time, against the same accused, is not a ground for habeas corpus in respect of his committal for trial. Dick v. The King, 19 Can. Cr. Cas. 44.

PRODUCING COPY OF WARRANT; BAIL.

(1) An application for a writ of habeas corpus in a criminal matter will not be entertained without the production of the warrant of commitment, or a copy thereof, or proof that a copy could not be obtained for the prisoner. (2) Where it appears from the record on a habeas corpus application that the application is held in custody on a committal for trial and that the offence is one for which he should be admitted to bail, but the question of the validity of the commitment cannot be decided for failure of the applicant to produce a copy of the warrant, the Court may, nevertheless, make an order for bail. Ex parte Aubin, 19 Can. Cr. Cas. 94.

PROCESS AFTER IMPRISONMENT VALIDATING DETENTION.

An order for discharge on habeas corpus will not be made if a valid cause of detention is shewn at the time of the return to the writ, although it did not exist when the imprisonment commenced. [R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238, and R. v. Morgan (No. 2), 5 Can. Cr. Cas. 272, 3 O.L.R. 356, specially referred to.] The King v. Mitchell, 19 Can. Cr. Cas. 113.

CERTIORARI IN AID; NOT AN "APPEAL;" AFFIDAVITS IN SUPPORT.

(1) Neither a proceeding to quash a summary conviction by way of certiorari, nor a motion to discharge on habeas corpus with certiorari in aid constitutes an "appeal," and where the powers of amendment of a conviction under a provincial statute are limited to "appeals" from convictions and orders, a conviction which illegally imposed hard labour for an offence against the provincial liquor laws cannot be amended on the habeas corpus motion and the prisoner is entitled to be discharged. [The King v. Plante, 40 C.L.J. 125, applied.] (2) On an application for a writ of habeas corpus with certiorari in aid, it is prima facie sufficient that the warrant be proved by an affidavit of the gaoler, and that the fact that the applicant is not detained for any other cause be proved by an affidavit of the applicant instead of proving both by the affidavit of the prisoner. [Compare R. v. Skinner, 9 Can. Cr. Cas. 558; see also Tremeear's Criminal Law and Evidence, 2nd ed., pp. 822, 823.] (3) Affidavits entitled in the Supreme Court of Saskatchewan and in the matter of the conviction, specifying the particulars of same, sufficiently set out a style of cause for the purpose of a habeas corpus application under Saskatchewan Crown Practice Rule 39. [Rex v. Harris, 6 Terr. L.R. 376, followed.] Re Ching How et al., 19 Can. Cr. Cas. 176, 1 D.L.R. 275.

STATING GROUNDS OF APPLICATION.

The grounds upon which a motion for a habeas corpus and certiorari in aid is founded must be stated in definite terms and a mere statement that the magistrate "exceeded his jurisdiction in convicting and sentencing said prisoner" is too vague and general to be dealt with, and may be ignored. The King v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256.

DISPROVING RECITAL OF CONSENT TO SUMMARY TRIAL.

The onus is upon the defendant on a habeas corpus application to disprove a recital of his consent to summary trial contained in a conviction following Code form 55 (Cr. Code 1906, sec. 799). The King v. Mali (No. 2), 19 Can. Cr. Cas. 188, 1 D.L.R. 484.

COMMON LAW AND STATUTORY POWERS; CERTIORARI IN AID.

(1) As regards summary convictions the jurisdiction to review commitments thereunder on habeas corpus is not limited to the statutory powers founded on Imperial statute 31 Car. II. ch. 2, and the writ may be supported also upon the jurisdiction at common law. [R. v. McEwen, 13 Can. Cr. Cas. 346, 17 Man. L.R. 477, distinguished.] (2) The regularity of a summary conviction for a vagrancy offence (Cr. Code 1906, sec. 238) is properly enquired into upon habeas corpus when the proceedings before the magistrate are brought up upon a writ

of certiorari in aid of the habeas corpus writ. [The King v. Pepper, 15 Can. Cr. Cas. 314, and The King v. Leschinski, 17 Can. Cr. Cas. 199, specially referred to.] The King v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548.

WRONGFUL SENTENCE; HOUSE-BREAKING.

A formal commitment of a person under art. 459 of the Cr. Code 1906, for house-breaking, on a trial and conviction under art. 464 of the Code with having a house-breaking instrument in his possession, is illegal as being upon a charge different than that which was tried, and the prisoner will be discharged on habeas corpus. Hoolahan v. Malepart, 19 Can. Cr. Cas. 405, 5 D.L.R. 479.

EXTRADITION PROCEEDINGS; REVIEW OF, ON HABEAS CORPUS.

It is without the province of a Court to whom an application is made for writ of habeas corpus directing the discharge of a person extradited to a foreign country to review on such proceedings the decision of the Extradition Commissioner if there is evidence justifying the issue of the warrant of extradition, the only duty of such Court in that regard being to decide if any such evidence exists. In re O'Neill, 19 Can. Cr. Cas. 410, 5 D.L.R. 646.

EXTRADITION PROCEEDINGS; REVIEW OF REMAND BY COMMISSIONER; STATUTORY REQUIREMENTS.

(1) On an application for a writ of habeas corpus for the discharge from custody of a person who was remanded by an Extradition Commissioner for extradition to France, the only question for examination is whether the extradition proceedings are in strict conformity with the requirements of the treaty of August 14th, 1876, between England and France, of the Imperial Extradition Act 1870, and of the Canadian Extradition Act, R.S.C. 1906, ch. 155. (2) On an application for a writ of habeas corpus for discharge from custody of a person remanded by an Extradition Commissioner for extradition to a foreign country, the decision of the commissioner as to the sufficiency of the evidence, where there is any evidence at all, as to the identity of the party remanded by him, cannot be reviewed. (3) On an application for a writ of habeas corpus for the discharge from custody of a prisoner remanded by an Extradition Commissioner for extradition to a foreign country, the justice or the propriety of the order of the commissioner in that regard cannot be enquired into. [United States of America v. Gaynor and Green, 9 Can. Cr. Cas. 205; United States v. Gaynor, [1905] A.C. 128, followed.] Re Darracq (alias Dutal), 19 Can. Cr. Cas. 483, 5 D.L.R. 771.

REVIEW OF EXTRADITION COMMITMENT; FUNCTION OF JUDGE.

The function of a Judge upon the return of a writ of habeas corpus in the case of one who has been committed for extradition is not to sit in appeal from the Extradition Commissioner, but simply to decide whether he had jurisdiction to order the committal, and evidence offering reasonable grounds of suspicion against the accused will be sufficient for a refusal of his discharge. United States v. Webber (No. 2), 20 Can. Cr. Cas. 6, 5 D.L.R. 866.

SUMMARY CONVICTION; POLICE MAGISTRATE'S POWERS.

A summary conviction by a city police magistrate under the vagrancy clauses, Cr. Code, R.S.C. 1906, ch. 146, secs. 238 and 239, may be quashed for irregularity on proceedings in habeas corpus and certiorari in aid taken on behalf of the defendant committed under such summary conviction, and is, in that respect, distinguishable from convictions made by city police magistrates for indictable offences under their extended jurisdiction under Cr. Code, sec. 777. [Rex. v. McEwen, 13 Can. Cr. Cas. 346, 7 Man. L.R. 477, distinguished.] The King v. Johnson, 20 Can. Cr. Cas. 8, 5 D.L.R. 523.

WHEN PROPER REMEDY.

Habeas corpus, and not an application to a magistrate for the release of a person remanded by him to custody, is the proper mode of enquiry as to whether his detention was illegal. The King v. Bouchard, 20 Can. Cr. Cas. 95, 4 D.L.R. 317.

ILLEGAL PROCEEDINGS; ARREST WITHOUT WARRANT; PROTEST BY ACCUSED; RENEWAL OF APPLICATION ON SAME GROUND.

(1) A prisoner whose attendance for trial by a magistrate in a summary conviction matter has been compelled by arrest without warrant in a case where a warrant is required by law, will be discharged upon habeas corpus from the commitment following conviction, if he protested before the magistrate against the illegal procedure. [See contra, Re Paul (No. 1.), 7 D.L.R. 24.] (2) Subject to any statutory restriction of the right, an application for a writ of habeas corpus for the discharge of a prisoner from custody may be renewed before another Judge of co-ordinate jurisdiction, notwithstanding that a similar application upon the same grounds had been refused by the Judge to whom the application was first made. Re Baptiste Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25.

[See also to the same effect, R. v. Carter, 5 Can. Cr. Cas. 401; Re McKenzie, 14 N.S.R. 481; Re J. W. Black, Cong. Dig. 614; but as to the effect of a statutory right of appeal, see Re Hall, 8 A.R. (Ont.)

135; Re Harper, 23 O.R. 63; Taylor v. Scott, 30 O.R. 475.]

REVIEW OF COMMITMENT BY HABEAS CORPUS.

The Court cannot on an application for the discharge of a prisoner from custody by way of habeas corpus review the action of the magistrate on the merits, or send the prisoner back to the magistrate to impose a lighter sentence where the sentence actually imposed was not in excess of what the law authorized. The King v. Fraser, 20 Can. Cr. Cas. 167, 7 D.L.R. 496.

COMMITMENT FOR TRIAL; ILLEGALITY; RIGHT TO DISCHARGE.

(1) The fact that a warrant of committal for trial was illegally issued on a charge of assault and occasioning actual bodily harm after the justices before whom the accused had been brought to answer the charge had with his consent entered upon a summary trial thereof, which trial had proceeded to the close of the evidence for the defence, is a ground for discharge upon habeas corpus. (2) Where the Court has power upon habeas corpus instead of discharging a prisoner from custody under an invalid commitment to remit the case to the magistrate under sec. 1120 of the Criminal Code, 1906, consideration will be given to the imprisonment already suffered and to the costs to which the accused has been put in moving against the illegal warrant of commitment. The King v. Roger Hicks, 20 Can. Cr. Cas. 192, 7 D.L.R. 171.

JURISDICTION OF POLICE MAGISTRATE; ILLEGAL PROCEEDINGS; ABSENCE OF A SWORN INFORMATION.

An accused person in an application on the return of a summons for a habeas corpus, may avail himself on an objection to the jurisdiction of a police magistrate to try him for an offence against the Liquor License Ordinance, on the ground that no sworn information had been lodged against him and that he was therefore improperly brought before the magistrate, under a warrant of arrest, where his objection before the magistrate was overruled, the trial proceeded with, and the accused found guilty. [Re Baptiste Paul (No. 2), 7 D.L.R. 25, followed; Regina v. McNutt, 3 Can. Cr. Cas. 184, 186, referred to.] Rex v. Davis, 20 Can. Cr. Cas. 293, 7 D.L.R. 608.

EXTRADITION PROCEEDINGS; CONFLICT OF DATES AS TO TIME OF OFFENCE.

Upon an application on habeas corpus for the discharge of a prisoner from custody, where it appears that in extradition proceedings he was committed upon the charge that he did "on or about the 8th day of February, 1912," obtain a promissory note from a certain party by false pretences with intention to cheat and defraud, and where the proceedings were begun by an information which stated that the offence had been committed on "the 8th day of February, 1911," and where throughout all the documents forwarded from the foreign jurisdiction up to the date of the present application the offence is alleged as of "the 8th day of February, 1911;" the warrant of commitment is invalid. Re William Staggs (No. 1), 20 Can. Cr. Cas. 306, 7 D.L.R. 738.

[See Extradition Act, R.S.C. 1906, ch. 155; see also United States v. Webber (No. 1), 5 D.L.R. 863; Re Webber et al., 6 D.L.R. 805.]

OTHER VALID COMMITMENT BAR TO DISCHARGE; REFUSAL OF WRIT.

Where it appears upon an application for a writ of habeas corpus made in respect of a summary conviction and commitment thereunder that the applicant is properly in custody under an order of remand in an entirely separate proceeding upon another charge, a writ of habeas corpus may be refused as, if issued, the prisoner's discharge could not be ordered in view of the other valid commitment; the proper course in such case is to attack the commitment upon the summary conviction by certiorari proceedings to quash the conviction and the warrant of commitment. The King v. Hazelwood, 20 Can. Cr. Cas. 488.

ILLEGAL ARREST; RELEASE UPON RECOGNIZANCE.

A writ of habeas corpus cum causa in respect of an alleged illegal arrest and a subsequent detention order made by a justice will not be granted when the accused has obtained a release upon giving bail and remains at liberty under the recognizance; such habeas corpus process is intended to give relief only to persons in actual custody under illegal process. Ex parte Seriesky, 21 Can. Cr. Cas. 140, 10 D.L.R. 612.

POWER TO ISSUE; MASTERS.

The effect of Nova Scotia practice Rule 2 (b) of Order LIV., by which it is provided that Masters of the Supreme Court of Nova Scotia shall exercise the jurisdiction of a judge in Chambers "except in causes or matters belonging to a prothonotary's office in the district for which he is a County Court judge," is to exclude jurisdiction to order the release in habeas corpus proceedings of a prisoner held in custody under a commitment for violation of the Canada Temperance Act, R.S.C. 1906, ch. 152, such commitment not being a matter belonging to a prothonotary's office. R. v. Woodworth, 21 Can. Cr. Cas. 187.

WITNESS IN CUSTODY; JUDGE'S ORDER TO PENITENTIARY WARDEN.

A writ of habeas corpus is not necessary in the Province of Quebec to compel the attendance of a penitentiary convict as a witness in a civil cause; an order to the warden by a judge of the Superior Court

of Quebec made under article 302 C.P. Que., accompanied by the payment of a proper sum for the warden's charges of bringing the prisoner from the penitentiary into court is valid for that purpose. Laing Packing & Provision Co. v. Duval, 21 Can. Cr. Cas. 201.

LIBERTY OF THE SUBJECT ACT; POWER OF COUNTY JUDGE ACTING AS MASTER.

Rule 1 and sub-rule (a) of order 54b (N.S.) does not confer upon a judge of a County Court, when acting as a Master of the Supreme Cout, power to discharge from jail, under the Liberty of the Subject Act, R.S.N.S. 1900, ch. 181, a person confined for the violation of the Nova Scotia Temperance Act. Re Crouse, 21 Can. Cr. Cas. 231, 11 D.L.R. 749. See also 21 Can. Cr. Cas. 243, 11 D.L.R. 759.

PERSON COMMITTED FOR TRIAL BUT NOT INDICTED; REMEDY; BAIL.

A person committed for trial but not indicted at the following Assize, is not entitled to his discharge on habeas corpus, under sec. 7 of the B.C. Habeas Corpus Act of 1897, his only right under such Act being to make application for release on bail. R. v. Dean, 21 Can. Cr. Cas. 310, 11 D.L.R. 598.

REVIEW OF COMMITMENT FOR TRIAL.

The court has jurisdiction upon habeas corpus to examine into the legality of a commitment for trial made by a justice upon a criminal charge, and in a proper case to order the discharge of the accused. [R. v. Hicks, 20 Can. Cr. Cas. 192, 7 D.L.R. 171; R. v. Gillespie, 1 Can. Cr. Cas. 551; R. v. Cox, 16 O.R. 228, referred to.] R. v. Wiss and Williams (No. 1), 21 Can. Cr. Cas. 433, 13 D.L.R. 166. See also 22 Can. Cr. Cas. 42, 13 D.L.R. 633.

ORDERING FURTHER DETENTION NOTWITHSTANDING INVALID COMMITMENT.

Where the magistrate illegally proceeded to try the accused for an indictable offence for which he had no jurisdiction to hold a summary trial either with or without the consent of the accuse, the court on habeas corpus may properly decline to order the further detention of the accused by remanding him to custody for a preliminary enquiry before such magistrate under sec. 1120 of the Cr. Code (1906), thus leaving it open for the prosecutor to take such steps as may be available to renew the prosecution after the discharge under the illegal commitment. [R. v. Blucher, 7 Can. Cr. Cas. 278, approved; see also R. v. Randolph, 4 Can. Cr. Cas. 165, 32 O.R. 212; R. v. Morgan, 5 Can. Cr. Cas. 63, 2 O.L.R. 413; R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238; R. v. Goldsberry, 11 Can. Cr. Cas. 159, and R. v. Frejd, 18 Can. Cr. Cas. 110.] R. v. Alexander and Shouldice, 21 Can. Cr. Cas. 473, 13 D.L.R. 385.

DISCONTINUANCE OF APPLICATION; PARTIES.

A prisoner who applies for and obtains a writ of habeas corpus, alleging unjust detention, has the right to discontinue and desist from his petition, and the court will give effect to an application for the discontinuance of the proceedings, and order the prisoner's return to jail. Where the application for the issue of a writ of habeas corpus is made by the prisoner himself, the party who laid the information upon which the prisoner was originally arrested has no status to appear in the habeas corpus proceedings, and ask for the liberation of the prisoner, although such party claims that the prisoner has been illegally arrested. Ex parte Harry K. Thaw (No. 1), 22 Can. Cr. Cas. 1, 13 D.L.R. 710. See also 22 Can. Cr. Cas. 38; 13 D.L.R. 712, 715.

RIGHT TO PETITION; PARTIES; WORDING; PRISONER'S OPPOSITION.

The petition for a writ of habeas corpus issued under authority of ch. 95 of the Consol. Stat. of L.C., (which extend the provisions of the English Habeas Corpus Act to the Province of Quebec) can validly be made by the party who illegally caused the arrest of the prisoner, although the prisoner may by intervention oppose the application, and by affidavit declare the same is so made without his authority, the prisoner further declaring that he desires to remain in jail. Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from illegal imprisonment. [Hottentot Venus Case, 13 East's Reports 195, followed.] A party who causes the arrest of another, and who subsequently is advised that such arrest is illegal, is entitled to apply for a writ of habeas corpus, to the end that the person arrested may be restored to his liberty. The term "on behalf of," when used in an application for a habeas corpus, means "in the name of," "on account of," "for the advantage of," or "in the interest of" another. [Compare R. v. Melver, 7 Can. Cr. Cas. 183.] No legal relationship is required to exist between the prisoner and the person making the application for a writ of habeas corpus for the prisoner's release. Re Harry K. Thaw (No. 2), 22 Can. Cr. Cas. 3, 13 D.L.R. 712. See also 22 Can. Cr. Cas. 1, 8; 13 D.L.R. 710, 715.

PROCEDURE; SERVING ORIGINAL WRIT.

A writ of habeas corpus can be properly served only by delivering the original writ to the person to whom it is addressed, or to the principal person where there are more than one; and where only copies of the writ had been served the irregularity is a ground for quashing the writ, although the original had been exhibited to the persons to whom it was addressed at the time when the copies were left with them. [See

Annotation at end of this case.] Re Harry K. Thaw (No. 3), 22 Can. Cr. Cas. 8, 13 D.L.R. 715. See also 22 Can. Cr. Cas. 1, 3; 13 D.L.R. 710, 712.

SUMMARY TRIAL; FAILURE TO INFORM PRISONER AS TO.

A prisoner will be discharged on habeas corpus from imprisonment under a conviction on a plea of guilty in a summary trial proceeding where the magistrate did not, as required by sec. 778 of the Criminal Code, inform the accused that he might, at his option, be tried forthwith without a jury, or remain in custody or under bail as the court might decide, to be tried in the ordinary way by a court having criminal jurisdiction. R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612.

[Followed in R. v. James, 31 Can. Cr. Cas. 4.]

SUMMARY TRIAL; FAILURE TO INFORM PRISONER; TRIAL DE NOVO.

On quashing on habeas corpus a conviction before a police magistrate on a summary trial, because of his failure to inform the prisoner, as required by sec. 778 (b) of the Criminal Code, as amended by 8–9 Edw. VII. ch. 9, of his option to be tried forthwith by the magistrate, or to remain in custody or under bail as the court might decide, for trial in the ordinary manner by a court having criminal jurisdiction, the discharge of the prisoner may be refused and he may be remanded to custody so that he may again be taken before the magistrate on proceedings de novo on which his election can be taken in proper form. R. v. Fuerst, 22 Can. Cr. Cas. 183, 15 D.L.R. 214.

[Followed in R. v. James, 31 Can. Cr. Cas. 4.]

JURISDICTION OF CO-ORDINATE JUDGES.

Each successive judge to whom a habeas corpus application is made must act upon his own view of the law applicable to it, and where an application of this character is made before a judge of the Alberta Supreme Court, the fact that the same application had previously been dismissed by each of two other justices of the same court, all vested with co-ordinate jurisdiction, is in no sense a bar to the de novo hearing and determination of the third habeas corpus application on its merits. R. v. Jackson, 22 Can. Cr. Cas. 215, 15 D.L.R. 545.

GROUNDS; TWO WARRANTS OF COMMITMENT.

A prisoner in custody under two warrants of commitment for trial for different offences cannot set up the irregularity of a remand under sec. 679 Cr. Code, because of an adjournment exceeding 8 days, during the preliminary inquiry on one of the charges, as a ground for a motion for his release on habeas corpus. An objection that the prisoner is held on two warrants for conflicting offences (bigamy and refusal to maintain) cannot be raised on habeas corpus; if available at all, it is by a demurrer or analogous proceeding at the trial. R. v. Beaudoin, 22 Can. Cr. Cas. 319, 17 D.L.R. 273.

ORDER FOR FURTHER DETENTION; JURISDICTION.

While an order for further detention may be justified under Cr. Code, sec. 1120 on a habeas corpus application allowed because of a technical error which rendered the conviction bad, it should not be made where the official who purported to make the commitment was not of the class of magistrate to whom extended jurisdiction had been given in respect of such offences as that on which the conviction was improperly made. [R. v. Blucher, 7 Can. Cr. Cas. 278; R. v. Breckenridge, 7 Can. Cr. Cas. 116; R. v. Benner, 8 Can. Cr. Cas. 398, followed.] R. v. Kolember, 22 Can. Cr. Cas. 341, 16 D.L.R. 146.

APPLICANT OUT ON BAIL; NONDISCLOSURE.

The essential and leading theory of habeas corpus procedure is the immediate determination of the right to the applicant's freedom; and when a habeas corpus is obtained without disclosing so material a fact as that the applicant was not in custody at the time of the application, as he had been released on bail, it will be set aside. [Cox v. Hakes, 15 App. Cas. 506, referred to.] Re Bhagwan Singh, 23 Can. Cr. Cas. 5, 17 D.L.R. 63.

SERVING NOTICE ON ATTORNEY-GENERAL; STATUS OF LOCAL AGENT.

A notice of motion for a writ of habeas corpus required under Alberta Crown Practice Rule to be served "upon the Attorney-General" need not be served personally upon that official; it is enough that service is made at the Attorney-General's office in Edmonton, but service on his local agent elsewhere will not be allowed as its equivalent without proof of the local agent's authority to receive service in the particular case or a waiver by the Attorney-General of regular service. R. v. Swett, 23 Can. Cr. Cas. 272, 19 D.L.R. 694.

WAR MEASURES ACT; ALIEN ENEMY.

The judgment of a registrar of alien enemies as to the necessity of the internment of a resident alien enemy under the War Measures Act 1914, and under the statutory regulations made thereunder, is not subject to review by the Courts on habeas corpus without the consent of the Minister of Justice. [Re Beranek, 24 Can. Cr. Cas. 252, 25 D.L.R. 564, followed.] An alien enemy has no right at common law to a writ of habeas corpus. [R. v. Schiever, 97 Eng. R. 551, followed.] Re Gusetu: Gusetu v. Date, 24 Can. Cr. Cas. 427.

PRELIMINARY INQUIRY WHERE ACCUSED UNDER REMAND FOR SENTENCE.

A prisoner convicted by a magistrate on a summary trial and remanded for sentence to a fixed date may be brought up in the meantime for preliminary inquiry upon another criminal charge by means of a writ of habeas corpus ad respondendum ordered by a Superior Court on the prosecutor's application. [Ex parte Griffiths, 5 B. & A. 730, followed; N.S. Crown Rule 157, referred to.] R. v. Henry, 25 Can. Cr. Cas. 86.

SCOPE OF INQUIRY; QUESTIONS OF EVIDENCE.

The questions open to consideration on a habeas corpus application are whether the commitment is legal, whether any offence known to the law is charged, and whether the magistrate had the necessary power or jurisdiction; but it is not for the Judge hearing such application to determine whether the committing magistrate's decision in conviction and sentencing the accused is in accordance with the evidence or is proper or improper on the merits of the case. R. v. Sands (No. 1), 25 Can. Cr. Cas. 116, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 120.

POWER TO ORDER FURTHER DETENTION; JURISDICTION; OTHER REMEDY; APPEAL.

The provisions of Cr. Code, sec. 1120, as to ordering on habeas corpus the further detention of a "person in custody, charged with an indictable offence," do not apply to a person already sentenced, although the sentence was made without jurisdiction; and the prisoner will be discharged from imprisonment adjudged even upon a plea of guilty if the magistrate has proceeded with summary trial under Cr. Code, sec. 778, on defendant's election of that mode of trial without informing him of his privilege of applying for bail should he choose to be tried in the ordinary way, by the Court having criminal jurisdiction, in the manner directed by Cr. Code, sec. 778, subsec. (2), as amended in 1909 by 8-9 Edw. VII (Can.), ch. 9. [See, contra, R. v. Frejd (1910), 18 Can. Cr. Cas. 110, 22 O.L.R. 506, and R. v. Manzi, 24 Can. Cr. Cas. 359, and Annotation to latter case, 24 Can. Cr. Cas. 360-363; see also R. v. Goldberry, 11 Can. Cr. Cas. 159, at 161, per Larue, J. (Que.).] A Judge of the Superior Court of the Province of Quebec has concurrent jurisdiction with a Judge of the King's Bench, on habeas corpus, respecting a commitment in a criminal matter. [See also Ex parte Goldsberry, 10 Can. Cr. Cas. 392.] The right of appeal by reserved case or by leave, as to questions of law arising upon the judgment of a magistrate upon a summary trial held by him under the extended jurisdiction conferred by Cr. Code, sec. 777, does not bar the remedy of the accused to seek his discharge on habeas corpus on the ground of the magistrate's omission to give the statutory information required by Cr. Code, sec. 778, as amended in 1909, on taking the prisoner's election of summary trial, the summary trial Court not being a Court of record, although presided over by a Judge of the Court of Sessions constituted under R.S.O. 1909, art. 3260. R. v. Morgan, 25 Can. Cr. Cas. 192.

RETURN TO WRIT; COMMITMENTS; QUEBEC PRACTICE.

Although it is usual in the Province of Quebec for the gaoler to make his return under oath to a writ of habeas corpus, a valid return may be made without its being sworn to. The Court hearing a habeas corpus application without a certiorari, need not enquire into the validity of one of several commitments, in execution of several convictions, if the remaining commitments are found to be valid. Ex parte Evans, 25 Can. Cr. Cas. 239.

SCOPE OF WRIT; IRREGULARITIES NOT GOING TO JURISDICTION.

If the court of record, making the conviction possesses the requisite jurisdiction no matter what errors or irregularities occur in the proceedings or judgment provided they are not of such a character as to render them void, its action cannot be reviewed or examined into on habeas corpus. Resort to the writ of habeas corpus should not be permitted where there is as complete a remedy by appeal under Cr. Code, sec. 1014, et seq. from the conviction attacked. R. v. Amyot, 11 Can. Cr. Cas. 232, 15 Que. K.B. 22; applied.] R. v. Therrien, 25 Can. Cr. Cas. 275, 28 D.L.R. 57. See also 26 Can. Cr. Cas. 309.

COMMON-LAW WRIT; SUCCESSIVE APPLICATIONS.

The restriction imposed by 23 Vict., ch. 57, sec. 27 (C.S.L.C., ch. 95, sec. 28), in habeas corpus matters in Quebec, whereby an application once refused should not be renewed before another judge, except on new facts, but the applicant might apply to the court of Queen's Bench in appeal, applies to the statutory habeas corpus and not to the common-law writ, consequently a writ of habeas corpus at common law to examine into the legality of detention under a conviction by an inferior court for a criminal offence may be issued by a judge of the King's Bench, after the refusal of an application upon the same grounds, made before a judge of the Quebec Superior Court. [R. v. Partington, 13 M. & W. 679; Cox v. Hakes, 15 A.C. 506, 60 L.J.Q.B. 89, and R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612, referred to.] R. v. Therrien, 25 Can. Cr. Cas. 275, 28 D.L.R. 57. See also 26 Can. Cr. Cas. 309.

EFFECT OF APPEAL; DISCHARGE ORDER; RE-ARREST.

Where an order discharging a prisoner on

habeas corpus has been carried out but the order is reversed on the appeal taken by the Crown, the Appellate Court may direct that an order issue for the rearrest of the accused. (Dictum per BECK, J.) Query whether a decision of the Appellate Division of the Supreme Court of Alberta, in a habeas corpus matter, reviewing under Alberta Crown rule 20 the decision of a single judge, may not itself be reviewed by the entire Court. (STUART, J.) R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D.L.R. 441. [Cited in R. v. Sinclair, 28 Can. Cr. Cas. 350, 32 D.L.R. 796.]

RENEWING APPLICATION BEFORE ANOTHER JUDGE; VALIDITY OF COMMITMENT.

A prisoner applying for a habeas corpus to test the validity of his commitment under a summary conviction may, in British Columbia, renew his application before another Judge after the dismissal of the first application although there are no new grounds. R. v. Campbell, 26 Can. Cr. Cas. 196, 28 D.L.R. 385.

ILLEGAL DETENTION.

The right to discharge on habeas corpus does not depend on the legality or illegality of the prisoner's caption but on the legality or illegality of his detention. [R. v. Whiteside (1904), 8 Can. Cr. Cas. 478, 8 O.L.R. 622, followed.] R. v. Gage, 26 Can. Cr. Cas. 385, 30 D.L.R. 825.

UNLAWFUL DETENTION; ENLISTMENT; MINOR UNDER EIGHTEEN.

The military discipline and control to which a soldier enlisted for active service is subject, along with his fellow soldiers, is not in law a detention or restraint upon liberty upon which to base a habeas corpus application made by the soldier's parent or other person having civil control over him during his minority for the purpose of having the soldier released from military service which he had voluntarily entered during minority. A minor under eighteen years, who understands the nature and consequences of enlistment and who is certified by the proper authorities to be qualified, may waive the exemption in favour of youths under 18 contained in the Canadian order-in-council of August 20, 1915, and his enlistment for overseas service will be valid without his father's consent. Re Fournier, 26 Can. Cr. Cas. 405, 32 D.L.R. 720.

FORM OF RETURN.

A return in habeas corpus will not be quashed because addressed to "the Chief Justice and other Justices of the Court" instead of being addressed, in strict conformity with the habeas corpus order, to the Judge who made the order. R. v. Hall, 27 Can. Cr. Cas. 1, 32 D.L.R. 236.

JURISDICTION ON COMMON-LAW WRIT.

A superior Court Judge upon a common-law writ of habeas corpus in respect of a committal by a commissioner holding extra-judicial proceedings not removed by certiorari may decide upon extrinsic evidence that the committal was made without jurisdiction and may direct the prisoner's discharge, but he has no jurisdiction upon such habeas corpus proceedings alone to set aside the commissioner's order upon which the committal was founded. A Court of superior jurisdiction will not entertain a motion to set aside a writ of habeas corpus and the proceedings thereunder, where the prisoner has been discharged thereunder from a commitment made in extra-judicial proceedings, as the setting aside of the habeas corpus proceedings would not replace in custody the person so discharged and the Court has in such case no power to issue a warrant for his rearrest and detention.

[See also Re Bartels, 13 Can. Cr. Cas. 59.] Re Beck, 27 Can. Cr. Cas. 331, 32 D.L.R. 15.

SUMMARY TRIAL FOLLOWING ILLEGAL ARREST; JURISDICTION.

It is a ground for discharge on habeas corpus that the accused was illegally arrested without a warrant, and not on view, for an indictable offence and was summarily tried by the magistrate notwithstanding a protest made that he had no jurisdiction because of the illegal arrest. [R. v. Miller, 25 Can. Cr. Cas. 151, followed.] R. v. Willson, 29 Can. Cr. Cas. 42.

REVIEW OF COMMITMENT.

Habeas corpus proceedings will lie to review a justice's commitment of the accused for trial made on a preliminary enquiry. [R. v. Delisle, 5 Can. Cr. Cas. 210, referred to; and see R. v. Weiss (No. 1), 21 Can. Cr. Cas. 438, 13 D.L.R. 166.] R. v. Mackey, 29 Can. Cr. Cas. 167. See also 29 Can. Cr. Cas. 282, 419, 40 D.L.R. 287.

POWER TO ORDER FURTHER DETENTION.

Apart from the provisions of Cr. Code, sec. 1120 as to ordering further detention on a habeas corpus motion notwithstanding the irregularity of the commitment, the court has power to remand the accused to his former custody where there has been an abortive trial before a magistrate; but such power of remand is to be exercised only when it is necessary in the interests of justice. [R. v. Frejd, 18 Can. Cr. Cas. 110, 22 O.L.R. 566, considered; see R. v. Kolember, 22 Can. Cr. Cas. 341, 16 D.L.R. 146.] Ex parte Carroll, 29 Can. Cr. Cas. 213, 41 D.L.R. 196.

DISCHARGE; JURISDICTION TO SET ASIDE.

The Supreme Court of Nova Scotia has no jurisdiction to set aside an order for discharge in the nature of habeas corpus. [Re Blair, 23 N.S.R. 225, followed; Re Sproule, 12 Can. S.C.R. 140, distinguished.] Re Mackey (No. 2), 29 Can. Cr. Cas. 282.

40 D.L.R. 287. See also 29 Can. Cr. Cas. 167, 419.

SCOPE OF WRIT IN EXTRADITION CASE.

The question before the court on a habeas corpus case under the Extradition Act, Can., is whether the accused was in lawful custody at the time of the issue of the writ. The lawfulness of the custody must depend upon the question whether there was a sufficient compliance with the provisions of the Extradition Act and if there was evidence upon which the extradition judge could act in making a committal order; his discretion is not reviewable on habeas corpus. (Per PERDUE, J.A.) [U.S.A. v. Gaynor, [1905] A.C. 128; Re Arton (No. 2), [1896] 1 Q.B. 509; Re Galway, [1896] 1 Q.B. 230, referred to.] Re Rosenberg, 29 Can. Cr. Cas. 309.

CONTRADICTING RETURN; COURT OF RECORD; REDUCING IMPRISONMENT.

Where a summary conviction is made by a court of record, e.g., by a Court of Sessions of the Peace in the Province of Quebec, for an offence punishable only on summary conviction, the same rule applies to exclude extrinsic evidence in contradiction of the record on a habeas corpus application in respect of the conviction as would apply in respect of other convictions made by a court of record; and if the record produced contains the recital of facts requisite to confer jurisdiction it is conclusive and cannot be contradicted by extrinsic evidence. [Re Sproule, 12 Can. S.C.R. 140, applied.] On the hearing of a habeas corpus to which a regular commitment and a regular summary conviction is returned, the court has no discretion to reduce the award of imprisonment lawfully made by the lower court. O'Neil v. Carbonneau, 29 Can. Cr. Cas. 340.

DISABILITY TO DEMAND WRIT; ALIEN ENEMY.

An alien enemy who was resident in a foreign country at the outbreak of the great war is not within the protection of the Royal Proclamations 1914, and on being arrested by a Canadian Immigration officer his detention cannot be inquired into on a writ of habeas corpus; an alien enemy who is not within the King's protection has no status to sue out a writ of habeas corpus. Re Gottesman, 29 Can. Cr. Cas. 439.

ORDERING FURTHER DETENTION; LEAVE TO FILE AMENDED COMMITMENT.

Where the warrant of commitment following a summary conviction awarding imprisonment for nonpayment of the fine and costs states the amount of the fine and is conditional further upon payment of the complainant's costs the amount of which are not stated and of the costs of conveying to gaol the amount of which have not been certified by the constable to the gaoler, the prisoner would not be entitled to discharge on habeas corpus without tendering the fine as to which the commitment was valid and bringing the amount of same into court on the habeas corpus motion by way of renewal of the tender made to the gaoler. The court may, however, on motion of the complainant showing cause, refuse immediate discharge and direct under Code, sec. 1120 that leave be given to file within a limited time an amended commitment correcting the defect and also the constable's certificate of the costs of conveying to gaol. [R. v. Morgan, 5 Can. Cr. Cas. 63; R. v. Barr, 11 Can. Cr. Cas. 1, applied; R. v. Wright, 10 Can. Cr. Cas. 461, referred to.] Coté v. Morin; Morin v. The Gaoler of Kamouraska, 30 Can. Cr. Cas. 59.

MOTION FOR DISCHARGE; LEGALITY OF INTERIM BAIL.

Habeas corpus jurisdiction over a person committed under a summary conviction is not affected by the alleged illegality of various orders for bail made on the habeas corpus application and the adjournments thereof if the accused was in close custody not only when the habeas order was made but on each occasion when the motion for discharge came on for hearing. [Re Bartels (1907), 13 Can. Cr. Cas. 59, and R. v. O'Hearon (No. 2), 5 Can. Cr. Cas. 531, referred to.] R. v. Keeper of Halifax Jail; Ex parte Simpson, 30 Can. Cr. Cas. 334, 44 D.L.R. 136.

REVIEW OF COMMITMENT FOR TRIAL.

If a committal for trial has been made without proof of an essential ingredient of the offence charged, it will be reviewed on habeas corpus and certiorari in aid, and the prisoner discharged if the depositions disclose no criminal offence. R. v. Morenecy, 30 Can. Cr. Cas. 395.

SUPPLEMENTING RECORD OF CONVICTION.

Where the record of the proceedings before the magistrate on the trial of an indictable offence triable only on the exercise of defendant's option for such trial under Code, sec. 778 does not shew that the magistrate stated the statutory option to the defendant, the court on habeas corpus will not receive either a statement or an affidavit from the magistrate to supplement the defective record. [R. v. Crookes, 19 Can. Cr. Cas. 150, 4 Sask. L.R. 335, applied.] R. v. James, 31 Can. Cr. Cas. 4.

HANDWRITING.

See also Evidence.

COMPARISON WITH ADMITTED HANDWRITING.

A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusion as to its authenticity, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for some purpose in the case,

although no witness was called to prove the handwriting to be the same in both. R. v. Dixon (No. 2), 3 Can. Cr. Cas. 220.

PROVING HANDWRITING OF ACCUSED; ACCUSED GIVING EVIDENCE ON HIS OWN BEHALF; DIRECTION BY JUDGE TO WRITE SPECIMEN OF HANDWRITING FROM DICTATION; EXCLUSION ON SUBSEQUENT TRIAL.

(1) An accused person does not, by offering himself as a witness on his own behalf, become bound to write in the witness box at the direction of the Judge a specimen of his handwriting for comparison with a document in evidence. (2) Where the accused had furnished a specimen of his handwriting by direction of the Court at a previous trial, but under protest from his counsel, the specimen so obtained should be excluded on the subsequent trial. The King v. Grinder, 10 Can. Cr. Cas. 333.

[Referred to in R. v. Henderson, 18 Can. Cr. Cas. 247.]

HARD LABOUR.

See Convictions; Commitment; Punishment; Sentence.

HEALTH REGULATIONS.

See Municipal by-law; Private Hospital.

HIGHWAY.

Religious gatherings on streets and highways; Note. 6 Can. Cr. Cas. 338.

OBSTRUCTING A TRAIL.

When a statute authorizes the expropriation of private land, the owner is not entitled to compensation, unless the statute so provides. Even where compensation is payable by the statute, the party expropriating may (unless the statute otherwise provides) enter upon the land for the purposes expressed by the statute, without being liable to an action for damages; the owner must take such proceedings as may exist for obtaining compensation—in the case of expropriation by the Crown by Petition of Right in the Exchequer Court. Where land, which was part of lands reserved to the Hudson's Bay Company, was sold in a state of nature to a purchaser, who obtained a certificate of ownership therefor under the Territories Real Property Act and cultivated and enclosed it, thus preventing the use of an old trail, which, subsequently, was surveyed and transferred to the Lieutenant-Governor for the use of the Territories:—Held, that the purchaser was rightly convicted of obstructing a public highway. The Queen v. Nimmons (1892), 1 Terr. L.R. 415.

SIDEWALK; OBSTRUCTION; MARCHING IN PROCESSION; IMPEDING FREE PASSAGE OF FOOT PASSENGERS.

Where a body of sixty students marched upon a sidewalk in files of four with arms linked, any of them may be properly convicted of an offence against a municipal by-law prohibiting "walking or marching in a group or near to each other on the sidewalk so as to obstruct a free passage for foot passengers," although sufficient space remained for persons walking in single file to pass them. The Queen v. Yates, 6 Can. Cr. Cas. 282.

"SALVATION ARMY;" OBSTRUCTION OF STREET.

(1) There is no legal right at common law for persons to assemble in any numbers upon a highway and to remain assembled there as long as they please to the detriment of others having equal rights of passage over the highway. (2) An assembly of a moral and religious character, ex. gr., the Salvation Army, is subject to the same rule and members thereof who hold a religious service on a town street and thereby collect a crowd which blocks the free passage of the street are properly convicted under a statute prohibiting persons from standing in a group or near to each other on the street so as to obstruct a free passage for carriages, etc. The Queen v. Watson, 4 Can. Cr. Cas. 331.

NUISANCE; JUDGMENT ORDERING ABATEMENT; DEFAULT; MOTION FOR WRIT DE NOCUMENTO AMOVENDO; ABATEMENT PENDING MOTION.

If a municipality found guilty of maintaining a nuisance by not repairing a highway, makes default under the judgment ordering abatement thereof, but repairs the highway pending a motion for a writ of de nocumento, the Court may in its discretion order the costs of the motion to be paid by the defendant. The King v. Portage la Prairie, 10 Can. Cr. Cas. 125.

OBSTRUCTION OF HIGHWAY; CRIMINAL AND NONCRIMINAL OFFENCES; INJURY TO THE PERSON; COMMON-LAW INDICTMENT AS REMEDY FOR ABATEMENT; WHAT PARTICULARS TO BE INCLUDED.

(1) An indictment for a nuisance in obstructing a public highway is insufficient to charge a criminal offence under Code, sec. 192 if it does not allege injury to the person of some one; and personal injury is not to be inferred from a count which states "actual" injury to a person named. (2) Obstruction of a highway is indictable at common law although injury to the person has not resulted, if it constitutes a common nuisance to His Majesty's subjects passing along the same; but since the Criminal Code the procedure by indictment where there has been no personal injury, remains only for the purpose of abatement or reme-

dy of the nuisance. (3) An indictment at common law for a nuisance in obstructing a highway must contain the words "to the common nuisance of all His Majesty's subjects passing, etc., along such highway," and must particularize the highway and the nature of the obstruction. The King v. Reynolds, 11 Can. Cr. Cas. 312.

REMOVING OBSTRUCTION; FENCE PLACED BY MUNICIPAL AUTHORITY.

The defendant charged under Cr. Code, sec. 530, with breaking down a fence erected across a road which had been a public highway, may set up in answer that the proceedings by which the Municipal Council purported to order the diversion of the highway and the closing of that portion thereof were irregular and invalid, and on its so appearing is entitled to have the charge dismissed by reason of his lawful right to remove the obstruction. [McQuarrie v. St. Mary's, 17 N.S.R. 497, referred to.] R. v. Hatt, 25 Can. Cr. Cas. 263, 27 D.L.R. 640.

HOLIDAY.

See also Sunday.

Verdict, etc., received on holiday. 3 Can. Cr. Cas. 586.

DIES NON; PRELIMINARY ENQUIRY.

(1) A preliminary enquiry held by a magistrate and a commitment for trial made on a statutory holiday are bad in law. (2) If after such commitment the accused elects to be tried at the County Judge's Criminal Court and pleads there to the charge and is convicted, the conviction is not invalidated because of the invalidity of the commitment for trial. The Queen v. Murray, 1 Can. Cr. Cas. 452.

SUMMARY CONVICTION; EASTER MONDAY.

(1) Easter Monday is not a statutory holiday and a magistrate may proceed to try a summary conviction matter upon that day. (2) Semble, Sundays are the only dies non juridici under Dominion laws. Ex parte Cormier, 12 Can. Cr. Cas. 339.

SUMMARY CONVICTIONS; ARREST ON SUNDAY; MAGISTRATE TAKING SECURITY ON SUNDAY AND FIXING DATE FOR HEARING; VALIDITY OF JUDICIAL PROCEEDINGS TAKEN ON SUNDAY.

(1) A warrant of arrest to answer a charge for an offence punishable on summary conviction may be issued and executed on a Sunday. (2) If the magistrate before whom the accused in a summary conviction matter is brought on a Sunday upon a warrant of arrest to answer the charge, accepts bail or security for the defendant's appearance on another day and the defendant appears accordingly, the magistrate has jurisdiction to proceed with the case whether the taking of bail and the continuance of the case on a Sunday were invalid or not. (3) Prohibition is not the proper procedure by which to raise the question of the validity of the service of the warrant on a Sunday. Re McGillivray, 13 Can. Cr. Cas. 113.

HOMICIDE.

See Manslaughter; Murder.

Note on bail in homicide cases. 5 Can. Cr. Cas. 232.

ENGAGING IN UNLAWFUL ACT; CONSTRUCTIVE HOMICIDE.

Where defendants are charged with homicide as resulting from the physical act of the deceased himself, but alleged to have been caused by the unlawful acts in which the accused were then engaged towards the deceased, not involving physical force or compulsion on their part against him, they are not guilty of culpable homicide unless the act of the deceased from which death resulted (i.e., in this case using as a club a gun reversed) was induced by threats or fear of violence, or by deception. [Cr. Code, 1906, sec. 252, considered.] Graves v. The King (No. 4), 21 Can. Cr. Cas. 44, 9 D.L.R. 589, reversing 20 Can. Cr. Cas. 438, 9 D.L.R. 175. See also 20 Can. Cr. Cas. 384, 9 D.L.R. 30.

WILFUL EXPOSURE OF CHILD; EVIDENCE AS TO CAUSE OF DEATH; SUFFICIENCY.

That the accused took his new-born illegitimate child out of doors on a cool day and left it exposed with no covering other than a little straw on the day of its birth and that it died shortly afterwards, is sufficient to shew that death resulted from or was hastened by his failure to properly care for the child so as to make him guilty of culpable homicide. [See Criminal Code, R.S.C. 1906, secs. 256, 259, 262.] R. v. Hammond, 22 Can. Cr. Cas. 120, 14 D.L.R. 804.

HORSE RACING.

RACE MEETING OF AN INCORPORATED ASSOCIATION; EXEMPTION AS TO BETTING.

See Gaming.

WHAT IS LEGAL RACE.

A trotting match for £50, between two horses driven in harness in sleighs on the ice, is a legal horse-race within the statutes 13 Geo. II. ch. 19, and 18 Geo. II. ch. 34. Fulton v. James, 5 U.C.C.P. 182.

AGRICULTURAL EXHIBITIONS; ENTERING HORSES IN WRONG CLASS, OR BY FALSE NAME.

The Ontario Statute, R.S.O. 1897, ch. 254, imposing punishment by fine and imprisonment for the offence of entering a horse in a wrong class at an agricultural exhibition

or fair, is intra vires of the provincial legislation. The King v. Horning, 8 Can. Cr. Cas. 268, affirming 6 Can. Cr. Cas. 514.

HOUSE-BREAKING.

CONVICTION FOR RECEIVING ON TRIAL FOR.

The essential elements of the offence of receiving stolen goods are not included in the offence of "house-breaking and theft," and a conviction for receiving stolen goods cannot be rendered on the summary trial of a person charged only with house-breaking and theft. R. v. Lamoureux, 4 Can. Cr. Cas. 101.

[Followed in R. v. Groulx, 15 Can. Cr. Cas. 20, 23, 18 Que. K.B. 120.]

HOUSE OF ILL-FAME.

See Disorderly House.

HUSBAND AND WIFE.

Competency of one as witness against the other implies that compellable. 7 Can. Cr. Cas. 139.

Nonsupport of wife; Injury to health. 11 Can. Cr. Cas. 230.

BIGAMY; TESTIMONY OF FIRST WIFE; ADMISSIBILITY.

In an indictment for bigamy, the first wife cannot be allowed to give evidence either for or against the prisoner. Regina v. Fontaine, 15 L.C. Jur. 141.

FAILURE TO PROVIDE NECESSARIES; WILLINGNESS OF WIFE TO LIVE WITH HUSBAND; SURPLUSAGE AVERMENTS.

An indictment under 32-33 Vict. ch. 20, sec. 25, alleged that E. S. was the wife of defendant, and was willing to live with him as such; that it was the defendant's duty to provide the necessary food, clothing and lodging for her sustenance; and that he, on, etc., and from thence hitherto, unlawfully, wilfully, and without lawful excuse, did refuse and neglect to provide the same, contrary to the statute, etc.:—Held, that the allegation that she was ready and willing to live with defendant was surplusage, and need not be proved; but that it must be shewn that she was in need, and that the defendant had the ability to supply her wants; and as this did not sufficiently appear by the evidence a conviction was set aside. Regina v. Nasmith (1877), 42 U.C.Q.B. 242.

NONSUPPORT; FAILURE TO PROVIDE NECESSARIES.

(1) Upon a prosecution under the Crim. Code, 1892, sec. 210 (2) for omitting without lawful excuse to provide necessaries for a wife, evidence is admissible, as tending to shew a lawful excuse, of an agreement between husband and wife at time of marriage that she should be supported as before the marriage and not by him until he could earn sufficient means for the maintenance of both. (2) Such evidence is admissible although it may not, if established, furnish an answer to the charge. The Queen v. Robinson, 1 Can. Cr. Cas. 28.

[Followed in R. v. Yuman, 17 Can. Cr. Cas. 778.]

NONSUPPORT; EVIDENCE OF DEATH OF FORMER HUSBAND.

Where the complainant in a charge of nonsupport of wife had been previously married, but had always lived apart from her first husband, and swore to having heard two years before the second marriage that her husband was dying in a foreign country, and that after her second marriage she again heard that her husband was dead, such was held to be evidence to go to the jury to prove that her first husband had died before her marriage to the defendant. R. v. Holmes, 2 Can. Cr. Cas. 131.

NONSUPPORT; REFUSAL OF WIFE TO LIVE WITH HUSBAND.

In order to constitute a wilful refusal or neglect on the part of a husband to maintain his family, under Crim. Code, sec. 207 (b), it is necessary that he should be under a legal obligation to do so, and his failure to maintain his wife, who had left him without valid cause and refused to return, is not an offence under that section. R. v. Leclair, 2 Can. Cr. Cas. 297.

Wilful refusal or neglect of husband to maintain his wife; Note. 2 Can. Cr. Cas. 300.

NONSUPPORT.

It is purely a question of fact upon a charge, under Crim. Code, sec. 210, of omitting to provide necessaries for a wife, whether the acts proved are such that the health of the wife is likely to be permanently injured by reason thereof; and the words "permanently injured" have no technical meaning as used in that section. R. v. Bowman, 3 Can. Cr. Cas. 410.

[Referred to in R. v. Wilkes, 11 Can. Cr. Cas. 229; R. v. McArthur, 14 Can. Cr. Cas. 344.]

NONSUPPORT.

On a case reserved upon a conviction for failing to supply necessaries to a wife whereby her health is likely to be permanently injured, the conviction should be affirmed, if there is some evidence from which an inference may be drawn that such injury was likely to result from the non-supplying of necessaries. R. v. McIntyre, 3 Can. Cr. Cas. 413.

NONSUPPORT; REASONABLE GROUND FOR BELIEVING THAT LIABILITY HAD TERMINATED.

(1) To constitute a wilful refusal or

neglect by a husband to maintain his wife (Crim. Code, sec. 207, there must be an absence of any reasonable ground for believing the refusal or neglect to be lawful. (2) A husband who has been ordered by a civil Court in an action brought by his wife for separation to pay to his wife an interim alimentary allowance is relieved from that liability in the Province of Quebec on proof that the wife is supporting herself by immorality, and a criminal prosecution against him for nonsupport will be dismissed on the like proof. (H— v. H—), 6 Can. Cr. Cas. 163.

OMISSION TO PROVIDE WIFE WITH NECESSARIES OF LIFE; INJURY TO HEALTH ESSENTIAL TO CRIMINAL RESPONSIBILITY.

Where the husband's failure to support his wife caused no injury to the wife's health, she having been maintained by the charity of friends on the husband's default, such default does not give rise to criminal responsibility under Code, secs. 210 and 215. The King v. Wilkes, 11 Can. Cr. Cas. 226.

[Followed in R. v. Wolfe, 13 Can. Cr. Cas. 246; referred to in R. v. McArthur, 14 Can. Cr. Cas. 344; R. v. Yuman, 17 Can. Cr. Cas. 378.]

NONSUPPORT; DESERTED WIFE SUPPORTED BY RELATIVES; INJURY TO HEALTH; LAWFUL EXCUSE.

(1) A charge of nonsupport made by a wife against her husband is not sustained under Cr. Code, sec. 242 where the wife was supplied with all necessaries for her support by her relatives and friends during the period for which the charge is laid. (2) The injury to the wife's health which is essential to constitute the offence of failing to provide necessaries to a wife under Cr. Code, sec. 242, must be due to deprivation of food, clothing, shelter or medical attendance, and an attack of nervous prostration suffered by the wife through mental worry because her husband deserts her and allows her relatives to support her is not sufficient. (3) The refusal of a deserted wife to again live with her husband unless he puts up security in money not to again desert her, is a "lawful excuse" for his omission to support her subsequently to his offer to return and while such refusal continues, unless it is shewn that her return would be dangerous to her health. The King v. Wolfe, 13 Can. Cr. Cas. 246.

[Referred to in R. v. Yuman, 17 Can. Cr. Cas. 478.]

NONSUPPORT OF WIFE; OMISSION TO SUPPLY NECESSARIES AND THEREBY INJURING HEALTH OF WIFE.

(1) Upon a charge of omitting to supply necessaries to his wife whereby her health was permanently injured, evidence is not admissible of the defendant's neglect of his wife prior to a former charge of a similar offence upon which the defendant had been acquitted. (2) Evidence having been adduced by the defence that the accused was not able to support his wife, the question of ability should have been left to the jury with an instruction that if the prisoner had not the ability to provide necessaries, he should be acquitted. (3) The admission of evidence as to what had been done or omitted before the date of his previous acquittal would be an infringement of the rule which forbids that a person shall be twice placed in jeopardy for the same offence. (Per Moss, C.J.O.) The King v. Yuman, 17 Can. Cr. Cas. 474.

CRIMINAL DESERTION; NONSUPPORT.

(1) Where the deserted wife had been compelled to work continuously at menial labour to support herself and child and required rest and surgical treatment for organic disease to stop the breaking down of her health, but was unable to obtain such surgical treatment and rest without being dependent on charity such facts will support a special finding by the jury that the wife's health is likely to be permanently injured from the husband's neglect to provide necessaries for her which neglect in such event is an indictable offence under Cr. Code (1906), sec. 242. (2) A decree of divorce granted in a foreign country at the suit of the husband will not absolve him in Canada from criminal responsibility under sec. 242 of the Cr. Code (1906), for neglect to provide necessaries for the wife whom he had deserted in Canada, if the husband had not in fact changed his domicile from Canada to the foreign country but had gone there merely for the purpose of living there long enough to enable him to obtain the divorce and of then returning to Canada. The King v. Wood, 19 Can. Cr. Cas. 15.

CRIMINAL CODE; PROOF OF ACTUAL MARRIAGE BEYOND EVIDENCE OF COHABITATION AND REPUTATION.

In a criminal conversation action there need not be evidence of the validity of the marriage ceremony, but there must be strong evidence of the marriage itself going beyond mere evidence of cohabitation and reputation, and the best proof that could be given of an actual marriage is by some person actually present at the solemnity. [Morris v. Miller, 4 Burr. 2057; Birt v. Barlow, 1 Doug. 171, 174; Wigmore on Evidence, sec. 2084; Catherwood v. Caslon (1884), 13 M. & W. 261, 13 L.J. 334; R. v. Millis, 10 Cr. & F. 534; Beamish v. Beamish, 9 H.L.C. 274, 337; Mainwaring's case, 1 Dear. & B. 139; R. v. Griffin, 4 L.R. Irish 497, 503, 14 Cox C.C. 308; Morris v. Miller, 1 W. Bl. 632, referred to.] Zdrahal v. Shatney, 20 Can. Cr. Cas. 205, 7 D.L.R. 554.

CRIMINAL LIABILITY OF HUSBAND FOR FAILURE TO PROVIDE "NECESSARIES" FOR WIFE AND CHILDREN; INSUFFICIENT CLOTHING; ESSENTIALS OF OFFENCE; CAN. CR. CODE 1906, SEC. 242.

(1) It must be established, in order to convict a husband under sec. 242 of the Cr. Code, for failing to provide necessaries for his wife or children, whereby their death resulted, that the articles or things which, without lawful excuse, he omitted to furnish were "necessaries" within the meaning of such section of the Code, and also that the death of his wife or children followed as a result of his omission to provide them. [The King v. Wilkes, 11 Can. Cr. Cas. 226, and the King v. Yuman, 17 Can. Cr. Cas. 474, referred to.] (2) A husband's failure to follow his wife and bring her back to his house, which she left in anger, on a bitterly cold night, and, being thinly clad, was frozen to death, does not render him criminally liable under sec. 242 of the Cr. Code, for failure to furnish her with "necessaries," where he provided a home according to his station in life and supplied his wife, who was in possession of all her faculties, with plenty of warm clothing, and, when she left his home, he had reason to believe that she had gone to a neighbour's but instead she got lost on the way. The King v. Sidney, 20 Can. Cr. Cas. 376, 5 D.L.R. 256.

NONSUPPORT; SUMMARY PROCEEDINGS; WIFE AS A WITNESS.

The amendment to the Criminal Code in 1913 by the addition of new sections 242A and 242B (3-4 Geo. V., ch. 13), will not affect the interpretation of the words "the three last preceding sections" used in sec. 244; the three sections intended are 241, 242 and 243, and these relate to indictable offences as to criminal omission of duty, while the added sections relate to summary convictions for neglect to provide for wife or children; the reference in the Canada Evidence Act, R.S.C. 1906, ch. 145, sec. 4, to offences against sec. 244 does not constitute the wife of the accused a competent witness against him on a summary hearing of a charge under the added section 242A. R. v. Allen, 23 Can. Cr. Cas. 67, 17 D.L.R. 719.

NEGLECT TO PROVIDE NECESSARIES.

The wife separated as to bed and board by a judgment of the Court, is not obliged to renounce such a judgment and to go back and live with her husband before bringing a criminal prosecution against him for his neglect to provide her with necessaries. Buteau v. Hamel, 24 Can. Cr. Cas. 53.

NONSUPPORT; CRIMINAL LIABILITY.

For the purposes of a prosecution under Cr. Code, sec. 242A (Code Amendment of 1913), for the summary conviction offence of nonsupport of a wife living in destitute or necessitous circumstances, it is no answer that the wife is being provided for by her parents, if she has no legal claim against her parents for her support, and if they are little able to provide that support. Algiers v. Tracy, 26 Can. Cr. Cas. 178, 30 D.L.R. 427.

IDENTITY.

IN EXTRADITION PROCEEDINGS, see Extradition.

IN PROVING PREVIOUS CONVICTION, see Previous conviction; Liquor license; Canada Temperance Act.

See also Evidence.

Of stolen property; Proof of, to obtain restitution. 5 Can. Cr. Cas. 113.

Murder; Proving the corpus delicti. 9 Can. Cr. Cas. 426, 446.

FORMER DEPOSITION; IDENTITY; PROOF OF.

Evidence given by the official stenographer to the effect that the prisoner resembled the party of same name as prisoner, whose depositions he had taken, and that he believed him to be the same man, but could not sufficiently remember to swear positively to his identity, is properly submitted to a jury. The Queen v. Douglas, 1 Can. Cr. Cas. 221.

ILLEGAL FEES.

See Extortion.

ILLICIT DISTILLING.

Discretion to exempt from either of the statutory penalties of fine and imprisonment. 2 Can. Cr. Cas. 19.

WARRANT OF COMMITMENT; COSTS OF CONVEYING TO GAOL.

Where a conviction is made under the Inland Revenue Act (Can.), and a money penalty is imposed, and in default imprisonment for a fixed term unless the penalty and the costs and charges of conveying the accused to gaol are sooner paid, it is necessary that the amount of the latter costs and charges should be stated in the warrant of commitment (sec. 113); and where not so stated the prisoner is entitled to be discharged on habeas corpus. R. v. Corbett, 2 Can. Cr. Cas. 499.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289; R. v. Mitchell, 19 Can. Cr. Cas. 120.]

IMMIGRATION.

See also Aliens; Alien labour.

Habeas corpus; Bonded passenger; Note. 7 Can. Cr. Cas. 431.

False representation to induce or deter. 9 Can. Cr. Cas. 572.

THROUGH BONDED CHINESE PASSENGER IN TRANSIT.

(1) A Chinaman who is only admitted into Canada as a through passenger bonded in transit to the United States and who is refused admission to the latter country, is not entitled to obtain his release on habeas corpus in Canada while being returned by the transportation company, nor to then elect to enter Canada under the Chinese Immigration Act, 1900. (2) Semble, the transportation company is under a statutory obligation under sec. 17 of the Chinese Immigration Act, 1900 (Can.), to deport from Canada bonded Chinese passengers brought in by it for entry to the United States when entry is refused there. In Re Lee San, 7 Can. Cr. Cas. 427.

BONDED SHIPMENT; NO RIGHT TO ELECT TO CHANGE DESTINATION.

A Chinaman passing through Canada in bond in the custody of a transportation company for shipment to the West Indies is not entitled to change his destination to the United States boundary even upon tender of the fare from the line of transit to the boundary, nor is he entitled to be set at liberty in Canada unless he has paid the Chinese immigration tax imposed by the Canadian Government and has been duly entered as an immigrant to Canada. Re Wing Toy, 7 Can. Cr. Cas. 551.

INDICTABLE OFFENCES; CHINESE IMMIGRATION ACT, R.S.C. CH. 95; ENTRY WITHOUT PAYING TAX; GENERAL CLAUSE AS TO VIOLATIONS OF STATUTE; MERE ENTRY NOT A VIOLATION UNDER SEC. 30.

(1) For a Chinaman not of the class absolutely prohibited from entering Canada and not guilty of personation or other frauds specified in the Chinese Immigration Act, R.S.C. ch. 95, to enter Canada without paying the Chinese tax which by that Act is payable on entry, is not an indictable offence. (2) Sec. 30 of the Chinese Immigration Act, which declares that every person who violates any provision thereof, for which no special punishment is provided, is guilty of an indictable offence, has not the effect of making the entry a "violation" of the Act in the absence of an express enactment prohibiting entry without payment of the tax. The King v. San Chak (No. 2), 12 Can. Cr. Cas. 498.

[Considered in Cheng Fun v. Campbell, 16 Can. Cr. Cas. 517.]

CHINESE IMMIGRATION; ENTRY TAX; EXEMPTION OF CHINESE MERCHANTS.

(1) Mandamus and not habeas corpus is the proper remedy by which to review the refusal of the Controller of Customs to permit a Chinaman to re-enter Canada without payment of the entry tax on the ground that being a Chinese "merchant" he is exempt by sec. 7 of the Chinese Immigration Act, R.S.C. 1906, ch. 95. (2) As the Chinese Immigration Act provides that the controller shall decide claims for exemption subject to the approval of the Minister of Customs, the claimant should appeal to the Minister from the controller's ruling, before asking the intervention of the Courts. Re Lee Him, 16 Can. Cr. Cas. 383.

CUSTOMS OFFICER; CHINESE IMMIGRATION ACT, R.S.C. 1906, CH. 95.

(1) Where a fine was imposed and paid upon a summary trial for alleged infraction of the Chinese Immigration Act but the conviction was set aside, the customs officer on whose information the prosecution was instituted is not liable for the return of the fine which was paid into a Dominion Government fund and did not pass through his hands, nor should the amount so paid be considered in assessing damages against the customs officer for unlawful detention. (2) The Crown, as represented by the Department of Trade and Commerce, claiming to hold the fine against the amount of an entry tax for which it held the plaintiff civilly liable, although the final judgment in the criminal prosecution had directed the return of the fine to the plaintiff. Semble, the plaintiff could not enforce the direction for return except by proceeding against the Crown in a Federal Court. Cheng Fun v. Campbell, 16 Can. Cr. Cas. 508.

CHINESE IMMIGRATION; APPEAL TO HEAD OF DEPARTMENT BEFORE APPLYING TO COURTS.

As the Chinese Immigration Act provides that the controller shall decide claims for exemption subject to the approval of the Minister of Customs, the claimant should appeal to the Minister from the controller's ruling, before asking the intervention of the Courts. Re Lee Him (No. 2), 17 Can. Cr. Cas. 19.

CONVICTED PERSON VISITING TEMPORARILY OUT OF CANADA.

(1) A person who has been convicted in Canada of a crime involving moral turpitude and who is domiciled in Canada, cannot on that ground be excluded from Canada under the Immigration Act, 1910 (Can.), on returning from a visit to the United States, although such person is not a Canadian citizen. (2) A person who has acquired Canadian domicile at common law

is within the exception of persons to be admitted under sec. 3 of the Immigration Act, 1910, as well as persons who have acquired a statutory domicile by three years' residence after admission under the statute. Re Margaret Murphy, 17 Can. Cr. Cas. 103.

IMMIGRATION ACT (CAN.); DEPORTATION.

The Superior Court of the Province of Quebec has no jurisdiction to revise, annul or modify an order made by the Minister of Agriculture or by a public officer pursuant to the provisions of the Immigration Act (Canada) respecting the deportation of an immigrant; and a writ of habeas corpus asked for that purpose will be refused. Robinson v. Regimbal, 18 Can. Cr. Cas. 478.

FALSE NATURALIZATION PAPERS; ASSISTING TO ENTER CANADA BY FRAUD.

(1) One who, for a money consideration, furnished false naturalization papers to be sent by another to a person living in the United States, in order to permit the latter to enter Canada by misrepresentation, in violation of the Immigration Act, 9 and 10 Edw. VII., ch. 27, 1910, as amended by 1 and 2 Geo. V., ch. 12, 1911, is guilty of a violation of sec. 33 (8) thereof, which declares any person guilty of an offence who shall knowingly and wilfully land or assist to land or attempt to land in Canada any immigrant or person whose entry is forbidden by such Act. (2) Sec. 33 (8) of the Immigration Act, 9 and 10 Edw. VII., ch. 27 (D.), which declares it an offence for any person or transportation company to knowingly and wilfully land or assist to land or to attempt to land in Canada any prohibited immigrant or person whose entry is forbidden by the Act, is not restricted to the prohibited classes mentioned in sec. 3 of the Act, but applies also to persons who are assisted to enter by misrepresentation. The King v. Palangio, 19 Can. Cr. Cas. 372, 4 D.L.R. 611.

DEPORTATION; IMMIGRANT FROM UNITED KINGDOM; LACK OF FUNDS; MONEY ADVANCED BY EMPLOYER; JURISDICTION.

Money advanced to an immigrant by a person for whom he had contracted to labour and which is to be deducted from his wages, is possessed "in his own right" within the meaning of the Immigration Act, 9–10 Edw. VII. (Can.) ch. 27, and the order-in-council made thereunder. An order for the deportation of an immigrant from the United Kingdom when made without jurisdiction, or not in accordance with the provisions of the Immigration Act, 9–10 Edw. VII. (Can.) ch. 27, may be reviewed by the court, notwithstanding sec. 23 of the Act, restricting the power of the court to review, quash, revise, restrain or otherwise interfere with the enforcement of orders made by the immigration authorities; such restriction does not apply where the order made was outside of the authority conferred by the statute. Re Walsh, Collier and Filsell, 22 Can. Cr. Cas. 60, 13 D.L.R. 288.

CHINESE IMMIGRATION ACT; CHINAMAN DOMICILED IN CANADA LEAVING AND RE-ENTERING WITHOUT PAYING HEAD-TAX.

A Chinaman who has been duly admitted into Canada and received his certificate under the Chinese Immigration Act does not become liable for another head-tax by going temporarily to the U.S.A. without reporting out to the Canadian Immigration officials under s. 20 of that Act if he returns to Canada within the time he would have the right to re-enter if he had reported out. His return under such circumstances without paying the head-tax as upon a first entry is not an indictable offence under s. 27 of the Act, whether or not he committed an offence in not reporting out, as to which quære. R. v. Fong Soon, 31 Can. Cr. Cas. 78, 45 D.L.R. 78.

IMPRISONMENT.

See Commitment; Habeas corpus; Prisons; Punishment; Sentence.

Power to remit; Note. 7 Can. Cr. Cas. 450.

Alternative punishments; Imprisonment in default of fine; Note. 10 Can. Cr. Cas. 361.

WHAT CONSTITUTES IMPRISONMENT.

"Standing in front of the horses and carriage driven by V.," although he was "thereby forcibly detained on the highway against his will," is not an imprisonment. Regina v. McElligott (1883), 3 O.R. 535.

A SPECIES OF "PENALTY."

The word "penalty," although generally applied to pecuniary punishment, as by fine, includes also punishment by imprisonment. R. v. Gavin, 1 Can. Cr. Cas. 59.

BAIL; CONSTRUCTIVE IMPRISONMENT.

A person admitted to bail is in custody and is constructively in gaol, so as to entitle him to the benefit of a statute providing for the discharge of the accused from imprisonment in default of indictment within a limited time. R. v. H. B. Cameron, 1 Can. Cr. Cas. 169.

ENFORCEMENT OF FINE.

Sec. 788 Cr. Code, only applies to authorize six months' imprisonment for keeping a bawdy house in default of payment of a fine when fine and imprisonment are conjointly imposed in the first instance. R. v. Stafford, 1 Can. Cr. Cas. 239.

[Considered in R. v. Ames, 10 Can. Cr. Cas. 57, 5 Terr. L.R. 497; referred to in Brunet v. Montreal, 17 Que. S.C. 85; R. v.

Sovereen, 20 Can. Cr. Cas. 111, 4 D.L.R. 356; distinguished in R. v. Laura Carter, 5 Can. Cr. Cas. 404.]

POSSIBLE EXCESS IN TERM OF.

A conviction awarding ninety days' imprisonment as an alternative punishment on nonpayment of a fine where the statute authorized three months' imprisonment is bad, as ninety days may possibly be more than three months. R. v. Gavin, 1 Can. Cr. Cas. 59.

[Considered in R. v. Rudolph, 17 Can. Cr. Cas. 206; referred to in Brunet v. Montreal, 17 Que. S.C. 85; distinguished in R. v. Doherty, 3 Can. Cr. Cas. 509; R. v. Alexander, 16 Can. Cr. Cas. 250.]

WARRANT OF COMMITMENT; NECESSITIES OF.

The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes an incarceration, with respect to the conditions upon which a prisoner can obtain his discharge before the expiration of the term to which he has been condemned. Ex parte Lon Kai Long, 1 Can. Cr. Cas. 120.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289.]

NAMING PLACE OF, IN WARRANT.

A warrant of commitment is bad if it simply directs the gaoler to "imprison" the defendant for the stated time, without specifying the place of imprisonment. The description of the place of imprisonment in a warrant of commitment is sufficient if the prison be described by its situation or some other definite description. Re J. W. King, 4 Can. Cr. Cas. 426.

FOR NONPAYMENT OF FINE.

A magistrate trying a case under the Summary Convictions clauses may under Cr. Code, sec. 872, award imprisonment in default of payment of the fine without directing that a distress shall first be made upon the defendant's goods and chattels. Ex parte Gorman, 4 Can. Cr. Cas. 305.

REVOCATION OF TICKET OF LEAVE; TERM NOT EXTENDED.

The term of imprisonment in pursuance of any sentence runs from the day of the passing of such sentence, without interruption, except when especially provided otherwise by law. The license issued under the authority of 62-63 Vict. ch. 49, and by which a convict while undergoing a term of imprisonment in penitentiary is conditionally allowed at large, may be revoked by the Governor-General either with or without cause assigned. The revocation by the Crown, without cause assigned, of such license works no interruption in the running of the sentence which shall terminate at the same time as if such license had never been granted. R. v. Johnson, 4 Can. Cr. Cas. 178.

HABEAS CORPUS; ORDER FOR FURTHER DETENTION.

Where the evidence as to the commission of the alleged offence is conflicting, and the term of imprisonment imposed by the conviction is in excess of that authorized by law, the Judge before whom the case is brought on habeas corpus should not exercise the powers conferred by Cr. Code, sec. 752 of making an order for the further detention of the accused. R. v. Randolph, 4 Can. Cr. Cas. 165.

[Followed in R. v. Shing, 17 Can. Cr. Cas. 463; referred to in R. v. Blucher, 7 Can. Cr. Cas. 279; R. v. Frejd, 18 Can. Cr. Cas. 113; distinguished in R. v. Graf, 15 Can. Cr. Cas. 201.]

PRIVILEGE OF RELEASE ON PAYING FINE; COMPUTATION OF TIME.

The term of imprisonment under a summary conviction of a person not then in custody commences from the date of his arrest under the warrant of commitment. It is sufficient that the warrant of commitment states only the length of time for which imprisonment was adjudged, without specifying that the term of imprisonment shall date from the arrest. Where a summary conviction imposed both imprisonment and fine, and in default of payment of the latter, a further detention for a fixed term unless the fine were sooner paid, the omission from the warrant of commitment of the latter proviso as to payment during the terms, is a defect which is cured by Code, sec. 886, and the warrant is valid. The Queen v. Joseph McDonald, 6 Can. Cr. Cas. 1.

[Applied in R. v. Collette, 16 Can. Cr. Cas. 281, 290, 19 Que. K.B. 133; referred to in Robertson v. Morris, 19 O.L.R. 633.]

REDUCTION OF SENTENCE ON APPEAL; ABSENCE OF ACCUSED.

A person appealing from his conviction and sentence of imprisonment under a liquor law, must be personally present on a revision of the sentence by the Appellate Court, although the appeal results in a lesser sentence. The King v. Johnston (No. 2), 11 Can. Cr. Cas. 10.

[Disapproved in Johnston v. Robertson, 13 Can. Cr. Cas. 452.]

SPEEDY TRIAL; "COMMITTED TO GAOL FOR TRIAL," MEANING OF.

The words "committed to gaol for trial" used in Code, sec. 826 refer to the actual incarceration of the accused for the purpose of detention in custody until tried and not to a temporary detention elsewhere en route from the place of the preliminary enquiry to the common gaol, nor does such temporary detention make the accused a person "otherwise in custody awaiting trial on the charge" within Code, sec. 825, sub-sec. 4. The King v. Tetreault, 17 Can. Cr. Cas. 259.

IMPRISONMENT ON DEFAULT OF PAYING FINE.

(1) It is not essential that a distress warrant should be issued to collect a fine imposed under the Fisheries Act (Can.) and if the fine is not paid the magistrate may issue a warrant for imprisonment under Code, sec. 739. (2) The defendant detained under a warrant of commitment on non-payment of fine and costs will not be discharged for the inclusion of so large a sum as $25 for costs of conveying to gaol, but will be left to his civil remedy if the fees are excessive. The King v. Berrigan, 17 Can. Cr. Cas. 329.

PLACE OF IMPRISONMENT; COMMON JAIL; TIME.

The "city prison" for the City of Halifax is a common jail within the Canadian Naval Service Act, 1910, ch. 43, to which the commander of a ship in the Canadian Naval Service may sentence one of his seamen to be imprisoned for insubordination. Where the imprisonment has commenced under a sentence for ninety days and at a time of the year which would not include the month of February, and, consequently, the sentence would not in the ordinary course exceed three months which was the maximum penalty allowed for the offence, it is not a ground for discharge on habeas corpus that a ninety day sentence may under certain contingencies exceed the statutory limit of three months. [R. v. Gavin, 1 Can. Cr. Cas. 59, distinguished.] R. v. Governor of City Prison; Ex parte Green, 23 Can. Cr. Cas. 293, 19 D.L.R. 246.

IMPRISONMENT IN DEFAULT OF FINE; SPECIAL ACT.

The magistrate making a summary conviction for an infraction of the Dental Profession Act, R.S.S. ch. 108, has power to order imprisonment forthwith in default of payment of the fine and costs, although sec. 51 of that Act provides a special mode of levying a fine by distress. [Cr. Code, sec. 739; R.S.S. ch. 1, sec. 52; R.S.S. ch. 62, sec. 8; R.S.S. ch. 108, sec. 51, considered; R. v. Cantillon, 19 O.R. 197, and R. v. Skinner, 9 Can. Cr. Cas. 558, distinguished.] Where the statute under which the summary conviction is made directs that the fine shall be payable to the convicting magistrate, there is no necessity for a direction in the formal conviction that the fine should be paid to him. R. v. Schilling, 23 Can. Cr. Cas. 380, 21 D.L.R. 60.

IMPRISONMENT IN DEFAULT OF FINE; SUMMARY TRIAL.

The restriction of Code, sec. 739 (b), by which imprisonment "not exceeding three months" may be ordered in default of payment of a fine on summary conviction under Part XV., do not apply to a conviction made on a "summary trial" under Part XVI. for an indictable offence; the imposition of imprisonment in default is a "proceeding" within Code, sec. 798, and the effect of sec. 798 is, therefore, to exclude the operation of sec. 739 to such a case. The magistrate summarily trying a charge for keeping a disorderly house under Code sec. 773 (f) and imposing a fine may under sec. 781, sub-sec. (2), order imprisonment up to six months in default of payment, and this imprisonment may under sec. 1057 be ordered to be "with hard labour." The "imprisonment" as to which Code, sec. 1057 applies to authorize the addition of hard labour, is not limited to that awarded in the first instance for the offence, but includes also imprisonment in default of paying a fine. [R. v. Nelson, 22 Can. Cr. Cas. 301, 17 D.L.R. 305, 7 S.L.R. 92, approved on this point.] It is not necessary to impose imprisonment as well as a fine to make sub-sec. (2) of Code, sec. 781 applicable; the words "in addition to" and a "further term" in that sub-sec. are intended to make it clear that even where imprisonment in the first instance, as well as a fine, is imposed, then further imprisonment in default of payment of the fine can be given up to six months. R. v. Davidson (No. 1), 28 Can. Cr. Cas. 44, 35 D.L.R. 82. See 28 Can. Cr. Cas. 56, 35 D.L.R. 94.

INCEST.

PROOF OF RELATIONSHIP.

Oral evidence is not admissible to prove relationship on a charge of incest in the Province of Quebec, and the relationship must be established by the production of extracts from the registers of civil status, as required by the provincial laws of evidence made applicable to criminal proceedings by the Canada Evidence Act, sec. 21, unless the absence of such registers is proved. It is not too late for the accused to object that oral evidence is insufficient proof, after the case for the prosecution has been closed. R. v. Garneau, 4 Can. Cr. Cas. 69.

[Commented on in R. v. Farrell, 15 Can. Cr. Cas. 289, 20 O.L.R. 182.]

EVIDENCE; PROOF OF BLOOD RELATIONSHIP.

On trial for incest, the evidence of the child, a girl of eleven years, that the accused was her father and the evidence of another person that the accused and the girl lived together as father and daughter for some seven or eight months, is not sufficient proof of relationship to justify a conviction. The King v. Smith, 13 Can. Cr. Cas. 403.

ATTEMPT INDICTABLE; CHILD OF TENDER YEARS.

(1) The crime of incest being punishable under Code, sec. 204 by imprisonment for fourteen years, sec. 570, applies to make an attempt to commit incest an indictable offence. (2) The corroboration "by some

other material evidence" required by the Canada Evidence Act (sec. 16) on taking the testimony of a child of tender years not under oath, need not be in respect of all material issues; it is sufficient if there is corroboration in some material respect that will strengthen the credibility of the main witness and justify the evidence being acted upon if it is believed and is sufficient. (3) The complaint of a girl of tender years made immediately after the attempt at incest accompanied by indecent assault, will be received although made in answer to interrogations, if the latter were not of a leading or suggestive character. The King v. Pailleur, 15 Can. Cr. Cas. 339.

[Referred to in R. v. Whistnant, 20 Can. Cr. Cas. 322.]

EVIDENCE; MARRIAGE; COHABITATION.

On the trial of a prisoner for incest with his daughter, formal proof of his marriage to the girl's mother is not essential; the marriage may be proved by evidence of reputation and cohabitation. Evidence of penetration and emission is not essential to the proof of a charge of incest. R. v. Lindsay, 26 Can. Cr. Cas. 163, 30 D.L.R. 417.

INDECENT ASSAULT.

See Assault.

INDECENCY.

Indecent exposure of person; Public place; Exposure to one or more persons. R. v. Levasseur, 9 Mont. L.N. 386.

Indecent or immoral plays in theatres; Cr. Code, secs. 177 and 179A. 8 Can. Cr. Cas. 340.

PUBLIC MORALS; SWEARING IN STREET OR PUBLIC PLACE; PRIVATE OFFICE IN CUSTOM HOUSE.

A city by-law enacted that no person should make use of any profane swearing, obscene, blasphemous or grossly insulting language, or be guilty of any other immorality or indecency in any street or public place:—Held, that the object of the by-law was to prevent an injury to public morals and applied to a street or a public place ejusdem generis with a street, and not to a private office in the custom house. Regina v. Bell, 25 O.R. 272.

INDECENT ACTS; THEATRICAL PERFORMANCE; OBSCENE SONG WITH INDECENT GESTURES.

A person is guilty of indecent acts within the meaning of sec. 177 of the Criminal Code, who, in a public theatre, in the presence of several persons, makes indecent gestures on his person or otherwise, while singing an obscene song. The Queen v. Jourdan, 8 Can. Cr. Cas. 337.

THEATRICAL PERFORMANCES; MANAGER PRESENTING AN INDECENT OR IMMORAL PLAY.

(1) Ordinary ballet dancing in the customary costume does not constitute an immoral or indecent play or performance within the meaning of Code, sec. 179A (amendment of 1903). (2) The word "indecent" has no fixed legal meaning, and it devolves upon the prosecution in a charge of presenting an indecent theatrical performance to affirmatively prove that the performance in question was of a depraving tendency. The King v. McAuliffe, 8 Can. Cr. Cas. 21.

POLICE REGULATION; PROVINCIAL LEGISLATIVE POWER; INDECENCIES IN THEATRE PERFORMANCES; "PUBLIC PLACE," MEANING OF.

(1) A provincial legislature has jurisdiction to legislate concerning matters of police regulation of public morals, but in so far as the same subject is dealt with by the Dominion Parliament, the Dominion legislation will prevail. [See now sec. 179A of the Criminal Code.] (2) The power of enacting such police regulations may be delegated by the provincial legislature to municipal councils. (3) A by-law of the city of Montreal passed under the authority of the Montreal Charter and providing a punishment for indecencies in theatre performances is intra vires. (4) Semble, the term "public place" in Code, sec. 207 includes a place to which the public have access only upon payment for admission, ex. gr., a theatre. Ex parte Ashley, 8 Can. Cr. Cas. 328.

WILFULLY COMMITTING INDECENT ACT IN PUBLIC PLACE; MEANING OF "WILFULLY."

(1) A summary conviction for "unlawfully" committing an act does not sufficiently charge that the act was "wilfully" done to constitute an offence under a statute which makes the latter an essential element of the offence. (2) An accused person who is summarily convicted on his plea of guilty upon a charge of "unlawfully" committing an indecent act (Code, sec. 177), and who is sentenced to imprisonment, is entitled to be discharged on habeas corpus as the commitment and conviction disclose no offence under the criminal law. (3) The word "wilfully" as applied to the offence declared by Code, sec. 177 implies that the act was done with evil intent and without any justifiable excuse, while the word "unlawful" does not necessarily refer to criminal penalty or prohibition. Ex parte O'Shaughnessy, 8 Can. Cr. Cas. 136.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 200.]

SUMMARY CONVICTION; OMISSION TO STATE ACT AS "WILFUL."

A summary conviction for indecency under Code, sec. 177 (b) is bad if it does not state the offence to have been committed

wilfully, but a valid conviction correcting the omission may be substituted on a habeas corpus application. The King v. Barre, 11 Can. Cr. Cas. 1.

OMISSION OF "WILFULLY;" STATING ACT TO HAVE BEEN DONE "UNLAWFULLY."

(1) A summary conviction under Code, sec. 177 for indecency must find that the act was wilful and the omission of such finding is a good ground for discharge upon habeas corpus. (2) A statement in the conviction that the accused "unlawfully" committed an indecent act does not cure the defect of not stating that the act was done "wilfully" in the terms of the statute creating the offence. The King v. Tupper, 11 Can. Cr. Cas. 199.

[Followed in R. v. Bridges, 13 B.C.R. 67; referred to in R. v. Graf, 19 O.L.R. 238.]

INTENT TO INSULT; EVIDENCE.

On the trial of summary conviction proceedings for an indecent act charged to have been wilfully committed with intent to insult the informant and his friends who were with him, and also charged to have been committed in a public place, the proof of the former makes it immaterial whether the place specified was one to which the public had access or not, and the defendant may be convicted under subsection (*b*) of Cr. Code, sec. 205; the latter subsection refers to an offence committed in any place, whether public or private, where there is the intention to insult or offend one or more persons as distinguished from the public generally. Berman v. Kocurka, 25 Can. Cr. Cas. 44.

PUBLIC PLACE; PRESENCE OF OTHERS; MASSAGE PARLOR.

The offence specified in Cr. Code, sec. 205, sub-sec. (a), is the wilful commission of an indecent act in a public place "in the presence of one or more persons," consequently, where two persons participated in the indecency, it must be shewn that someone else was present; it is not sufficient, where no one else was present, to base a charge against one of them upon the evidence of the other consenting party. Any place to which the public have access as of right or by invitation or permission of the owner ex. gr., a massage parlour) is a public place within the meaning of Cr. Code, sec. 205 (a) as to the commission therein of indecent acts. R. v. Clifford, 26 Can. Cr. Cas. 5, 26 D.L.R. 754.

[Distinguished in R. v. Gerald, 26 Can. Cr. Cas. 7.]

INDIAN ACT.

Evidence; Confession to Indian agent; Person in authority. 1 Can. Cr. Cas. 401.

SALE OF LIQUOR TO INDIANS; AMENDING DATES OF INFORMATION.

When an information laid against the defendant, under the Indian Act, charged that he sold intoxicating liquor to two persons on the 5th July, and to two persons on the 8th July, and the justices, notwithstanding that the defendant's counsel objected to the information on this ground, proceeded and heard evidence in respect of all the offences so charged, then amended the information by substituting the 8th August for the 8th July, proceeded and heard evidence in respect of the substituted charge and dismissed it, and convicted the defendants for selling to two persons on the 5th July, the conviction was quashed. It was the duty of the justices when the objection was taken to have amended the information by striking out one or other of the charges, and to have heard the evidence applicable to the remaining charge only. Regina v. Alward (1894), 25 O.R. 519. [Regina v. Hazen, 20 A.R. 633, distinguished.]

CONFESSION OF CRIME TO INDIAN AGENT.

The Indian agent, appointed under the Indian Act, R.S.C. 1886, ch. 43, for the Indian reserve upon which an accused Indian lives, is a person in authority; and to allow in evidence a confession made to him it must appear that no inducement was offered to the accused to make it. R. v. Charcoal, 4 Can. Cr. Cas. 93.

[Referred to in Re Leevis, 9 Can. Cr. Cas. 238.]

An illegal sale of liquor to an Indian by a hotel cook or other employee unauthorized by the proprietor to sell liquors is not, in the absence of any knowledge or connivance on the part of the proprietor, a sale "by his clerk, servant or agent," so as to render the proprietor liable to the penalty imposed by the Indian Act, R.S.C. 1886, ch. 43, sec. 94, as amended by 51 Vict. ch. 22, sec. 4. The King v. Michael Gee, 5 Can. Cr. Cas. 148.

[Approved in R. v. McKenzie, 12 Can. Cr. Cas. 441, 41 N.S.R. 184; referred in Collette v. King, 16 Can. Cr. Cas. 281, 291, 19 Que. K.B. 134; R. v. Lee, 4 Can. Cr. Cas. 420.]

SELLING INTOXICATING LIQUOR TO "TREATY" HALF-BREED.

The sale of intoxicants to a half-breed who, by reason of having "taken treaty," was an Indian within the "Indian Act" (Can.), is not an offence under that Act unless the seller knew or had reason to suspect that the half-breed had "taken treaty." The Queen v. Mellon, 7 Can. Cr. Cas. 179.

[Relied on in R. v. Hughes, 12 B.C.R. 291.]

TERRITORIAL JURISDICTION OF AN INDIAN AGENT.

The magisterial authority of an Indian agent under the Indian Act is limited to the Province in which his agency is located, and a commitment by an Indian agent which does not disclose either the Province or the location of the agency, is bad. The King v. Gow, 11 Can. Cr. Cas. 81.

INDIAN AGENT WITH POWERS OF TWO JUSTICES UNDER THE INDIAN ACT.

A warrant of commitment for an offence against the Indiana Act made by an "Indian agent" exercising the powers of two justices should shew on its face the district for which he was an Indian agent as he had jurisdiction by virtue of that office only in the district for which he was appointed. The King v. McHugh, 13 Can. Cr. Cas. 104.

OFFENCE PUNISHABLE UNDER ANOTHER STATUTE.

Offences committed by Indians upon an Indian reserve are none the less punishable under the provisions of the Criminal Code, because the same circumstances disclose an offence under the Indian Act. The King v. Beboning, 13 Can. Cr. Cas. 405.

SELLING LIQUOR TO INDIAN; CIRCUMSTANCES SUFFICIENT TO PUT SELLER ON ENQUIRY.

It is not essential to the offence, under the Indian Act, sec. 135, of selling liquor to an Indian, for the accused to have known at the time of sale that the purchaser was an Indian; and if the appearance and language of the purchaser is such as should reasonably cause suspicion that the later is a "treaty" Indian, the liquor dealer is not excused because he thought the purchaser was a half-breed and sold to him without further enquiry. The King v. Pickard, 14 Can. Cr. Cas. 33.

OFFENCES OUTSIDE RESERVATION.

An Indian is punishable as other persons are for offences committed outside a reservation against provincial laws. R. v. Martin, 29 Can. Cr. Cas. 189, 39 D.L.R. 635, affirming 40 O.L.R. 270.

INDICTMENT.

I. Form; Requisites.
II. Sufficiency of Allegations.
III. Joinder of Counts or Persons.
IV. Quashing.

See also Information.

Failure of foreman of grand jury to initial names of witnesses upon. 1 Can. Cr. Cas. 442.

Form of, in charge of conspiracy to defraud. 1 Can. Cr. Cas. 215, 216.

Count to be for one offence only; Continuous acts. 5 Can. Cr. Cas. 338.

Grand jury; Initialling names of witnesses endorsed on bill of indictment. 6 Can. Cr. Cas. 404.

Charging one transaction as two crimes. 10 Can. Cr. Cas. 423.

Private prosecutors; Recognizance to prosecute; Preferring indictment before grand jury. 10 Can. Cr. Cas. 214.

Formalities of, what defects amendable. 2 Can. Cr. Cas. 338.

Describing the offence; Specifying the particular acts charged. 7 Can. Cr. Cas. 450.

Note on quashing indictment for insufficiency. 3 Can. Cr. Cas. 108.

Joint indictment; Discretion to order separate trials. 3 Can. Cr. Cas. 351, 353.

Who may prefer an indictment. 3 Can. Cr. Cas. 579.

Decision on motion to quash not proper subject of a "reserved case." 1 Can. Cr. Cas. 456.

I. Form; Requisites.

WHEN NOT REMOVABLE BY CERTIORARI.

An indictment cannot be removed by certiorari from the Assizes after judgment pronounced, for the purpose of applying for a new trial. The Queen v. Smith et al. (1883), 10 U.C.Q.B. 99.

CONSPIRACY; WHAT TO CONTAIN.

In an indictment for conspiracy an offence prohibited by penal law must be set forth, and an intent to cheat and defraud private individuals, not being necessarily a penal offence, will not support such an indictment; and also that the Court in which the conspiracy is alleged must state of what thing or things the defendant intended to defraud the creditors. Regina v. Roy et al., 11 L.C.J. 89, Q.B. 1867.

FALSE PRETENCES; ATTORNEY-GENERAL'S FIAT; DELEGATION OF AUTHORITY.

On an indictment containing four counts for obtaining money by false pretences, was endorsed: "I direct that this indictment be laid before the grand jury. Montreal, 6th October, 1880. By J. A. Mousseau, Q.C.; C. P. Davidson, Q.C.; L. O. Loranger, Attorney-General." Messrs. Mousseau and Davidson were the two counsel authorized to represent the Crown in all the criminal proceedings during the term. A motion supported by affidavit was made to quash the indictment on the ground, inter alia, that the preliminary formalities required by sec. 28 of 32 and 33 Vict. ch. 29, had not been observed. The Chief Justice allowed the case to proceed, intimating that he would reserve the point raised, should the defendant be found guilty. The defendant was convicted, and it was held, that under 32 and 33 Vict. ch. 29, sec. 28, the Attorney-General could not delegate to the judgment and discretion of another the power which

the legislature had authorized him personally to exercise to direct that a bill of indictment for obtaining money by false pretences be laid before the grand jury; and it being admitted that the Attorney-General gave no directions with reference to this indictment, the motion to quash should have been granted, and the verdict ought to be set aside. Reg. v. Abrahams, 6 Can. S.C.R. 10.

INDICTMENT FOR ASSAULT; MISDESCRIPTION OF NAME AND PERSON; AMENDMENT.

The defendant was indicted under sec. 25, 32 and 33 Vict. ch. 20, for that she on the 5th day of January, 1879, then being the mistress of a certain girl called Marie, her servant, her maiden name being unknown, of the age of eight years, did unlawfully, and maliciously do grievous bodily harm to the said Marie, whereby the health of the said Marie was permanently injured. At the trial it was proved that the child's name was Marie Vincent, and that she was not the servant of the defendant. In face of this evidence, the offence, as laid, could not be proved, and motion to amend being made, the learned Chief Justice ordered the indictment to be amended by striking out the words "then being mistress of" and "her servant, her maiden name being unknown," and by adding after the name "Marie" the name of Vincent in the three places where the name "Marie" occurs. The trial proceeded on the indictment so amended, and the prisoner was found guilty of a common assault. The prisoner was sentenced to three months' imprisonment, but in passing sentence the learned Chief Justice reserved two questions: First, whether the amendment was justifiable; second, whether the verdict for assault ought to be maintained. The Court held the conviction to be right. Regina v. Bissonette (1879), Ramsay's Case (Que.) 190.

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DUPLICITY; CONSPIRACY TO PROCURE SIGNATURE TO NOTE; FRAUDULENTLY REPRESENTING NOTE AS AGREEMENT.

Two indictments were laid against defendants, one for conspiracy to procure W. to sign two promissory notes; and the other for fraudulently inducing W. to sign the documents representing them to be agreements, whereas they were in fact promissory notes:—Held, that several offences were not set up in each count of the indictments; that it was no objection to the indictments that the notes might not be of value until delivered to defendants, and further, that under sec. 78 of R.S.C. ch. 164, an indictment would lie for inducing W. to write his name on papers which might afterwards be dealt with as valuable securities. [Rex v. Danger, 1 Dears. & B. 307, 3 Jur. N.S. 1011; Regina v. Gordon, 23 Q.B.D. 354, considerd.] Regina v. Burke et al. (1893), 24 O.R. 64.

COPY OF, TO BE USED IN ACTION FOR MALICIOUS PROSECUTION; NO JURISDICTION TO REVIEW UNLESS A RECORD OF THE COURT.

Semble, that a person tried for felony and acquitted, can only obtain a copy of the indictment and record of acquittal to be used in an action for malicious prosecution, on the fiat of the Attorney-General; and the granting or refusing such application cannot be reviewed by this Court. The application here was for a rule calling on the Attorney-General to shew cause why judgment of acquittal should not be entered on the indictment:—Held, that the indictment not being a record of this Court, or brought into it be certiorari, the Court had no jurisdiction. Regina v. Ivy (1874), 24 U.C.C.P. 78.

OBJECTION TO INDICTMENT TO BE TAKEN BEFORE PLEADING.

An indictment for doing grievous bodily harm, which alleged that the prisoner did "feloniously stab, cut and wound," etc., instead of alleging, in the terms of the 17th sec. of 32 and 33 Vict. ch. 20, that he did "unlawfully and maliciously" stab, etc., is good. A defective indictment is amenable under 32 and 33 Vict. ch. 20, sec. 32, and any objection to it for any defect apparent on the face thereof, must be taken by demurrer or motion to quash the indictment

before the defendant has pleaded and not afterwards. The Queen v. Daniel Flynn, 18 N.B.R. 321.

OBSTRUCTING HIGHWAY.

About thirty-five years ago one S., with the assent of the then road commissioners, built a dam or embankment eighteen feet wide along the line of road, where there was a valley and creek, being allowed therefor five years' taxes and statute labour. This embankment was used for the purposes of his mill and for the highway. Nothing was said as to who should keep it in repair, and statute labour was afterwards done upon it as elsewhere. The embankment having become too narrow and unsafe, the defendant, the owner, was indicted for putting the embankment on the highway, and permitting it to remain there, as an obstruction:—Held, that the indictment would not lie, for he could not, under the facts stated, be compelled to remove the embankment, though he might be required to remove any water collected on the highway there, and indicted for neglect to do so, or might be liable in a civil action for the injury thus done to the embankment. Quære, whether upon such an indictment tried on the civil side, and a verdict for the Crown, the verdict can be entered for the defendant on leave reserved. The proper course is, to reserve a case under the statute, C.S. U.C. ch. 112. Regina v. Fitzgerald, 39 U.C.Q.B. 297.

WHEN A PROPER REMEDY.

Where a county council is liable to repair a bridge the proper remedy is indictment, not mandamus. Re Jamieson and the Corporation of the County of Lanark (1876), 36 U.C.Q.B. 647.

INITIALLING NAMES OF WITNESSES.

An indictment should not be quashed because of the omission of the foreman to initial names of the witnesses sworn before the grand jury. R. v. Buchanan, 1 Can. Cr. Cas. 442.

[Referred to in R. v. Hayes (No. 2), 9 Can. Cr. Cas. 112.]

MULTIFARIOUSNESS; WITHDRAWAL IN PART.

An indictment multifarious in that it combines a charge of a failure to provide necessaries for a child under sixteen under Cr. Code, sec. 210, 215, with a charge of an attempt to murder the child (Cr. Code, sec. 232) and to which indictment the prisoners pleaded is sufficient upon which to base a conviction thereon for the latter offence without a formal amendment of the indictment, where the presiding Judge has withdrawn from the jury that portion of the charge based upon secs. 210 and 215. R. v. Lapierre, 1 Can. Cr. Cas. 413.

[Considered in R. v. Union Colliery Co., 3 Can. Cr. Cas. 534, 7 B.C.R. 259.]

RECOGNIZANCE TO PROSECUTE; "PREFERRING" OF INDICTMENT.

A party bound over by recognizance to prosecute need not personally attend at the sittings of the Court, to prefer an indictment before the grand jury unless required to give evidence, and an indictment found in his absence is valid although no order of the Court, Judge's consent, or special direction of the Attorney-General, was given to prefer the same. (Per McDonald, C.J., Ritchie and Townshend, JJ.) The Crown prosecutor or counsel appointed for the sittings of the Court sufficiently represents a prosecutor so bound over, to validate the preferring of the indictment by such officer, and the same is to be considered as preferred on behalf of the prosecutor. (Per Ritchie, J.) The preferring of an indictment by an agent of the Attorney-General acting under a general appointment to attend to all criminal cases at a session of the Court, without having obtained the special direction of the Attorney-General or an order or consent under Cr. Code, sec. 641, is not a compliance with the latter section which requires the indictment to be preferred by the person bound over by recognizance to prefer the same; and if the latter fails to appear, the indictment should be quashed. (Per Weatherbe, J., Graham, E.J., and Henry, J.) R. v. Hamilton, 2 Can. Cr. Cas. 178.

[Referred to in Re Criminal Code, 10 Can. Cr. Cas. 479, 43 S.C.R. 457.]

FORM OF INDICTMENT; DESCRIPTION OF OFFENCE.

It is not necessary that an indictment which sufficiently describes that which is by statute an indictable offence should conclude with the words "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." R. v. Doyle, 2 Can. Cr. Cas. 335.

NEW CHARGE FOUNDED ON DEPOSITIONS BEFORE MAGISTRATE.

An indictment for obtaining money under the false pretence that the prisoner had in his warehouse certain produce belonging to the person from whom the money was obtained will not be quashed under sec. 641 of the Criminal Code, although the offence for which the accused was committed for trial was that of stealing the produce mentioned, if the facts disclosed on the depositions taken before the magistrate were sufficient to found a charge of false pretences. R. v. Patterson, 2 Can. Cr. Cas 339.

CONSENT OF ATTORNEY-GENERAL TO PREFER.

Where the preferring of an indictment is authorized solely upon the ground that a direction of the Attorney-General has been given therefor (Cr. Code, sec. 641), the written consent or discretion must be one with regard to the particular case, and the

offence must be specified therein; and a general direction in writing by the Attorney-General authorizing counsel to take charge of the criminal prosecution for the Crown at the sittings of the Court will not suffice. R. v. Townsend, 3 Can. Cr. Cas. 29.

[Followed in R. v. Buchanan, 12 Man. L. R. 193, 196; referred to in Re Criminal Code, 43 Can. S.C.R. 457, 16 Can. Cr. Cas. 479; distinguished in R. v. Faulkner, 19 Can. Cr. Cas. 49.]

FORM OF; SUFFICIENCY.

An indictment is sufficient in form if it contains all the allegations essential to constitute the offence and charges in substance the offence created by the statute; and it is immaterial in what part of the same the averment is contained, or that words of equivalent import are used instead of the language of the statute. An indictment charging bank officials with having made a monthly report, etc., "a wilful, false and deceptive statement" of and concerning the affairs of the bank with intent to deceive, sufficiently charges the offence, under sec. 99 of the Bank Act, of having made "a wilfully false or deceptive statement in any return or report" with such intent. R. v. Weir (No. 1), 3 Can. Cr. Cas. 102.

[Applied in R. v. Cross, 14 Can. Cr. Cas. 171, 43 N.S.R. 325; referred to in R. v. Union Colliery Co., 3 Can. Cr. Cas. 529, 7 B.C.R. 254.]

DURING PRELIMINARY ENQUIRY; JUDGE'S DIRECTION TO PREFER.

An endorsement made and signed by the Judge upon an indictment by which he "directs" that the indictment be submitted to the grand jury, is a sufficient "consent of the Judge," under Criminal Code, sec. 641, to the preferring of the indictment. An accused against whom the indictment is preferred, under the authority of a Judge's consent under Criminal Code, sec. 641, is not entitled to have the indictment quashed by reason of the fact that a preliminary enquiry in regard to the same offence was at the same time pending before a justice of the peace upon which the latter had not given his decision for or against committal for trial. R. v. Weir (No. 2), 3 Can. Cr. Cas. 155.

[Considered in R. v. Houle, 17 Can. Cr. Cas. 409.]

APPLICATION TO COURT FOR ORDER TO PREFER.

A Superior Court should not make an order under Crim. Code, sec. 641, that an indictment be preferred against a party accused of an offence if the two justices before whom the preliminary investigation was held signed a declaration to the effect that they were unable to agree. In such a case the prosecutor should be left to his recourse to an application to the Attorney-General, who can either prefer an indictment himself or direct one to be preferred. Whether or not the Crown should assume the expense incidental to a prosecution is more particular a question for the Attorney-General as a part of his executive functions, and is not one to be decided by a Court. Ex parte Hanning 4 Can. Cr. Cas. 203.

CORPORATION; DEMURRER.

An objection to an indictment against a corporation upon the ground that it does not disclose any offence in respect of which the defendant corporation could be liable, must be taken by demurrer and not by motion to quash. R. v. Toronto Railway Company, 4 Can. Cr. Cas. 4.

FORM OF, FOR PERJURY.

The examples in Code, Form FF., of the description of offences in indictments are intended to illustrate the provisions of Code, sec. 611, relating to the form of counts; and the operative effect of form FF., under Code, sec. 982, is not restricted to the validating of counts in respect only of the particular offences for which examples are given in the form, but extends to counts for other offences. On a charge under Code, sec. 147, of making a false statutory declaration, it is not necessary to allege in the indictment that the false statement was made with intent to mislead. An indictment may be valid as being founded on the evidence disclosed on "the depositions taken before the justice" (Code, sec. 641), although the preliminary enquiry was held jointly, in respect of the party indicted and of two others separately charged with the same offence, and the depositions were given in respect of all of them in the one proceeding. R. v. Skelton, 4 Can. Cr. Cas. 467.

[Followed in R. v. Sinclair, 12 Can. Cr. Cas. 27; R. v. Dewar, 2 N.W.T. 194, referred to in R. v. Phillips, 14 Can. Cr. Cas. 242.]

BILL OF INDICTMENT; INITIALLING WITNESS' NAMES ENDORSED, WHEN SWORN; DEPOSITIONS AT PRELIMINARY ENQUIRY; USE OF BEFORE GRAND JURY.

(1) Sec. 645 of the Criminal Code, which requires that the foreman of a grand jury shall initial upon the bill of indictment the names of the witnesses examined before the grand jury, is imperative and not merely directory, and the failure to observe it is good ground for quashing the indictment. (Court of K.B.) (2) Depositions taken at the preliminary enquiry can only be read to a grand jury in cases where such depositions can be used as evidence before a petit jury. (Wurtele, J.) The King v. Belanger, 6 Can. Cr. Cas. 295.

FAILURE TO ENDORSE EVERY NAME OF WITNESS; REMITTING BILL OF INDICTMENT TO GRAND JURY TO ENDORSE NAMES OF ADDITIONAL WITNESSES.

(1) The omission to endorse upon the bill of indictment the names of witnesses summoned by the grand jury of its own motion does not invalidate the indictment, but the Court may send for the grand jury and direct that the names of such additional witnesses be endorsed and initialled so that the accused may have notice upon whose testimony a true bill had been found. (2) The provisions contained in sec. 645 of the Criminal Code requiring that the name of every witness examined or intended to be examined shall be endorsed upon the bill of indictment is directory only and not imperative. The King v. Holmes, 6 Can. Cr. Cas. 402.

[Referred to in R. v. Holmes, 9 Can. Cr. Cas. 112.]

REFUSAL OF CROWN TO ALLOW PRIVATE PROSECUTOR TO INTERVENE.

The informant at whose instance an indictment has been preferred for perjury, has no locus standi to appear by counsel and take part in the trial, without the consent of the Crown. The King v. Gilmore, 7 Can. Cr. Cas. 219.

CONSENT OR ORDER OF JUDGE TO PREFER; PRACTICE.

When the order or consent of the presiding Judge is necessary to validate the preferring of an indictment, such order or consent must be put in writing before the indictment is brought in, and it cannot be afterwards made nunc pro tunc. The King v. Beckwith, 7 Can. Cr. Cas. 450.

[Referred to R. v. Groulx, 15 Can. Cr. Cas. 28, 18 Que. K.B. 25; specially referred to in R. v. Coulombe, 20 Can. Cr. Cas. 32, 6 D.L.R. 99.]

FORM OF INDICTMENT; SURPLUSAGE.

Where the statutory form of indictment for perjury is not followed, but the indictment contains all the averments which the statute requires, the addition of other unnecessary averments does not invalidate the indictment, although it might not be sufficient at common law. The King v. Coote, 8 Can. Cr. Cas. 199.

KEEPING A COMMON BAWDY HOUSE; INDICTMENT, SUMMARY TRIAL OR SUMMARY CONVICTION.

(1) A prosecution against the keeper of a common bawdy house may be brought either by indictment or under the summary trials procedure, or the keeper may be charged as a vagrant under the summary convictions procedure, and neither the provision for summary trial nor that for summary conviction abrogates the right of the Crown to bring an indictment. (2) The different methods of procedure with the varying penalties dependant upon the class of tribunal selected are not inconsistent but are alternative. The King v. Sarah Smith, 9 Can. Cr. Cas. 338.

DESCRIBING THE OFFENCE; STATING FACTS DISCLOSING AN INDICTABLE OFFENCE; ENDANGERING LIFE BY "UNLAWFUL AND IMPROPER MEANS"; CR. CODE, SECS. 527, 611.

An indictment for unlawfully conspiring and agreeing together and with each other to deprive another of the necessaries of life, to wit, proper medical care and nursing, whereby his death was caused, but not alleging any duty to supply such care and nursing is bad as not disclosing an offence known to the law, because of such omission. The King v. Goodfellow, 10 Can. Cr. Cas. 424.

[Referred to in R. v. Sinclair, 12 Can. Cr. Cas. 32; R. v. McGuire, 13 Can. Cr. Cas. 323.]

PRIVATE PROSECUTOR; PREFERRING INDICTMENT; LEAVE TO PROSECUTOR'S COUNSEL TO GO BEFORE GRAND JURY.

(1) A prosecutor bound over at his own request to prefer an indictment after the discharge of the accused on a preliminary enquiry, is only permitted to appear by counsel before the grand jury when the practice of the Court so authorizes; and the practice in the district of Montreal requires a formal application to the Court for permission. (2) Where counsel for the private prosecutor prepared an indictment and had it signed by the clerk of the Crown, but without leave of the Court or notice to the Crown prosecutors, preferred the indictment and examined witnesses before the grand jury, a true bill returned thereon will not necessarily be quashed; but security for costs will be ordered on the defendant's application in like manner as would have been done under Code, sec. 595 (4) upon the prosecutor's application for leave. The King v. Hoo Yoke, 10 Can. Cr. Cas. 211.

CERTIFICATE OF SENTENCE TO PENITENTIARY; TRIAL IN ANOTHER PROVINCE; NO ENQUIRY INTO REGULARITY OF INDICTMENT.

The Courts of a province in which is situate a penitentiary common to that and another province, should not enquire on habeas corpus into the validity of an indictment upon which the prisoner was tried in the other province and sentenced to imprisonment in such penitentiary. The King v. Wright, 10 Can. Cr. Cas. 461.

[Followed in McCree v. Watson, 37 N.B. R. 627.]

SPEEDY TRIAL; THEFT; INDICTMENT OR CHARGE IN CONJUNCTION INSTEAD OF DISJUNCTIVE.

An indictment charging the offence of theft by a person required to account under Code, sec. 355 is valid if the offence is

stated as combining fraudulent convention, fraudulent omission to account and fraudulent omission to pay over money, although the offence would be complete with one of these elements. The King v. Cross, 14 Can. Cr. Cas. 171.

NAMING ALLEGED THIEF IN INDICTMENT FOR RECEIVING.

If an indictment charges the accused with unlawfully receiving money stolen by a person named, the mention of the name is surplusage and if the jury find the accused guilty of receiving money stolen "by a person unknown," such verdict is legal without amending the indictment. The King v. Groulx, 15 Can. Cr. Cas. 20.

CHARGE IN LIEU OF INDICTMENT; PROVINCES WITHOUT GRAND JURY SYSTEM.

(1) A formal charge in lieu of an indictment in Saskatchewan under Code, sec. 873A., must be preferred either by the Attorney-General of the province or by an agent of the Attorney-General or by order of the Court or with the written consent of the Attorney-General or of the Court. (2) A conviction following a charge so preferred in lieu of an indictment without the consent or authorization required by Code, sec. 873A, will be set aside on appeal. (3) As Code, sec. 873 does not apply in Saskatchewan no charge in lieu of an indictment can be preferred in that province without a preliminary enquiry before a magistrate, and Code, sec. 873A does not dispense with the necessity for the preliminary enquiry. (Per Newlands and Prendergast, JJ.) The King v. Duff (No. 2), 15 Can. Cr. Cas. 454.

[Specially considered in Re The Criminal Code and Re The Lord's Day Act, 16 Can. Cr. Cas. 459.]

CRIMINAL LIBEL; FORM OF INDICTMENT; INDICTMENT FOR PUBLISHING OBSCENE MATTER.

(1) An indictment for defamatory libel which charges in terms that the defendant "unlawfully published a defamatory libel" and which sets out particulars of the time, the person defamed and the words claimed to be defamatory, will not be quashed because of failure to also charge that the matter published was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him. (2) An indictment for wilfully publishing obscene matter contrary to Code, sec. 207 is sufficient if the publication is of such a nature as a jury can reasonably say upon the evidence that it is obscene under the circumstances attending its publication, although the words may not be obscene under all circumstances. The King v. Macdougall, 15 Can. Cr. Cas. 466.

CONTINUOUS ACTS; ELECTION OF CROWN TO TREAT AS ONE OFFENCE.

(1) On an indictment for various acts of obstruction of a railway by placing pieces of iron on the rails in a manner likely to wreck a train, the prosecution may elect to treat the several acts of obstruction continuing for several weeks as cumulative acts forming one offence in law, and the refusal of the trial Judge to order that the prosecution elect as to which act of obstruction it would proceed upon, is not error in law. (2) A conviction on such indictment would be an answer to a fresh indictment for any of the offences as to which evidence was given for the prosecution. (3) Where the trial Judge considers it necessary for a fair trial of an indictment charging various acts, any of which would be an offence, he may order the prosecutor to furnish particulars or direct separate trial. The King v. Michaud, 17 Can. Cr. Cas. 86.

INDICTMENT OR CHARGE; CHARGE IN LIEU OF INDICTMENT IN SASKATCHEWAN WITH CONSENT OF ATTORNEY-GENERAL.

(1) A charge of indictment is not to be preferred against an accused person outside of the judicial district or county in which the offence is alleged to have been committed, unless an order of the Court has been made for a change of venue under Code, sec. 884. (2) A formal charge in lieu of an indictment made by the Attorney-General in the Provinces of Saskatchewan and Alberta under Code, sec. 873a, must be made in the judicial district in which the offence was committed in like manner to an indictment in the other provinces. (3) The jurisdiction of a Superior Court of criminal jurisdiction under Code, secs. 557 and 580 to try any indictable offence in the province for which it is created, is to be exercised subject to the right of the accused at common law and under Code, sec. 884 to be tried in the locality of the offence unless an order has been made to change the venue. The King v. Lynn (No. 1), 17 Can. Cr. Cas. 354.

PREFERRING INDICTMENT WITHOUT A PRELIMINARY ENQUIRY AND COMMITMENT.

(1) The Attorney-General has the right to directly present to the grand jury an indictment against a person suspected of committing a criminal offence, without having recourse to a preliminary enquiry before a magistrate. (2) The fact that an accused person has been sent up to the assizes for trial pursuant to a preliminary enquiry does not deprive the Attorney-General of the right to bring an indictment before the grand jury and to ignore altogether the proceedings already taken before the magistrate. The King v. Houle, 17 Can. Cr. Cas. 407.

INDICTMENT FOR MURDER; ORIGINAL INDICTMENT LOST OR MISLAID; JUDGE'S DIRECTION TO PREFER NEW INDICTMENT BEFORE GRAND JURY.

(1) If the original indictment to which the accused had pleaded at a former assize has been lost or mislaid, the Judge presiding at a later assize may direct a new indictment to be preferred before the grand jury then in session, and, on a true bill being returned, the trial may proceed upon the new indictment. (2) On the prisoner, through his counsel, refusing to plead to the new indictment, the trial Judge may direct a plea of "not guilty" to be entered under Code, sec. 900. The King v. McAuliffe, 17 Can. Cr. Cas. 495.

TRUE BILL; BAIL ON CONTINUANCE OF TRIAL; FAILURE TO SURRENDER INTO CUSTODY AND DEPARTING THE COURT WITHOUT LEAVE.

When a grand jury finds a true bill against any person absent from the Court, it is the Judge's duty to direct the issue of a bench warrant to have the accused brought to the Court to answer the indictment. The King v. Keizer (No. 1), 18 Can. Cr. Cas. 32.

INFORMATION ON SUMMARY TRIAL; ALTERNATIVE MATTER.

An information in a summary trial proceeding under Cr. Code, secs. 773 or 777 for keeping a disorderly house is by sec. 2 (16), to be considered as a "count" or "indictment" as regards formal and other objections cured by the general provisions as to counts (Code, secs. 852-858), and such information is not objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the statute by which the offence is defined. [R. v. Leconte (1906), 11 Can. Cr. Cas. 41, and R. v. Code (1908), 13 Can. Cr. Cas. 372, distinguished.] The King v. Mah Sam, 19 Can. Cr. Cas. 1.

CONSENT OF OFFICIAL TO PREFER; CROWN COUNSEL; NAME OF ACCUSED.

(1) An "acting Attorney-General" is the Attorney-General pro tem., and as such may give a direction to Crown counsel for the preferment of a bill of indictment under Cr. Code, sec. 873. Such direction to prefer an indictment may be in general terms written upon the bill authorizing counsel acting for the Crown at a specified Assize sittings to prefer the same. (2) Where an indictment has been preferred by counsel acting on behalf of the Crown at a Court of criminal jurisdiction, it will not be presumed that he would not have preferred it but for the direction of the Attorney-General or acting Attorney-General written thereon, and the indictment may be sustained under the general powers conferred upon Crown counsel under Code, sec. 872 if for the same charge as that upon which the accused was committed for trial, whether or not the Attorney-General's direction under Code, sec. 873 was regularly given. (3) The true name of the person against whom the offence was alleged to have been committed may be substituted by the Court in an indictment after the grand jury has found a true bill, where the name originally in the indictment was that by which the same party was commonly known. The King v. Faulkner, 19 Can. Cr. Cas. 47.

KEEPER OF BAWDY HOUSE; CONSENT OF JUDGE TO PREFER INDICTMENT.

(1) The offence, under Cr. Code, sec. 228, of keeping a bawdy house being punishable, upon indictment, there is no limitation of time for commencement of a prosecution for it by indictment, although the keeper is also declared by the Cr. Code, sec. 239, to be a loose, idle or disorderly person or vagrant, punishable in this character upon summary conviction, subject to the six months' limitation of Cr. Code, sec. 1142. (Per Magee, J.) (2) Where the depositions and the committal for trial were both ignored by the prosecution, and instead the County Crown Attorney, under Cr. Code, sec. 873, obtained the written consent of the Judge to prefer the indictment on which a true bill was returned by the grand jury, and on which the petty jury returned a verdict of "guilty" and the depositions taken before the magistrate were not made a part of the case reserved for the opinion of the Court of Appeal in respect of the regularity of a refusal of a claim by the accused to be tried without a jury under the Speedy Trials clauses, the Court of Appeal may properly assume that the charge in the indictment is not the same as that for which the prisoner was committed, or any other charge appearing in the evidence before the magistrate, as, in either of these events, the County Crown Attorney would not, under sec. 871, have needed the consent of the Judge to prefer the indictment. (Per Maclaren, J.A.) The King v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 256.

LEAVE OF COURT; CRIMINAL LIBEL.

Only in rare cases will the Court grant leave to prefer an indictment for criminal libel at the instance of a private prosecutor who has not been bound over at the preliminary enquiry. The King v. Daniel, 20 Can. Cr. Cas. 368, 4 D.L.R. 443.

OFFENCE UNDER BOTH FEDERAL AND PROVINCIAL LAW.

Where an act which is not an offence at common law is the subject of a distinct absolute prohibition by provincial statute on public grounds, the offence so created is one for the wilful commission of which an indictment will lie under the provisions of the Criminal Code, R.S.C. 1906, ch. 146.

sec. 164, where no other mode of punishment is expressly provided by law. [R. v. Meehan, 3 O.L.R. 567, referred to.] R. v. Durocher, 21 Can. Cr. Cas. 61, 9 D.L.R. 627, affirmed in 21 Can. Cr. Cas. 382, 13 D.L.R. 243.

STATUTORY OFFENCE; INDICTMENT.

Where an act not an offence at common law is prohibited by statute without procedure for its enforcement being pointed out, it may be prosecuted by indictment. [Reg. v. Buchanan, 8 Q.B. 883; Reg. v. Tyler and International Commercial Co., [1891] 2 Q.B. 588, 592; Reg. v. Hall, [1891] 1 Q.B. 747, and Rex v. Meehan, 3 O.L.R. 567, referred to.] A proceeding by indictment at common law for the violation of a statute providing a penalty, but not pointing out the method of its enforcement, is not precluded by sec. 164 of the Criminal Code, 1906, which declares in general terms that wilful disobedience of a statute shall be indictable, unless some penalty or other mode of punishment is expressly provided by law; the section of the Code does not go so far as the common law, and the latter remains operative in cases to which the Code does not extend. (Per Maclaren, J.A.) R. v. Durocher, 21 Can. Cr. Cas. 382, 13 D.L.R. 243, affirming 21 Can. Cr. Cas. 61, 9 D.L.R. 627.

LEAVE TO PREFER FORMAL CHARGE; ATTORNEY-GENERAL.

Leave to a private prosecutor to prefer a charge in Saskatchewan upon which, in lieu of an indictment, the accused would in that province be triable should be refused if the Attorney-General has instructed his agent not to prefer a charge although there has been a committal for trial for the offence, unless such a strong prima facie case is disclosed on the depositions as to suggest an attempt to stifle a proper prosecution. In exercising the discretion given to the provincial Attorney-General in Saskatchewan and Alberta, under Cr. Code, sec. 873A, as to whether a formal charge shall be preferred on the depositions on which there has been a committal for trial, the Attorney-General has practically to perform what would be Grand Jury functions in provinces where there is a Grand Jury system. [Re Criminal Code, 16 Can. Cr. Cas. 549, 43 Can. S.C.R. 434, referred to.] R. v. Weiss, 23 Can. Cr. Cas. 460, 23 D.L.R. 710.

CHARGE IN LIEU OF INDICTMENT.

In provinces where there is no Grand Jury system and therefore no indictment the case is not in the provincial Supreme Court for trial until a formal charge in lieu of an indictment has been preferred, and a stay of proceedings by the Attorney-General cannot be entered under Cr. Code, sec. 962, in the event of no formal charge having been laid. R. v. Weiss, 23 Can. Cr. Cas. 460, 23 D.L.R. 710.

[Note that for purposes of sec. 962 the term "indictment" includes a formal charge under Code, sec. 873A by the interpretation clause, Code, sec. 2 (16), as amended 1907.]

NAMES OF CROWN WITNESSES; FORMAL CHARGE WHERE NO GRAND JURY SYSTEM.

The context of secs. 874 to 876 of the Criminal Code makes sec. 876 (endorsing names of witnesses on bill of indictment) inapplicable to proceedings by formal charge in a province where there is no grand jury system, notwithstanding the extended meaning given to the word "indictment" by Cr. Code, sec. 2 (16); effect is to be given to the latter only in the event of the context being consistent therewith. While no definite rule is laid down in the Criminal Code to compel the endorsing of the names of witnesses for the prosecution on a formal charge laid by the agent of the Attorney-General under Cr. Code, sec. 873A (applicable in Alberta and Saskatchewan), the presiding Judge may give all necessary protection to the accused so that he may have a fair opportunity to defend himself; the name of any additional Crown witness not examined at the preliminary inquiry ought, as a matter of fairness, to be disclosed to the accused—at any rate if he asks for the information. [R. v. Gleenslade, 11 Cox C.C. 412, referred to.] (Dictum) If the Crown does not intend to call at the trial a witness whom it called on the preliminary inquiry, such witness should be made available to the defence unless his evidence is unquestionably immaterial. R. v. McClair, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

CROWN PROSECUTOR BEFORE GRAND JURY; CONSTABLE; INTERPRETER.

It is not an objection to the trial of an indictment that the Crown prosecutor was present in the grand jury room during the deliberations of the grand jury upon the bill and also conducted the trial of the indictment found. An indictment will not be quashed because of the presence in the grand jury room of the constable sworn to accompany the grand jury to secure the secrecy of its deliberations. Where it is necessary to have an interpreter to translate the testimony of witnesses before a grand jury, the presence of such interpreter in the grand jury room during the grand jury's deliberations will not invalidate an indictment. A bill of indictment preferred by the Crown prosecutor under Cr. Code, sec. 872, for a charge founded on the evidence taken before the committing justice, need not in addition to the signature of the Attorney-General's representative include a statement that he was in fact such representative. **Gagnon v. The King**, 24 Can. Cr. Cas. 51.

FORMAL CHARGE IN PLACE OF INDICTMENT; AMENDMENT.

When an amendment is made by or at the request of the Attorney-General to a charge brought in Alberta where there is no grand jury system, the amended charge has the same validity as the former charge, unaffected by a consideration as to whether an indictment could be similarly amended by the Court in a matter of substance. [R. v. Standard Soap Co. 12 Can. Cr. Cas. 290, referred to.] R. v. Wallace, 24 Can. Cr. Cas. 95, 24 D.L.R. 825.

CONCURRENT INDICTMENTS FOR IDENTICAL OFFENCE; CROWN TO ELECT; IRREGULARITIES; DEPOSITIONS; SIGNATURE.

Where a second grand jury was summoned and a second indictment brought in for the same offence because of the prosecution being in doubt as to the regularity of the first indictment, it is the privilege of the accused to compel the Crown to elect upon which of them it will proceed, but if the accused was tried only upon one of the indictments and made no motion to compel the Crown to elect, no prejudice is shewn which will invalidate the conviction made on such trial. Irregularities in the signature of the depositions on which the commitment for trial was founded will not invalidate the bill found by the grand jury where no objection on account thereof has been raised until after electing a jury trial when arraigned under the speedy trials clauses, Part XVIII. of the Criminal Code (Code, sec. 827). R. v. Morin, 28 Can. Cr. Cas. 269, 38 D.L.R. 342.

LEAVE TO PREFER; HABEAS CORPUS; DISCHARGE.

Leave to prefer an indictment may properly be refused the Crown when the accused has been discharged on a habeas corpus reviewing a magistrate's commitment for trial in respect of the same charge and holding the evidence insufficient on the merits to justify a committal for trial. R. v. Mackey, 29 Can. Cr. Cas. 419. See also 29 Can. Cr. Cas. 167, 282; 40 D.L.R. 287.

II. Sufficiency of Allegations.

BIGAMY; ACCUSED A FOREIGN SUBJECT; ALLEGATION OF INDICTMENT.

On a motion in arrest of judgment, on a trial for bigamy:—Held, that in an indictment for bigamy committed in a foreign country it is necessary to aver that the accused was a British subject; that he was or is a resident in the province, and that he had left the same with intent to commit the offence. Regina v. McQuiggan, 2 L.C.R. 340.

FORGERY; VARIANCE OF CHARGE IN INFORMATION AND INDICTMENT.

Where a prosecutor has been bound by recognizance to prosecute and give evidence against a person charged with perjury in the evidence given by him on the trial of a certain suit, and the grand jury have found an indictment against the defendant, the Court will not quash the indictment because there is a variance in the specific charge of perjury contained in the information and that contained in the indictment, provided the indictment sets forth the substantial charge contained in the information. The Queen v. Broad, 14 U.C.C.P. 168.

AMENDMENT OF.

The prisoner was indicted for stealing the cattle of R. M. At the trial R. M. gave evidence that he was nineteen years of age; that his father was dead, and the goods were bought with the proceeds of his father's estate; that his mother was administratrix, and that the witness managed the property, and bought the cattle in question. On objection that the property in the cattle was wrongly laid, the indictment was amended, by stating the goods to be the property of the mother. The case proceeded, and no further evidence of the administrative character of the mother was given, the County Court Judge holding the evidence of R. M. was sufficient, and not leaving any question as to the property to the jury. On a case reserved:—Held, 1st. That there was ample evidence of possession in R. M. to support the indictment without amendment, 2nd. That the Judge had power to amend under Con. St. C. ch. 99, sec. 78. 3rd. That the conviction on the amended indictment could not be sustained, as the Judge had apparently treated the case as established by the fact of the cattle being the mother's property in her representative character, of which there was no evidence; nor was any question of ownership by her, apart from her representative character, left to the jury. The Queen v. Jackson, 19 U.C.C.P. 280.

AMENDMENT OF "DURING TRIAL."

An indictment charged that "the prisoner did steal, take and carry away," etc., without charging that it was done feloniously. Before pleading the prisoner's counsel moved to quash the indictment. After argument the presiding Judge allowed the indictment to be amended under 32 and 33 Vict. ch. 29, sec. 32, by adding the word "feloniously." The prisoner was found guilty upon the amended indictment:—Held, on a case reserved that the indictment without the word feloniously was bad. Held, (by Allen, C.J., Weldon, Fisher and Duff, JJ.; Wetmore, J., dissenting), that the indictment was not amendable under 32 and 33 Vict. ch. 29, sec. 32. Held (by Allen, C.J., Weldon, Fisher and Duff, JJ.; Wetmore, J., dissenting), that although the objection to the indictment in this case was taken before pleaded, and that technically

the trial does not begin till after the prisoner has pleaded to the indictment and the jury are being called and sworn, yet that such a liberal construction should be put upon the words "during the trial," in Rev. Stat. ch. 159, sec. 22 (Cons. Stat. p. 1088), that the provisions of that chapter relating to reserving questions for the consideration of the Supreme Court should be held to apply to any of the proceedings in the Court below after the indictment has been found. The Queen v. Morrison, 18 N.B.R. 682.

CHARGE FOR MURDER UNSUSTAINABLE FOR ASSAULT.

Held, following Regina v. Bird, 2 Den. C.C. 94, and Regina v. Phelps, 2 Moo. C.C. 240, that an indictment for murder the prisoner cannot be convicted of an assault under 32 and 33 Vict. ch. 29, sec. 5. Regina v. Canes et al. (1872), 22 U.C.C.P. 185.

CHARGING ILLEGAL STORING OF DYNAMITE; FAILURE TO ALLEGE CARELESSNESS; SUFFICIENCY.

Indictment charging the defendants with having unlawfully, knowingly and wilfully deposited in a room in a lodging or boarding house (described) in the city of Halifax, near to certain streets or thoroughfares and in close proximity to divers dwelling houses, excessive quantities of a dangerous and explosive substance called dynamite, in excessive and dangerous quantities, by reason whereof the subjects, etc., were in great danger:—Held, good without alleging carelessness, or that the quantities deposited were so great that care would not produce safety. (Weatherbe, J., dissenting.) The Queen v. Holmes and Brecken (1884), 17 N. S.R. 498.

CONVICTION FOR ASSAULT ON A CHARGE OF MURDER; AUTREFOIS ACQUIT.

On an indictment for murder in the statutory form, not charging an assault, the prisoner, under 32-33 Vict. ch. 29, sec. 51, cannot be convicted of an assault; and his acquittal of the felony is therefore no bar to a subsequent indictment for the assault. In this case there could have been no conviction for the assault, because the evidence upon the trial for murder shewed that it did not conduce to the death. (Per Wilson, J.) Regina v. Smith (1874), 34 U.C.Q.B. 552.

SETTING FIRE TO BARN CONTAINING HAY; ALLEGATION OF INTENT TO INJURE.

An indictment charging a prisoner with having feloniously and maliciously set fire to a barn containing hay, etc., according to the form contained in the schedule to the Act 32-33 Vict. ch. 29 (Malicious Injuries to Property) is good, and it is not necessary to allege the intent to injure or defraud the prosecutor. The Queen v. Soucie, 17 N.B.R. 611.

Delivery of particulars as an amendment of. 1 Can. Cr. Cas. 486.

PARTICULARS.

The absence or the insufficiency of particulars does not vitiate an indictment nor an information; but if it be made to appear that there is a reasonable necessity for more specific information, the Court or magistrate may, on application of the accused person, order that further particulars be given, but such an order is altogether within the judicial discretion of the Judge or magistrate. R. v. France, 1 Can. Cr. Cas. 321.

[Discussed in R. v. Phillips, 11 Can. Cr. Cas. 94, 11 O.L.R. 478; followed in R. v. Paquin, 7 Que. Q.B. 322; referred to in Campbell v. Walsh, 18 Can. Cr. Cas. 314; Dufresne v. R., 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

DEFECT.

An indictment charging the publication of a defamatory libel, but not alleging that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad by reason of the omission of an essential ingredient of the offence. Such an indictment cannot be amended and must be set aside and quashed as the defect is a matter of substance. R. v. Cameron, 2 Can. Cr. Cas. 173.

[Observed in R. v. Macdougall, 15 Can. Cr. Cas. 466, 39 N.B.R. 396, 398; referred to in R. v. Gill, 14 Can. Cr. Cas. 302, 18 O.L.R. 234; R. v. Laud, 8 Can. Cr. Cas. 48; R. v. Cohen, 19 Can. Cr. Cas. 440, 5 D.L.R. 437.]

AMENDMENT OF INDICTMENT; PARTICULARS.

(1) Where in an indictment for obtaining money under false pretences the false pretence was erroneously laid as being that there was in store "a large quantity of beans, to wit, 2,680 bushels of beans," instead of that there were in store "2,680 bushels of beans," as appeared from the depositions taken on the preliminary enquiry, the trial Judge may allow an amendment of the indictment to conform with the proof. (2) Although upon the indictment in its original form the charge would be merely upon a false pretence that there was in store "a large quantity of beans," and the number of bushels would not be required to be proved, the variance by reason of the amendment is not such as would mislead or prejudice the accused in his defence. R. v. Patterson, 2 Can. Cr. Cas. 339.

WHAT AMENDMENTS ALLOWABLE.

The Court may, at the trial, amend an indictment if the amendment does not change the character or nature of the charge, and if the accused cannot be prejudiced by the

change either as regards the evidence applicable or the defence raised. If the amendment asked would substitute a different transaction from the first alleged, or would render a different plea necessary, it ought not to be made. R. v. Weir (No. 3), 3 Can. Cr. Cas. 262.

[Discussed in R. v. Lacelle, 10 Can. Cr. Cas. 234; referred to in R. v. Cohen, 19 Can. Cr. Cas. 428, 5 D.L.R. 437.]

DESCRIBING THE OFFENCE; ATTEMPTED THEFT FROM A PERSON UNKNOWN.

An indictment, charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom the offence was committed, or the description of the property the accused attempted to steal, is sufficient. The Queen v. Taylor, 5 Can. Cr. Cas. 89.

OBJECTION; EXCEPTION IN STATUTE DECLARING OFFENCE; DEMURRER OR MOTION TO QUASH; POWER OF AMENDMENT.

The words "not being his wife" in Code, sec. 269, providing for the offence of defiling children under fourteen, is an exception, the failure to negative which in the indictment will not invalidate a conviction thereon where no objection was taken before pleading. The King v. Wright, 11 Can. Cr. Cas. 221.

PERJURY; KNOWLEDGE OF FALSITY.

An indictment or charge for perjury in which it is alleged that the accused committed perjury by falsely, wilfully and with intent to mislead the magistrate, swearing to a certain statement, involves a charge that the accused knew such statement to be false and will not be quashed for failure to more specifically charge such knowledge. The King v. Doyle, 12 Can. Cr. Cas. 69.

CHARGE IN LIEU OF INDICTMENT; PRELIMINARY ENQUIRY NOT ESSENTIAL.

(1) A formal charge in lieu of an indictment may be preferred in the Provinces of Alberta and Saskatchewan under Code, sec. 873a without a preliminary enquiry before a magistrate. (2) The Deputy Attorney-General is not an "agent" of the Attorney-General in either of the Provinces of Alberta and Saskatchewan within Code, sec. 873a, and has no authority to prefer a charge under that section unless he has the written consent of the Judge or of the Attorney-General or an order of the Court. [The King v. Duff (No. 2), 15 Can. Cr. Cas. 454, 2 Sask. R. 388, specially considered.] Re the Criminal Code, Re the Lord's Day Act, 16 Can. Cr. Cas. 459.

[Distinguished in R. v. Faulkner, 19 Can. Cr. Cas. 49.]

AMENDMENT AFTER PASSING BY GRAND JURY; DIFFERENT OFFENCE; QUASHING.

(1) A indictment cannot be so amended, after having been passed upon by the grand jury, to charge an offence substantially different from that charged in the original indictment. [Reg. v. Patterson, 26 O.R. 656; Reg. v. Weir (No. 3), 3 Can. Cr. Cas. 262; R. v. Benson, [1908] 2 K.B. 278, and R. v. Corrigan, 20 O.L.R. 99, referred to.] (2) An indictment charging an offence under sec. 405 of the Cr. Code, R.S.C. 1906, ch. 146, of obtaining money by false pretences, upon which a true bill has been found by the grand jury, cannot be amended at the close of the case for the Crown so as to charge an offence under sec. 405 (a) of obtaining credit by false pretences, inasmuch as the two offences are not substantially of the same nature. [Reg. v. Boyd, 5 Que. Q.B. 1, referred to.] (3) Where an indictment, upon which a true bill has been found by the grand jury, has been amended at the close of the case for the Crown so as to charge an offence substantially different from that charged in the original indictment, and the accused has been convicted of the offence charged in the amended indictment, a substantial wrong or miscarriage has occurred at the trial, inasmuch as the accused has been convicted upon a charge which has not been dealt with by the grand jury, and sec. 1019 of the Cr. Code, R.S.C. 1906, ch. 146, is, therefore, inapplicable, and the conviction must be quashed. [R. v. Bates, [1911] 1 K.B. 964, referred to.] The King v. Cohen, 19 Can. Cr. Cas. 428, 5 D.L.R. 437.

SUFFICIENCY OF; CONSPIRACY TO PROCURE ABORTION.

An indictment for conspiracy to procure an abortion is sufficient under secs. 303, 852 of the Criminal Code, 1906, where it alleges that the defendants did, at a place in the Province of Ontario, at a given time, conspire, combine, confederate, and agree together to commit a certain indictable offence, to wit, the crime of abortion, by then and there conspiring, combining, confederating, and agreeing together to procure the miscarriage of a named woman, thereby committing an indictable offence, contrary to the Criminal Code. [Regina v. Rowlands (1851), 17 Q.B. 671, specially referred to.] R. v. Bachrack, 21 Can. Cr. Cas. 257, 11 D.L.R. 522.

DESCRIPTION OF OFFENCE; THEFT.

An indictment for the theft of money which discloses the date of the offence, the name of the person from whom taken and the amount, if sufficient to enable the accused to defend, is not bad for lack of stating further details of the mode in which the alleged offence was committed. R. v. Lemelin, 22 Can. Cr. Cas. 109, 8 D.L.R. 1025.

TEMPERANCE ACT; DEFECTIVE INFORMATION; JURISDICTION; PLACE OF OFFENCE.

A fatal objection to an information in a

summary proceeding cannot be cured by the testimony adduced where the defendant does not appear. [R. v. Hughes, 4 Q.B.D. 614; Turner v. Postmaster-General, 5 B. & S. 756, distinguished.] An information under the Canada Temperance Act, R.S.C. 1906, ch. 152, is bad as not disclosing an offence within the magistrate's territorial jurisdiction if it does not specify where the offence took place, although the place of the offence was stated in the summons served upon the defendant; a conviction made on such information in default of the appearance of the defendant thereto must be quashed. Ex parte Monahan; R. v. Hubbard, 24 Can. Cr. Cas. 127.

SURPLUSAGE; FALSE DECLARATION; STATING STATUTE.

A conviction under Cr. Code, sec. 175, for making a false solemn declaration in an extra judicial proceeding, may be supported in respect of a statutory declaration authorized by the Canada Evidence Act, and taken with the formalities which the latter Act requires, although the formal charge was that the accused "being required or authorized by law, to wit, by the Alberta Insurance Act, Alta. 1915, ch. 16, to make a solemn declaration," made the false statements with knowledge, etc., "contrary to sec. 175 of the Criminal Code," the reference to the Alberta Insurance Act being treated as surplusage. (Per HARVEY, C.J., and SCOTT, J.) R. v. Nier, 25 Can. Cr. Cas. 241, 28 D.L.R. 373.

PARTICULARS; DESCRIPTION; STATUTORY WORDS.

The proviso in Code, sec. 853 (1) that the absence or insufficiency of details shall not vitiate an indictment, does not dispense with the right of the accused to demand particulars of the time, place and matter of the offence sufficient to identify the transaction complained of; the count will not be quashed for the absence of these details, nor is there any mistrial on that account where no objection was raised at the trial and where the indictment followed a preliminary enquiry, the depositions upon which gave reasonable information to enable the accused to know what he had to answer. [Smith v. Moody, [1903] 1 K.B. 56, considered.] The effect of sub-sections (2) and (3) of Code, sec. 852, is to permit the use in an indictment of the popular word under which the offence is known instead of setting forth in detail all of the legal elements of the offence which such word indicates; for example, a charge of theft by fraudulent conversion without color of right may be laid simply as theft by charging that the accused "did steal" a specified article and naming as the owner the person in fraud of whom the accused converted the article to his own use. R. v. Trainor, 27 Can. Cr. Cas. 232, 33 D.L.R. 658.

COMPANY; FRAUD; DESCRIBING OFFENCE; VAGUENESS; PARTICULARS.

A charge against a company director under Cr. Code, sec. 414 for concurring in the making of a false statement with intent to induce the public to become shareholders will not be quashed for failure to set out the alleged false statement; but such details may properly be made the subject of an order for particulars under Cr. Code, secs. 859 and 860. (Per HARVEY, C.J., and BECK, J., affirming the conviction on an equal division.) R. v. Buck, 27 Can. Cr. Cas. 427, 35 D.L.R. 55, reversed in 29 Can. Cr. Cas. 45, 38 D.L.R. 548.

FALSE PRETENCES.

An indictment or charge for obtaining money under a false pretence is not bad for not sitting out what the false pretence was or stating to whom it was made. (Code, secs. 852, 1152, Code, form 64 (c).) R. v. Leverton, 28 Can. Cr. Cas. 61, 34 D.L.R. 514.

SUFFICIENCY OF INDICTMENT; SEDITIOUS LIBEL.

Section 852 of the Criminal Code provides that every count of an indictment shall contain, and shall be sufficient if it contain, a statement that the accused has committed some indictable offence therein specified; but this does not mean merely naming an offence as "murder" or "theft"—the offence itself must be described with reasonable certainty. So also sec. 861, which declares that no count for publishing a seditious libel shall be deemed insufficient on the ground that it does not set out the words thereof, dispenses only with the ipsissima verba—there must be substantial references to identify the words or locate the objectionable parts. R. v. Bainbridge, 30 Can. Cr. Cas. 214, 42 D.L.R. 493.

III. Joinder of Counts or Persons.

MISJOINDER OF COUNTS.

An indictment contained two counts, one charging the prisoner with murdering M. J. T. on the 10th November, 1881; the other with manslaughter of the said M. J. T. on the same day. The grand jury found "a true bill." A motion to quash the indictment for misjoinder was refused, the counsel for the prosecution electing to proceed on the first count only:—Held, affirming the judgment of the Supreme Court of New Brunswick, that the indictment was sufficient. Theal v. Queen, 7 Can. S.C.R. 397.

DEFECT PATENT ON THE FACE OF; DEMURRER; MISJOINDER OF COUNTS.

Held, also, that the Court will not arrest judgment after verdict, or reverse judg-

ment in error, for any defect patent on the face of the indictment, as by 32 and 33 Vict. ch. 29, sec. 32, objection to such defect must be taken by demurrer, or by motion to quash the indictment. Where an indictment contains one count for larceny, and allegations in the nature of counts for previous convictions for misdemeanours, and the prisoner, being arraigned on the whole indictment, pleads "not guilty," and is tried at a subsequent assize, when the count for larceny only is read to the jury, held, no error, as the prisoner was only given in charge on the larceny count. It is not a misjoinder of counts to all allegations of a previous conviction for misdemeanour, as counts, to a count for larceny, and the question, at all events, can only be raised by demurrer, on motion to quash the indictment under 32 and 33 Vict. ch. 29, sec. 32; and where there has been a demurrer to such allegation, as insufficient in law, and judgment in favour of the prisoner, but he is convicted on the felony count, the Court of Error will not reopen the matter on the suggestion that there is misjoinder of counts. An indictment describing an offence within 32 and 33 Vict. ch. 21, sec. 18, as feloniously stealing an information taken in a Police Court, is sufficient after verdict. Regina v. Mason (1872), 22 U.C.C.P. 246.

INDICTMENT AGAINST DEPUTY WHILE PRINCIPAL IN OFFICE; JOINT INDICTMENT.

Upon the trial of a party indicted for misdemeanour, the Crown has the right to cause jurors to stand aside, until the whole panel of jurors is gone through. An indictment charging a misdemeanour against a registrar and his deputy jointly is good, if the facts established a joint offence. A deputy is liable to be indicted while the principal legally holds the office, and even after the deputy himself has been dismissed from the office. R. v. Benjamin, 4 U.C.C.P. 179.

NAME OF THIRD PERSON; PROOF OF NAMES; VARIANCE.

Where two or more names are laid in an indictment under an alias dictus it is not necessary to prove them all. J. was indicted for the murder of A.J., otherwise called K.K. On the trial it was proved that the deceased was known by the name of K.K., but there was no evidence that she ever went by the other name:—Held, affirming the judgment of the Court below, that this variance between the indictment and the evidence did not invalidate the conviction of J. for manslaughter. The Queen v. Angus Jacobs (1889), 16 Can. S.C.R. 433.

CRIMINAL CONSPIRACY.

One conspirator may be indicted and convicted without joining the others, although living and within the jurisdiction. R. v. Frawley, 1 Can. Cr. Cas. 253.

JOINT INDICTMENT; ORDER OF DEFENCE.

Where several persons are jointly indicted the order in which each of them shall enter upon his defence is generally subject to the discretion of the trial Judge. Where there is a difference in degree of criminality with respect to the charge made against several persons jointly indicted, they should be called upon for their defence the greater before the less according to the seriousness of the charge against each as disclosed both by the indictment and the evidence for the prosecution, ex. gr., the principal before the accessory, and the thief before the receiver. Where there appears no such difference in degree of criminality in respect of several persons jointly indicted, the order of defence is the order in which their names appear in the indictment. Re v. Barsalou (No. 3), 4 Can. Cr. Cas. 446.

PARTICULARS; DEFECT CURED BY VERDICT.

(1) An indictment for selling under a power of attorney which charges that the money appropriated was the proceeds of a sale made by the defendant while acting under a power of attorney, will not be quashed for failure to allege that the power of attorney was one for the sale or disposition of property (Code, sec. 309), but particulars will be ordered as to the date, nature or purport of the alleged power of attorney. (2) The defect, being only a partial one, was cured by verdict, and cannot be given effect to upon a reserved case as to whether a verdict of guilty on such indictment was valid or not. (3) A count in an indictment charging that the defendant acting under a power of attorney fraudulently sold certain bank shares and fraudulently converted the proceeds "and did thereby steal the said proceeds" is not bad as charging two offences, and the reference to the fraudulent sale and fraudulent conversion are to be taken as descriptive of the means whereby the offence of stealing under a power of attorney which charges that the money appropriated was the proceeds of a sale made by the defendant while acting under a power of attorney will not be quashed for failure to allege that the power of attorney was one for the sale or disposition of property (Code, sec. 309), but particulars will be ordered as to the date, nature or purport of the alleged power of attorney. The defect, being only a partial one, was cured by verdict, and cannot be given effect to upon a reserved case as to whether a verdict of guilty on such indictment was valid or not. (4) A count in an indictment charging that the defendant acting under a power of attorney fraudulently sold certain bank

shares and fraudulently converted the proceeds "and did thereby steal the said proceeds" is not bad as charging two offences, and the reference to the fraudulent sale and fraudulent conversion are to be taken as descriptive of the means whereby the offence of stealing under a power of attorney was committed. The Queen v. Fulton, 5 Can. Cr. Cas. 36.

CHALLENGE OF JURORS; JOINDER OF COUNTS IN INDICTMENT; WOUNDING AND ASSAULT.

(1) On an indictment for unlawful wounding, in which is included a separate count for assault, the accused is not entitled to claim the total number of peremptory challenges of jurors as he would have if the charges were contained in separate indictments, but is limited to the largest numbed allowed in respect of any single count. (2) The omission to send to a grand jury the depositions taken on the preliminary enquiry as required in Nova Scotia under Code, sec. 760, will not invalidate an indictment found without such depositions. The King v. Turpin, 8 Can. Cr. Cas. 59.

SEPARATE COUNTS.

(1) One indictment may contain separate counts under Code, sec. 301, for carnal knowledge of a girl under fourteen (Code, sec. 301), and for seduction of the same girl when between fourteen and sixteen charged as having occurred two years later. (2) It is within the power of the trial Court to try the two counts together or in its discretion to direct a separate trial under Code, sec. 857. The King v. Hughes, 17 Can. Cr. Cas. 450.

INDICTMENT WITH SEVERAL COUNTS.

As each count in an indictment may be treated as a separate indictment (Cr. Code, sec. 857), if the jury agree upon some counts and disagree upon others, the trial Judge may take their verdict on those upon which there is an agreement and may discharge the jury and order a separate trial as to the others before a new jury. The King v. Toronto Railway Co. (No. 1), 18 Can. Cr. Cas. 417, affirmed in 25 Can. Cr. Cas. 183, 25 D.L.R. 586.

WHEN TRIAL OF DEFENDANT BEGINS; ABSENCE OF PROPERLY PROVED COPY OF DEPOSITION; JOINDER OF DIFFERENT COUNTS.

(1) The actual procedure of trying the defendant commences with the preferring of the bill of indictment. (2) The absence of a properly proved transcript of the depositions is not a ground for quashing the indictment, provided such indictment sets out the same charge as the one contained in the commitment. [R. v. Lepine, 4 Can. Cr. Cas. 145; R. v. Traynor, 4 Can. Cr. Cas. 410, and R. v. Jodrey, 9 Can. Cr. Cas. 51, specially referred to.] (3) The Crown prosecutor may prefer indictments for as many different offences as he finds disclosed by the depositions, and also for the charge set out in the commitment for trial. The King v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.

SPEEDY TRIAL; COUNT ON SEPARATE PAPER; PRELIMINARY ENQUIRY; FRAUDULENT BOOK ENTRY.

Annexing a new count written on a separate paper to the formal charge brought under the Speedy Trials clauses (Cr. Code, sec. 827) which had been duly signed by the prosecuting counsel is sufficient, where done by such counsel, to incorporate the new count in the formal charge so amended by consent of the trial judge, and so validate a speedy trial on the new count upon which the trial proceeded when the original count was quashed. In Saskatchewan where a charge in lieu of indictment may be laid by the Attorney-General's agent without any preliminary enquiry, it is not a valid objection to a substituted count added by leave of the district judge holding a criminal trial under the Speedy Trials clauses (Cr. Code, sec. 827, as amended 1909), that the new charge being one for fraudulently omitting to make entries in his employer's books (Cr. Code, sec. 415b), was not covered by the preliminary enquiry which was held only upon a charge of theft. [Re Criminal Code, 16 Can. Cr. Cas. 459, 43 Can. S.C.R. 434, referred to.] It is error to omit the word "material" from an indictment or formal charge against a servant, under sec. 415 (b) of the Criminal Code, relating to the fraudulent making of a false entry in, or the fraudulent omission to make entry in a book of account of the employer in any material particular. R. v. Wilson, 22 Can. Cr. Cas. 161, 15 D.L.R. 168.

MISJOINDER OF PERSONS; SUMMARY PROCEEDINGS.

There is a misjoinder which nullifies the information and the summons thereon where three persons are jointly charged with a vagrancy offence as being a night walker (Cr. Code, sec. 238, sub-sec. (i).) [R. v. Hagerman, 31 Ont. R. 637, referred to.] An objection to summary conviction proceedings for misjoinder of three persons accused under one complaint for an offence several in its nature will be maintained even after plea as it forms a ground of nullity of the proceedings and not a mere irregularity which might be waived. [R v. Berry, 3 Cox C.C. 127; R. v. Clarke, 29 Ont. R. 642, and Martin v. Mackonachie, 3 Q.B.D. 775, referred to.] R. v. Lachance, 24 Can. Cr. Cas. 421.

ATTORNEY-GENERAL; EXTRADITION; DUPLICITY; THEFT.

Cr. Code, sec. 873 which permits the Attorney-General to prefer a bill of indictment

for any offence, is of general application as to persons, and is not limited to persons already committed for trial or otherwise brought before the Court. The fact that the Attorney-General had caused extradition proceedings to be taken in a foreign country to bring the accused back to Canada and that such proceedings are still pending, is no bar to the Attorney-General preferring a bill of indictment for the same offence under the powers conferred by Cr. Code, sec. 873 It will not be assumed on a motion to quash a count of an indictment for duplicity, that a charge of theft of money between stated dates with an interval of two years refers to more than a single act or transaction, nor that the money in question is identical with a like sum charged in another count to have been unlawfully received during the same period by the accused as to which particulars delivered by the Crown show it to be the aggregate of nineteen different amounts. The requirement of sec. 852 of the Cr. Code that a count shall state in substance that the accused has committed "some indictable offence therein specified" has reference to the particular kind of offence charged as distinguished from other kinds of offences recognized by the law; it is not directed to the specific acts and things which constituted the offence alleged to have been committed, and while by sec. 853 particulars should be included with reasonable details to identify the transaction, a count cannot be quashed for their absence. An indictment should not charge in the alternative, different offences in the same count in averring the specific act which particularly constitutes the offence, but a count will not be quashed because it charges in the disjunctive merely as to the subject matter of the offence, ex. gr., in a charge of theft that it was of "money, valuable securities or other property." An objection to a count of an indictment that there is discrepancy between it and the particulars furnished under it and that the averments of the count are not borne by the particulars, is not matter to be considered on a motion to quash the count, but may be raised at the trial. R. v. Kelly (No. 1), 27 Can. Cr. Cas. 94, affirmed in 27 Can. Cr. Cas. 140, 282, 34 D.L.R. 311.

JOINDER OF COUNTS; THEFT; RECEIVING; FALSE PRETENCES; SEPARATE TRIAL; PUNISHMENT; ATTORNEY-GENERAL.

Where various counts for theft and receiving, and of obtaining money by false pretences relate to one continuous set of transactions, the trial Judge will properly exercise his discretion under Cr. Code, sec. 856, by trying them together but directing a separate trial upon an additional count for perjury relating to the same transactions. (Per Howell, C.J.M.) Where the person accused of receiving has, in addition, aided and abetted the committing of the theft and is for that reason indictable as a principal under Cr. Code, sec. 69, it is permissible to join in the one indictment a count for theft and a count for receiving, but if only one offence has been committed the accused person should be punished for that one offence only, although he has been found guilty on several counts founded on that one offence. (Per Perdue, J.A.) Where the evidence would support a charge either of theft under the Criminal Code, or of false pretences, the prosecutor is justified in including counts for both in the indictment, but, on conviction for both in respect of the one transaction, one penalty only will be imposed. [R. v. Lockett, [1914] 2 K.B. 720, 83 L.J.K.B. 1193, applied.] The Attorney-General may prefer an indictment although there may have been no charge laid before a magistrate. R. v. Kelly (No. 2), 27 Can. Cr. Cas. 140, affirming 27 Can. Cr. Cas. 94; affirmed in 27 Can. Cr. Cas. 282, 34 D.L.R. 311.

JOINDER OF PERSONS; SEPARATE TRIAL; EVIDENCE.

When the depositions taken before the committing magistrate disclose the fact that on the preliminary enquiry evidence had been given of statements made by each of the accused in the absence of the other, which tended to implicate the one but not the other, and which might work an injustice to such other if introduced at a joint trial, the prosecuting counsel desiring to use such statements in evidence when the trial shall take place should see to it either that separate indictments are laid against the two accused or that an application to the trial Judge for a separate trial is not opposed by the prosecution. (Per Beck, J.) R. v. Murray and Mahoney (No. 2), 27 Can. Cr. Cas. 247, 33 D.L.R. 702. See also 25 Can. Cr. Cas. 214, 28 D.L.R. 372; 28 Can. Cr. Cas. 247, 38 D.L.R. 395.

IV. Quashing.

SECOND TRIAL OF; GENERAL VERDICT OF JURY; STAYING OF JUDGMENT.

On an indictment for nuisance judgment had been arrested, and a second trial had, in order to take the opinion of the jury on a particular question which the Court thought material. The jury upon the second trial found a general verdict of acquittal without answering such question, which was submitted to them by the Judge. The indictment had not been removed by certiorari; and held, therefore, that this Court could not interfere by staying the entry of judgment until a new indictment could be preferred. Semble, that the jury had a right to find generally as they did. Regina v. Spence et al. (1855), 12 U.C.Q.B. 519.

DEFECT IN SUBSTANCE; MOTION TO QUASH.

Each count of an indictment must contain a statement of all the essential ingredients which constitute the offence charged. In charging the offence of uttering a forged instrument the indictment must aver that the defendants made use of or uttered the instrument knowing it to have been forged. A count of an indictment charging the defendant with having, with intent to defraud, unlawfully made use of and uttered a promissory note, alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been made and signed. Such a defect is one of substance and cannot be amended under Cr. Code, sec. 629. R. v. Weir (No. 5), 3 Can. Cr. Cas. 499.

[Referred to in R. v. Sand, 8 Can. Cr. Cas. 48; R. v. Henderson, 18 Can. Cr. Cas. 250.]

IRREGULARITY IN DEPOSITIONS; OBJECTION.

Where the depositions before the magistrate have not been taken according to law, and a material provision of the law has not been complied with, the indictment may be quashed under Crim. Code, sec. 641, upon motion at any time before the accused is given in charge to the jury. R. v. Lepine, 4 Can. Cr. Cas. 145.

[Distinguished in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 234; R. v. Prasiloski (No. 2), 16 Can. Cr. Cas. 148; R. v. Faulkner, 19 Can. Cr. Cas. 49; commented on in R. v. Duff, 2 S.L.R. 397, 15 Can. Cr. Cas. 465; relied on in R. v. Hannay, 11 Can. Cr. Cas. 24; specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.]

MOTION TO QUASH; GRAND JUROR ADMITTED TO JURY ROOM WITHOUT BEING SWORN.

(1) The presence in the grand jury room of an unauthorized person, summoned as a grand juror but not impanelled, during the deliberations of the grand jury will not invalidate an indictment then under consideration, if such person was excluded from the grand jury before the presentment unless it be shewn that the accused was thereby prejudiced. (2) On discovery that a person summoned as a grand juror and coming into Court with the grand jury to present an indictment had not been sworn and had been admitted to the grand jury room during their deliberations, the Court may exclude such person and direct the grand jury to retire to reconsider the bill without requiring the grand jurors to be resworn. The King v. Kelly, 9 Can. Cr. Cas. 130.

OBSTRUCTING DIVINE SERVICE; STATUS OF CLERGYMAN.

An indictment for obstructing a clergyman in celebrating divine service will not be quashed for failure to allege therein that the clergyman was in lawful charge of the church or place of worship. The King v. Wasyl Kapij, 9 Can. Cr. Cas. 186.

CONCEALMENT OF PRISONER WITH INTENT TO ESCAPE; STRIKING OUT PLEA OF GUILTY AND QUASHING INDICTMENT; CR. CODE (1906) SEC. 72.

(1) An indictment for "concealing himself with intent to escape from the penitentiary" will be quashed for not disclosing a criminal offence, as the fact of concealment by a prisoner having such intent might or might not, according to circumstances, be too remote to constitute an attempt to escape. (2) On a plea of guilty to an indictment so framed, the trial Judge may of him own motion direct the plea to be struck out and the indictment quashed, whereupon the Crown may prefer a fresh indictment. The King v. Labourdette, 13 Can. Cr. Cas. 379.

PRELIMINARY ENQUIRY; MOTION TO QUASH INDICTMENT AGAINST TWO PERSONS.

(1) An indictment will not be quashed because of an irregularity in the taking of some of the depositions at the preliminary enquiry if the depositions regularly taken thereat are alone sufficient to justify the committal for trial. (2) Where one of two persons accused is absent during a part of the preliminary enquiry when the evidence of one witness was taken for the prosecution, the deposition of that witness may be regularly taken as against the codefendant then present. (3) An indictment not preferred with the consent of the Judge or the direction of the Attorney-General under Code, sec. 873 may be quashed if not founded upon facts disclosed in the depositions taken on the preliminary enquiry. (4) Semble, the consent of the Judge under sec. 873 to the preferring of an indictment may be called in question on a motion to quash the indictment, if it appears that the consent was obtained without disclosing a material fact known to the prosecutor the disclosure of which would probably have caused the consent to be refused, ex. gr., the previous withdrawal of a complaint in respect of the subject matter of the indictment. The King v. Eliasoph, 16 Can. Cr. Cas. 131.

MERE IRREGULARITY IN CERTIFYING DEPOSITIONS NOT A GROUND FOR QUASHING INDICTMENT FOUNDED THEREON.

An indictment will not be quashed on the ground that it is founded on depositions certified by the magistrate's stenographer, but not signed by the magistrate nor accompanied by the stenographer's affidavit under Code, sec. 683. The King v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139.

[Referred to in Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.]

QUASHING OF FORMER INDICTMENT; NEW INDICTMENT PREFERRED BY ATTORNEY-GENERAL.

Although an indictment may have been set aside by the Court for irregularities in procedure at the preliminary enquiry, nothing prevents the Attorney-General from presenting a new indictment which may be submitted to the grand jury without there having been any preliminary enquiry or any information whatever before a magistrate. The King v. Robert (No. 2), 17 Can. Cr. Cas. 196.

QUASHING INDICTMENT; IRREGULARITY IN GRAND JURY PROCEEDINGS.

R. v. Birchenough, 22 Can. Cr. Cas. 483, 16 D.L.R. 394.

INSUFFICIENCY; AMENDMENT; POISON OF "ANIMALS"; "CATTLE."

An indictment purporting to charge an offence under Cr. Code, sec. 536, sub-sec. (b), in laying out poison, but which charged that the poison was wilfully placed in such a position as to be easily partaken of by "animals" instead of by "cattle" (Code, sec. 536), should not have been quashed on defendant's motion, but should have been amended or a new indictment in due form preferred. Richard v. Goulet, 23 Can. Cr. Cas. 327, 19 D.L.R. 371.

QUASHING; DEPRIVING ACCUSED OF SUMMARY TRIAL; ADDED COUNTS; JURISDICTION.

Where the indictment has been preferred at the direction of the Attorney-General (Cr. Code, sec. 873) in a form which includes counts for other offences as well as the offence charged in the information before the magistrate, and for which he committed the accused, the latter cannot object to plead on the ground that he elects trial before the magistrate on such of the charges as are subjects of summary trial if the magistrate had no jurisdiction of summary trial on the information before him, at least where the defence does not shew that the magistrate was one of the class acquiring jurisdiction under Code, sec. 777, sub-sec. (2) as amended 1909. The inclusion in the indictment of a count which is not supported by the depositions taken on the preliminary enquiry is validated by obtaining the direction of the Attorney-General to the preferring of the indictment in that form. R. v. Pawliski, 24 Can. Cr. Cas. 147, 25 D.L.R. 527.

MOTION TO QUASH; SPECIFIC GROUNDS; GRAND JURY.

On a motion to quash an indictment on the ground that the grand jury finding it was not properly constituted, the objecting party must specially set forth his grounds of objection and will not be given the benefit of a ground not specified. R. v. Morrow, 24 Can. Cr. Cas. 310.

DISQUALIFICATION OF GRAND JUROR; DATE; AMENDMENT.

It is not a ground for quashing an indictment that the complainant in the proceedings before the magistrate upon which the indictment was based was summoned and sworn as a grand juror and was present in the jury box when the indictment was presented, if in fact he took no part in the deliberations on the bill. [R. v. Hayes (No. 2), 9 Can. Cr. Cas. 101, 11 B.C.R. 4, referred to.] On a motion to quash an indictment on the ground that the complainant was a member of the grand jury, the Court may take evidence to prove that the grand jury which found the bill of indictment did not include the complainant and that the latter took no part in the deliberation thereon, and thus negative any presumption of bias. Where the particular offence laid in the indictment is not of the class as to which a change of date would be tantamount to charging a different offence, the Court may order an amendment of the date of the offence to conform to the evidence even after the close of the evidence. [Re. v. Lacelle, 19 Can. Cr. Cas. 229, 11 O.L.R. 74, distinguished.] Proof that an improper communication reflecting on the accused had been made to the grand jurors who returned the bill of indictment would not be a ground for quashing the indictment. Veronneau v. The King, 26 Can. Cr. Cas. 278, 31 D.L.R. 332, affirmed in 27 Can. Cr. Cas. 211, 33 D.L.R. 68.

QUASHING; FAILURE OF COMMITTING JUSTICE TO READ DEPOSITIONS TO ACCUSED.

An indictment founded upon a committal for trial is subject to be quashed for failure of the committing justice to ask the accused after the examination of the witnesses for the prosecution whether he wishes the depositions to be read again, even where the depositions were taken in shorthand (Code, secs. 683, 684), if the re-reading of the depositions was not waived by the accused (sec. 684) and did not take place; the direction of Code, sec. 684 in that respect is imperative and not merely permissive. [McDonald v. The King, 26 Can. Cr. Cas. 175, 30 D.L.R. 738, 25 Que. K.B. 322, applied.] R. v. Beaulieu, 28 Can. Cr. Cas. 336.

INFANT.

See Child.

INFORMATION.

I. Form; Requisites.
II. Sufficiency of Allegations.
III. Joinder of Counts or Persons.

See also Indictment.
Defects or irregularities in information

in summary proceedings. 2 Can. Cr. Cas. 121, 124.

Statute requiring informant to be a "person aggrieved." 8 Can. Cr. Cas. 57.

Information charging two matters of complaint; Irregularity; Amendment. 10 Can. Cr. Cas. 35.

Mandamus to justice to take. 5 Can. Cr. Cas. 307.

Defect in information for search warrant; Responsibility of informant on amendment. 7 Can. Cr. Cas. 60.

Status of informant officer to execute judgment in his own case. 27 Can. Cr. Cas. 63.

I. Form; Requisites.

COMMENCEMENT OF PROSECUTION; TIME OF INFORMATION AND SUMMONS; DELAY.

Laying the information is the commencement of a prosecution before a magistrate. Sec. 25 of 32 Vict. ch. 32 (O.) provides that "all prosecutions under this section shall be commenced within twenty days after the commission of the offence, or after the cause of action arose, and not afterwards." The information against defendant was taken on the 30th December, 1872, laying the offence on the 16th December. On the 15th January, 1873, a summons was issued on the information, and on the 30th the defendant was tried and convicted:—Held, that the prosecution was commenced in time. When the delay in proceeding after laying the information is great and defendant seriously prejudiced thereby, he might perhaps obtain relief from the Court. Regina v. Lennox (1878), 34 U.C.Q.B. 28.

COUNTERFEITING; COIN OF FOREIGN STATE.

Sec. 18 of Consol. Stat. C. ch. 90, makes it an offence to have possession of any coin counterfeited to resemble, or any dies for the purpose of imitating, any foreign gold or silver coin described in the 16th section of the Act. The gold or silver coin there described are any coin of coarse gold or silver resembling any coin made by the authority of any foreign state and then actually current there, though not current by law in this province. An indictment under this section alleged that there was a certain silver coin known as half a dollar struck by and current in the United States, though not current by law in this province, and that the defendants had in their possession counterfeited coin, each piece resembling a piece of the current coin of the United States of the value of fifty cents, and called therein half a dollar, and also dies used to counterfeit the current silver coin of the United States, called half a dollar, etc.:—Held, on demurrer, that the indictment was bad, for not alleging that the counterfeit coin which the defendants had resembled some gold or silver coin of the United States. But that the allegation as to the dies was sufficient, without alleging that the silver coin was not current in this province. The judgment given was that the indictment be quashed, so that another indictment might be preferred, not that defendants be discharged. Regina v. Tierney et al. (1869), 29 U.C.Q.B. 181.

LAYING OF BEFORE TWO JUSTICES.

Held (affirming the decision of Taylor, C.J., Dubuc, J., dissenting), that the laying of the information was the bringing of the prosecution, and that it ought to have been laid before two justices, and that the matter of the prosecution was not, therefore, properly before the two justices on the hearing of the case, and they had no jurisdiction to determine it. This objection to the jurisdiction must be taken at the hearing before the justices, otherwise it will be waived. Reg. v. Starkey, 7 Man. L.R. 489.

NO AUTHORITY TO ISSUE A WARRANT UNLESS INFORMATION IS IN WRITING AND SWORN TO.

The warrant of a magistrate is only prima facie and not conclusive evidence of its contents, as, for instance, of an information on oath and in writing having been laid before him. Such information must be, under C.S.U.C. ch. 102, sec. 8, not only on oath, but in writing, and except on an information thus laid there is no authority to issue the warrant. Friel v. Ferguson (1865), 15 U.C.C.P. 584.

QUI TAM AGAINST A JUDGE; ABSENCE OF MALICE; REFUSAL TO ALLOW INFORMATION.

Application for leave to file a qui tam information against a Judge of a Recorder's Court, upon the ground that he had falsified the records of the Court, and maliciously condemned the applicant as guilty of a felony upon a verdict of his peers, when, as alleged, no verdict whatever was found by the jury. The facts to support the application were, that the jury came into Court to render their verdict, and the foreman pronounced a verdict of guilty. The counsel for the accused then questioned (not through the Court) some of the jury as to the grounds of their verdict, when one of them stated that he did not concur in the verdict. The attention of the Court was not drawn to this dissent, nor did it appear that the Court was aware of it. A verdict of guilty was recorded by the presiding Judge; and when formally read to the jury by the clerk no objection was made. The Court refused to allow the information. Regina v. Ford (1853), 3 U.C.C.P. 209.

INFORMATION BY COMMISSIONER OF DOMINION POLICE AS PERSONAL OR CROWN REPRESENTATIVE.

Queen v. St. Louis, 1 Can. Cr. Cas. 141. [Considered in R. v. Gouillioud, 7 Can. Cr. Cas. 423; R. v. Hoo Yoke, 10 Can. Cr. Cas. 213; referred to in Beauchesne v. Scotstown, 16 Que. S.C. 324.]

DEFECT IN; WAIVER.

If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the defendant appears thereon and pleads to the charge, the proceedings will not be quashed on certiorari because it is afterwards shewn that the information was not in fact sworn at such time and place. Ex parte Sonier, 2 Can. Cr. Cas. 121.

[Referred to by Meagher, J., dissenting in R. v. Ettinger, 3 Can. Cr. Cas. 398.]

REFUSAL TO PROCEED WITH INFORMATION.

Where a police magistrate receives an information, and, after hearing and considering the allegations of the informant, decides that the statute invoked in support of the prosecution does not apply, and that what is charged does not constitute an offence, and therefore refuses to issue either a summons or warrant against the accused, a mandamus does not lie to compel him to do so. Re E. J. Parke, 3 Can. Cr. Cas. 122.

[Referred in Re Broom, 18 Can. Cr. Cas. 255.]

INFORMATION IRREGULARLY SIGNED AND SWORN.

An information under oath which on its face purports to be the information of a person other than the person who has signed and sworn to the same is bad. Where a warrant of arrest based upon such defective information has been issued to enforce the attendance of the accused before a magistrate, and the magistrate at the opening of the trial amends the information by inserting therein, in the presence of and with the consent of the person who had signed and sworn to the information, the latter's name in the place of the name so appearing on the face of the information, it is necessary that the information should be resworn. Where the defendant has been arrested under the warrant and when brought before the magistrate takes objection to the amended information upon the ground that it should be resworn after the amendment, and has the objection noted, he does not waive the objection by proceeding with the trial and cross-examining witnesses. R. v. McNutt, 3 Can. Cr. Cas. 184.

[Referred to in Papillo v. R., 20 Can. Cr. Cas. 329; R. v. Davis, 20 Can. Cr. Cas. 295; R. v. Sweeney, 1 D.L.R. 477, 478; R. v. McGillivray, 13 Can. Cr. Cas. 117; distinguished in R. v. Johnson, 17 Can. Cr. Cas. 174; discussed in Campbell v. Walsh, 18 Can. Cr. Cas. 312.]

NEED NOT BE SWORN UNLESS WARRANT TO ISSUE.

A summons may be issued upon an information before a justice of the peace for an offence punishable on summary conviction, although the information has not been sworn (Cr. Code, sec. 843, 845 (2); but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath (Cr. Code, secs. 558, 843). R. v. William McDonald, 3 Can. Cr. Cas. 287.

MANDAMUS; LOCUS STANDI OF APPLICANT.

(1) Where an information for personation is laid before a deputy returning officer under the Ontario Election Act, and the accused is arrested on the warrant of such deputy, the magistrate can only proceed summarily upon that information, and he has no jurisdiction to proceed under a new information afterwards laid by the deputy returning officer before him. (2) The deputy returning officer has in such case no locus standi to apply for a mandamus directed to the magistrate to compel the performance by the latter of a statutory obligation in respect of the prosecution proceedings. The King v. Case (No. 2), 7 Can. Cr. Cas. 212.

"COUNT," MEANING OF; CR. CODE, SECS. 3 (1), 713.

Sec. 713 of the Code applies to summary trials as well as to trial upon an indictment; and the word "count" as used in secs. 3 (1) and 713, includes an information before a justice for an indictable offence. The King v. Frank Coolen, 8 Can. Cr. Cas. 157.

SUMMARY HEARING; INFORMATION NOT SHEWING OFFENCE WITHIN STATUTORY LIMIT; EVIDENCE AT HEARING INSUFFICIENT TO PROVE OFFENCE.

(1) Where an information under a licensing law does not shew that the alleged offence was committed within the statutory limit prior to the laying of the information, the magistrate has no jurisdiction. (2) The defect in the information is not cured by the appearance of the magistrate and the taking by the latter of evidence for the prosecution unless such evidence discloses a prima facie case of an offence under the statute. (3) Where neither the information, nor the evidence before the magistrate at summary hearing, discloses any offence against the law, prohibition may be granted by a Superior Court pending an adjournment ordered by the magistrate for the purpose of deliberating on his finding. The King v. Breen, 8 Can. Cr. Cas. 146.

INFORMATION AND BELIEF OF INFORMANT; FAILURE TO DISCLOSE CAUSES OF SUSPICION.

(1) An information to lead a warrant for the apprehension and trial of a person

charged with an offence punishable on summary conviction must disclose reasonable or probable grounds for believing that the accused committed the offence. (2) An information stating that the deponent has just cause to suspect and believe, and does suspect and believe, that the accused committed the offence, but stating no grounds of suspicion, does not justify the issue of a warrant, unless supplemented by the examination upon oath of the informant, or of his witnesses, to prove the causes of suspicion. (3) Upon objection being taken before the magistrate before whom the accused was brought under the warrant, the charge should have been dismissed upon the prosecutor electing not to have the information amended, and this right will be enforced upon an appeal from the conviction. The King v. Lizotte, 10 Can. Cr. Cas. 316.

WARRANT OF ARREST TO ANSWER CHARGE; INFORMATION, FORM OF; INFORMANT'S INFORMATION AND BELIEF, GROUNDS OF; EX PARTE ENQUIRY UNDER OATH AS TO GROUNDS OF SUSPICION; INFORMATION INSUFFICIENT TO LEAD WARRANT.

(1) A sworn information merely stating that the complainant has just cause to suspect and believe and does suspect and believe that the defendant has committed the offence charged, will not alone authorize a justice to issue a warrant of arrest; the justice must enquire into the facts on which the informant's belief is founded, and exercise his own judgment thereon. (2) On a charge of keeping liquor for sale contrary to the Canada Temperance Act, the accused having been arrested and brought before the magistrate to answer the charge upon such information without an enquiry by the magistrate into the grounds of suspicion, the magistrate acquired no jurisdiction to proceed with the trial, and a summary conviction was quashed. (3) Where the complaint is laid upon information and belief, and the causes of suspicion are not disclosed therein, the justice should examine the complainant and his witnesses ex parte under oath, touching the grounds of suspicion; and the justice should grant a warrant of arrest only in case he himself entertains the like suspicion as a result of such investigation. Ex parte Coffon, 11 Can. Cr. Cas. 48.

[Followed in Ex parte Grundy, 12 Can. Cr. Cas. 68; referred to in Ex parte O'Regan, 16 Can. Cr. Cas. 121; R. v. Sweeney, 1 D.L.R. 477; distinguished in Ex parte Madden, 13 Can. Cr. Cas. 273; Ex parte Archambault, 16 Can. Cr. Cas. 434; specially referred to in R. v. Coulombe, 20 Can. Cr. Cas. 32, 6 D.L.R. 299.]

CRIMINAL OFFENCE DISCLOSED; REFUSAL OF MAGISTRATE TO ISSUE PROCESS.

(1) In Ontario a magistrate who refuses to issue either a summons or a warrant upon an information laid before him for a criminal offence may be called upon by order nisi from the High Court of Justice to shew cause why the information had not been proceeded upon. (2) The person accused by such information may also be made a party to the proceedings against the magistrate that he may also shew cause why the magistrate should not issue process against him. (3) A charge against a magistrate of wrongfully exacting illegal fees for his own use and benefit discloses a common law offence. The King v. Graham, 17 Can. Cr. Cas. 264.

[Referred to in R. v. Mitchell, 19 Can. Cr. Cas. 120.]

DESCRIBING THE OFFENCE; "KEEPING" LIQUOR FOR SALE.

(1) In describing an offence in an information or search warrant, a variation from the precise words of the statute is not fatal, if the words used are such as bring the case within the plain meaning of the enactment. (2) An information under a liquor law charging that liquor was "kept" by the accused in violation of the statute sufficiently charges a "keeping for sale" where that is the only "keeping" of liquor which the statute prohibits. (3) The causes of suspicion need not be set forth in the information for a search warrant under the Prohibition Act (P.E.I.) as that statute provides a special form which does not provide for the insertion of the causes and therefore Code form No. 1 does not apply. Fanning v. Gough, 18 Can. Cr. Cas. 66.

OMISSION IN TO STATE PLACE OF OFFENCE; SIGNING INFORMATION.

(1) A justice has no jurisdiction to issue a warrant under Code, sec. 653, upon an information which does not state either the place where the offence was committed, or that the offence is indictable and triable in the province. (2) An information under Code, sec. 653 must be signed by the informant. (Per Barry and McKeown, JJ.) Campbell v. Walsh, 18 Can. Cr. Cas. 304.

NEW INFORMATION; ACCUSED DISCHARGED ON OLD INFORMATION.

The discharge of the accused upon a preliminary enquiry for an indictable offence is not a bar to fresh proceedings upon a new information based upon the same facts. The King v. Burke, 19 Can. Cr. Cas. 141.

IRREGULARITIES IN DRAWING JURY; EFFECT ON INFORMATION.

An information will not be quashed on the ground that the jury which returned it was illegally constituted because the sheriff, in drawing it, struck from the panel the names of two regularly drawn jurors, who, to his own knowledge, were exempt from jury duty, and substituted therefor two other duly qualified jurors, without

having before him the affidavit of exemption required by sec. 43 of ch. 162 of R.S. N.S. 1900, as such requirement is not imperative, although a disregard thereof is a dereliction of the sheriff's duty. The King v. Brown and Diggs, 19 Can. Cr. Cas. 237.

MAGISTRATE HEARING WITNESSES PRIOR TO ISSUING A WARRANT; MORE THAN ONE PARTICULAR ACT INCLUDED IN STATEMENT OF THE OFFENCE.

(1) The magistrate may, under Crim. Code, sec. 655 hear witnesses for his own information upon the application for a warrant. (2) The particular acts referred to in the sub-secs. of sec. 490 of the Crim. Code, sec. 1906, are the ingredients of the single offence of the unlawful use of a beverage trademark and the fact that more than one of such particular acts is included in the statement of the offence as contained in an information or summons, does not invalidate such information or summons. [Ex parte Coffon, 11 Can. Cr. Cas. 48, specially referred to.] The King v. Coulombe, 20 Can. Cr. Cas. 31, 6 D.L.R. 99.

CHARGING OFFENCE UNDER STATUTE; VARIATION FROM WORDS OF STATUTE.

An information charging, under the Motor Vehicle Act (Alta.), the offence as driving "at a greater speed than fifteen miles per hour" instead of in the words of the statute "at a greater speed than one mile in four minutes," charges the identical offence covered by the words of the statute and is sufficient, although it may be the better practice in such cases to follow the words of the statute itself. The King v. Ley, 20 Can. Cr. Cas. 170, 7 D.L.R. 764.

[Sec. 20 Motor Vehicle Act, 2 and 3 Geo. V. (Alta.) ch. 6, referred to.]

FORM AND REQUISITES; ADULTERATION ACT.

Where a summary prosecution under the Adulteration Act, R.S.C. 1906, ch. 133, is permissible only when brought at the instance of an inland revenue officer, the information must correctly designate his official capacity or it will be void; nor can an amendment be permitted to add his official designation to the information as such would be equivalent to substituting a new information. Beland v. Boyce, 21 Can. Cr. Cas. 421, 13 D.L.R. 147.

[Applied in Ex p. Richard, 26 Can. Cr. Cas. 166, 30 D.L.R. 364.]

INFORMATION TREATED AS FORMAL CHARGE OR INDICTMENT; SPEEDY TRIAL.

Where the information on which the preliminary enquiry proceeded is used in place of a formal indictment or "charge" on a speedy trial, and the accused moves to quash it as such, he thereby treats it as a de facto indictment and cannot object to the lack of a formal document, at least where no prejudice is shewn. R. v. Daigle, 23 Can. Cr. Cas. 92, 18 D.L.R. 56.

FORM OF INFORMATION BEFORE JUSTICE; STATEMENT OF BELIEF.

If the reasonable or probable grounds for believing that an offence has been committed are anything less than the actual knowledge of an eye-witness of the written and sworn information under Cr. Code, sec. 654 should be worded accordingly and the informant not allowed to take a positive oath that the offence was committed. White v. Dunning, 24 Can. Cr. Cas. 85, 21 D.L.R. 528.

SUMMARY TRIAL; BAWDY HOUSE.

A conviction by two Justices sitting together and having the powers of a magistrate for summary trial without the consent of the accused for an offence under Cr. Code, sec. 773, is not invalid because the information was taken before one only of the two Justices, as by Cr. Code, sec. 796, one Justice has power to remand before two Justices for the purposes of a summary trial under Part XVI. of the Cr. Code. A charge of being an inmate of a common bawdy house under Cr. Code, sec. 229A, which is tried by a magistrate under Cr. Code, sec. 774, without the consent of the accused, is not invalid because the precise locality of the house is not designated in addition to the town or territory over which the magistrate had jurisdiction, but the magistrate may order the prosecution to give particulars. [R. v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380, and R. v. Mickleham, 10 Can. Cr. Cas. 382, applied.] R. v. James, 25 Can. Cr. Cas. 23, 25 D.L.R. 476.

SEARCH WARRANT; IRREGULARITY; LIQUOR LAW.

A summary conviction under the Ontario Temperance Act is not affected by any irregularity in the information for the search warrant, as a result of which the prosecution was enabled to prove the finding of liquor on the premises and drinking carried on with others than persons there resident. [R. v. Swarts, 37 O.L.R. 103, 27 Can. Cr. Cas. 90, 32 D.L.R. 786, applied.] R. v. Lake, 28 Can. Cr. Cas. 138.

II. Sufficiency of Allegations.

AMENDMENT OF; LAYING SECOND INFORMATION BEFORE DISPOSING OF FIRST CHARGE.

The applicant, C., having appeared to an information charging him with an assault, and praying that the case might be disposed of summarily under the statute, H., the complainant, applied to amend the information by adding the words "falsely imprison." This being refused, H. offered no evidence, and a second information was at

once laid, including the charge of false imprisonment. The magistrate refused to give a certificate of dismissal of the first charge, or to proceed further thereon, but endorsed on the information, "Case withdrawn by permission of the Court, with the view of having a new information laid:"—Held, that the complainant could not, even with the magistrate's consent, withdrawn the charge, the defendant being entitled to have it disposed of. Held, also, that an information may be amended, but if on oath it must be resworn; and that the amendment might have been made here. Semble, that the more correct course would have been to go on with the original case, and, under 32 and 33 Vict. ch. 20, sec. 46, to refrain from adjudicating. A mandamus to hear and determine the first charge, and, if dismissed, to grant a certificate of dismissal, was however refused, for the withdrawal was equivalent to a dismissal; and the magistrate might, under sec. 46, refrain from adjudicating, and if it were dismissed without a hearing on its merits, there would be no certificate. Re Conklin (1871), 31 U.C.Q.B. 160.

CRIMINAL LIBEL; FALSE CHARGE AGAINST PERSON IN AUTHORITY; ATTORNEY-GENERAL.

(1) A criminal information will not be granted except in case of a libel on a person in authority, in respect of the duties pertaining to his office. (2) Where the libel was directed against M., who was at the time Attorney-General, but alleged improper conduct upon his part when he was a Judge, an information was refused. (3) The applicant for a criminal information must rely wholly upon the Court for redress, and must come there entirely free from blame. (4) Where there is a foundation for a libel, though it fall far short of justification, an information will not be granted. Regina v. Biggs, 2 Man. R. 18.

DEFECTIVE "IN SUBSTANCE OR IN FORM"; AMENDMENT.

An information stated that the defendant "within the space of thirty days last past, to wit, on the 30th and 31st days of July, 1892 . . . did unlawfully sell intoxicating liquor without the license therefor by law required." Such an information does not charge two offences, but only the single offence of selling unlawfully within thirty days. (Per Hagarty, C.J.O., and Boyd, C.) Such an information does charge two offences and is in contravention of sec. 845 (3) of the Criminal Code, 1892. (Per Osler and Maclennan, J.J.A.) But, per Curiam, assuming that an information so worded does contravene the provisions of sec. 845 (3) of the Criminal Code, 1892, the defect is one "in substance or in form" within the meaning of the curative section (847) and does not invalidate an otherwise valid conviction for a single offence. The provision of sec. 87, that no adjournment shall be for more than eight days, is matter of procedure and may be waived and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect. A conviction for a first offence under sec. 70 of the Liquor License Act, R.S.O. ch. 194, properly awards imprisonment in default of payment of the fine and not in default of sufficient distress. Judgment of the Queen's Bench Division, 23 O.R. 387, reversed. [Regina v. Smith, 46 U.C.Q.B. 442, and Regina v. Hartley, 20 O.R. 481, approved.] Regina v. Hazen, (1893), 20 O.A.R. 633.

INFORMATION AND BELIEF OF INFORMANT; FAILURE TO DISCLOSE CAUSES OF SUSPICION.

A sworn information stating that the complainant has just cause to suspect and believe, and does suspect and believe, that the party charged has committed a specified offence triable under the Summary Convictions Act, 32 and 33 Vict. ch. 31, will not authorize a justice to issue his warrant to arrest in the first instance. It is the duty of the justice before issuing a warrant to examine upon oath the complainant, or his witnesses, as to the facts upon which such suspicion and belief are founded, and to exercise his own judgment thereon. Ex parte Boyce (1885), 24 N.B.R. 347.

IRREGULARITY OF INFORMATION; MALICIOUS INJURY TO PROPERTY; FAILURE TO STATE VALUE.

Neither an information against a person for malicious injury to property, under the 32 and 33 Vict, ch. 22, secs. 49–50, nor the warrant issued thereon, stated the value of the property injured:—Held, an irregularity only, as the magistrate had jurisdiction over the offence, either by way of preliminary examination if the value exceeded $20, or summarily if it was within that sum. Kingston v. Wallace et al. (1886), 25 N.B.R. 573.

SUFFICIENCY OF; NOT ALLEGING ABSENCE OF EXCUSE; SUNDAY OBSERVANCE.

A conviction was, that the defendant did, on the 16th May, 1886, create a disturbance in 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 47 Vict. ch. 32, sec. 13 (O.), whereby power was given to pass by-laws (sub-sec. 12) "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:—Held, that the conviction was bad in not alleging that the beating of the drum was without any just or lawful excuse. Semble, that it could not be inferred from the evidence that the drum made any unusual noise, as the witness did not say he heard any noise, but only that he saw defendant beating a drum. Semble, also, that the words used in the statute that the noise made must be "calculated to disturb the inhabitants," and in the conviction that the defendant "did create a disturbance by . . . the beating of a drum," were not equivalent terms. Regina v. Martin (1886), 12 O.R. 800.

AMENDMENT IN ABSENCE OF ACCUSED; DISTINCT OFFENCE.

(1) An amendment changing a charge of selling liquor to a charge of keeping liquor for sale cannot be made if the accused does not appear at the trial. (2) No such amendment is authorized in respect of proceedings under the Canada Temperance Act, for the magistrate cannot determine in the defendant's absence whether or not the latter has been "materially misled" by the variance (sec. 116). (3) Criminal Code, sec. 853, authorizing a magistrate to determine the case in the defendant's absence on his default in appearance, must be restricted to the particular charge in the original information and cannot cover a distinct offence. Ex parte Doherty, 1 Can. Cr. Cas. 84.

[Distinguished in Ex parte Tompkins, 12 Can. Cr. Cas. 552; approved in R. v. Lyons, 10 Can. Cr. Cas. 134; referred to in Ex parte Le Bel, 16 Can. Cr. Cas. 367.]

DESCRIBING THE OFFENCE.

(1) An information should give a concise and legal description of the offence charged, and should contain the same certainty as an indictment, and the description of the charge must include every ingredient required by the statute to constitute the offence. (2) The statement of the offence may be in the words of the enactment describing it or declaring the transactions charged to be an indictable offence. The Queen v. France, 1 Can. Cr. Cas. 321.

[Discussed in R. v. Phillips, 11 Can. Cr. Cas. 94, 11 O.L.R. 478; followed in R. v. Gill, 18 O.L.R. 234, 14 Can. Cr. Cas. 302; R. v. Paquin, 7 Que. Q.B. 322; referred to in Campbell v. Walsh, 18 Can. Cr. Cas. 314; Dufresne v. R., 19 Can. Cr. Cas. 414, 5 D. L.R. 501.]

TEMPERANCE ACT OF 1864; SUCCESSIVE COMPLAINTS.

Sec. 17 of the Temperance Act of 1864, which provides that two or more offences by the same party may be included in one complaint, and that, whatever may be the number of offences included in one complaint, the maximum of penalty which may be imposed for them all shall in no case exceed $100, is to be construed as permissive and not as imperative; and if separate complaints are laid in respect of each offence, convictions obtained thereon with accumulated penalties of more than $100 may be enforced, although the offences were all prior to the laying of the first information. There is no presumption that a complaint made for a single offence under that Act is to include all offences to be charged against the accused thereunder previous to the date of the complaint and within the three months' limitation within which prosecutions are required to be brought. Wentworth v. Mathieu, 3 Can. Cr. Cas. 429.

[Referred to in R. v. Gallagher, 18 Can. Cr. Cas. 349.]

STATUTE REQUIRING SWORN INFORMATION; AMENDED INFORMATION NOT RESWORN; WAIVER BY ACCUSED.

Where the accused was brought before a justice to answer a charge under an Ontario statute which requires an information on oath, and the justice thereupon amended the informant and gave notice to the accused that he would be tried on the amended information, the fact that the information had not been resworn after the amendment will not invalidate the proceedings if no objection was then taken by the accused. The King v. Lewis, 6 Can. Cr. Cas. 499.

AMENDING COMPLAINT AFTER EVIDENCE TAKEN; CLERICAL ERROR.

Leave to amend a clerical error in a sworn complaint may be granted at the hearing even after the evidence for the prosecution has been concluded. Bell v. Parent, 7 Can. Cr. Cas. 465.

SUMMARY CONVICTION; POSITIVE STATEMENT OF OFFENCE.

(1) Where there is an absolute and positive statement by the informant in the sworn information of the commission of the offence by the accused, a warrant of arrest may be issued without an examination of the informant or of his witnesses. (2) Failure to serve at the time of arrest, a copy of the warrant to apprehend, does not go to the jurisdiction of the magistrate and is not a ground for setting aside a conviction. [Ex parte Coffon, 11 Can. Cr. Cas. 48, 37 N.B.R. 122, distinguished.] Ex parte Madden, 1 Can. Cr. Cas. 273.

LIQUOR LAWS; DEFECT IN STATING OFFENCE MERELY AS SALE TO MINOR; AMENDMENT PERMITTED AFTER TIME LIMIT FOR FRESH INFORMATION.

(1) An information under the Liquor

License Act (Ont.) charging the sale of liquor to a minor, may be amended by adding that the minor was "apparently or to the knowledge of the defendant under the age of twenty-one," although the time for laying a new information for such offence had expired before the amendment was asked. (2) Such an amendment involving only the addition of words necessary to describe the offence intended to be charged but incompletely charged in the information, is not the substitution of another and different offence as to which the prescription may apply. The King v. Ayer, 14 Can. Cr. Cas. 210.

[Specially referred to in R. v. O'Connor, 20 Can. Cr. Cas. 76, 3 D.L.R. 23, 3 O.W.N. 840, 21 O.W.R. 691.]

INFORMATION "UPON INFORMATION AND BELIEF."

An information for an offence under the Nova Scotia Liquor License Act upon information and belief only and not stating the grounds of belief, is authorized by sec. 120 of that Act. The King v. Power, 14 Can. Cr. Cas. 264.

SUMMARY TRIAL; WRITTEN CHARGE AND PLEA TO SAME.

(1) Sec. 541 (1) of the Cr. Code which declares that as to certain offences (inter alia, wilful damage to property) the act must have been done "without legal justification or excuse and without colour of right," is to be construed as a proviso or exception which forms a matter of defence or excuse but need not be formally alleged in an information or conviction. (2) While a mere reference in an information under the Summary Convictions clauses to the offence as being contrary to a specified section of the Code would probably not cure the omission from the information of a statement of an essential part of the offence, the same particularity is not required in an information for an indictable offence which the magistrate can try only under the "summary trials" procedure, as the defendant pleads in the latter case not to the information but to a written charge to be then and there prepared by the magistrate and read to the accused. (3) The information for an indictable offence is superseded by the charge in writing prepared by the magistrate holding summary trial as required by Code, sec. 778 (3). The King v. Gill, 14 Can. Cr. Cas. 294.

INFORMATION IN SUMMARY PROCEEDINGS; OMISSION TO CHARGE A MATERIAL INGREDIENT OF OFFENCE; AMENDMENT AFTER EXPIRY OF TIME LIMIT FOR LAYING CHARGE.

(1) Where the statutory offence is the furnishing of intoxicating liquor to a person known to the accused to have been interdicted, and a time limit is provided for laying information therefore, an information within the time but omitting to charge knowledge of the interdiction cannot be amended to include such statement after the expiry of the time limit. (2) The original information in such case alleges no offence and is consequently to be treated on amendment as a new information. The King v. Guertin, 15 Can. Cr. Cas. 251.

[Specially referred to in R. v. O'Connor, 20 Can. Cr. Cas. 76, 3 D.L.R. 23, 3 O.W.N. 840, 21 O.W.R. 691; followed in The King v. Speed, 17 Can. Cr. Cas. 24.]

VAGRANCY; PLEA OF GUILTY INSUFFICIENT TO SUPPORT CONVICTION UNLESS REQUEST SHEWN IN INFORMATION.

Where the information charged that the accused was a common prostitute on the streets not giving a satisfactory account of herself and that she was thereby a vagrant, but omitted to charge that she was asked to give an account of her presence on the streets, a plea of guilty to the information goes no further than the matter charged and a conviction cannot be supported. The King v. Pepper, 15 Can. Cr. Cas. 314.

[Specially referred to in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; referred to in R. v. Johnson, 20 Can. Cr. Cas. 10, 5 D.L.R. 523; dissented from in Re Brady, Cas. 123, 10 D.L.R. 424.

AMENDMENT ILLEGAL AFTER EXPIRY OF TIME LIMITED FOR PROSECUTION.

(1) An information for an offence under a liquor law which omits a material ingredient of the offence cannot be amended by adding the same after the expiry of the statutory limit for bringing a prosecution. (2) Prohibition will issue to prevent the magistrate from proceeding upon an information so amended after the expiry of the time limit for bringing a charge. [R. v. Guertin, 15 Can. Cr. Cas. 251, followed.] The King v. Speed, 17 Can. Cr. Cas. 24.

SUMMARY CONVICTION; CLAIM FOR MONEY PENALTY; DISCRETION OF MAGISTRATE TO IMPOSE IMPRISONMENT INSTEAD OF FINE.

Where a liquor law provides a penalty on summary conviction of either fine or imprisonment, the fact that the information concluded with a demand only for the imposition of a fine does not debar the magistrate from imposing imprisonment instead of a fine. Plante v. Cliche, 17 Can. Cr. Cas. 43, affirmed in 20 Can. Cr. Cas. 186.

INFORMATION LAID BY TELEPHONE.

An information laid by telephone message to the magistrate on the last day and transmitted by mail to reach the magistrate on a later day is irregular. The King v. Harrington, 17 Can. Cr. Cas. 62.

SUMMARY CONVICTION; PARTICULARS OF OFFENCE; NO STATUTORY DEFINITION; SPECIFIC ACTS.

(1) Where the information for an offence punishable on summary conviction charges the offence in general terms and there is no statutory definition giving the particulars of the acts which will constitute the offence, Code, sec. 723 will not apply to validate an information which does not specify the means by which the offence was committed. (2) There being no statutory definition of what constitutes a false pretending to be a healer of the sick, which is punishable on summary conviction under the Saskatchewan Medical Act, an information for that offence is defective if it does not specify the acts complained of. The King v. Armstrong, 18 Can. Cr. Cas. 72.

MURDER; STATEMENT IGNORING PART OF EVIDENCE CONTRA; MISDIRECTION; NEW TRIAL.

Where upon a trial for murder the trial Judge commented upon the facts in his charge to the jury upon the basis of certain allegations not having been proved by reason of which the jury may have considered that certain testimony was withdrawn from their consideration, the Court will grant the accused a new trial, although his counsel did not object on that ground at the trial nor ask to have the last mentioned testimony re-read to the jury or specially called to their attention. The King v. Paul, 18 Can. Cr. Cas. 219.

PLACE OF OFFENCE.

An objection on the ground that the information for an indictable offence did not mention the place where the offence was committed is not a ground for habeas corpus upon the committal of the accused for trial. Dick v. The King, 19 Can. Cr. Cas. 44.

SUFFICIENCY OF ALLEGATION; FOLLOWING LANGUAGE OF THE STATUTE.

Where the information and the conviction follow the language of the statute under which the conviction was made, that is all that is required, even though the information and the conviction charged two offences and the evidence was not confined to one offence. [Re v. Leconte, 11 Can. Cr. Cas. 41, 11 O.L.R. 408, applied.] The King v. Riddell, 19 Can. Cr. Cas. 400, 4 D.L.R. 662.

AMENDMENT; COMPLAINT LAID UNDER VOID PROVINCIAL ACT; SUBSEQUENT ACT OF DOMINION PARLIAMENT; PROHIBITING SALE OF COCAINE.

A complaint under ch. 35, of 1 Geo. V. of Quebec, which prohibits the sale of cocaine, morphine or their compounds, except to wholesale dealers, physicians, druggists, dentists, veterinary surgeons, or the holders of physician's prescriptions, cannot be amended, upon such Act being held void because in conflict with the subsequent enactment of the Dominion Parliament, 1 and 2 Geo. V. ch. 17, which makes it a crime to sell, take, or have in one's possession cocaine, without lawful excuse, so as to set out an offence under the Dominion Act, since the effect of allowing such amendment would be to change the nature and gravity of the offence charged in the original information. [The King v. Hayes, 6 Can. Cr. Cas. 357; Reg. v. France, 1 Can. Cr. Cas. 321; The King v. Lacelle, 10 Can. Cr. Cas. 229; The King v. Clark, 9 Can. Cr. Cas. 125; Reg. v. James, 12 Cox Cr. Cas. 127; Reg. v. Norton, 16 Cox Cr. Cas. 59; Reg. v. Carr, 26 L.C.J. 61, referred to.] Dufresne et al. v. The King, 19 Can. Cr. Cas. 415, 5 D.L.R. 501.

RAISING QUESTION AS TO SUFFICIENCY OF INFORMATION FOR FIRST TIME ON APPEAL.

An objection to an information based on a municipal by-law prohibiting the use of abusive, insulting, and provoking language toward another while on a public street, because of the omission of the word "abusive" therefrom, is too late where made for the first time upon an appeal from the decision of a County Judge upon the review of a magistrate's conviction, where the statute authorizing the by-law is sufficient to warrant a by-law in the terms of the conviction without the word "abusive." The King v. Elderman, 19 Can. Cr. Cas. 445.

AMENDMENT OF INFORMATION; INDICTABLE OFFENCES.

(1) Upon the summary trial of a charge of keeping a disorderly house, the magistrate has power to amend the information during the course of the trial, by changing the street number of the alleged disorderly house, without having the information resworn. [Reg. v. D'Eyncourt, 21 Q.B.D. 109, referred to.] (2) The powers of amendment granted by sec. 1124 of the Canadian Criminal Code, R.S.C. ch. 146, are not confined to summary convictions, but may be exercised in the case of convictions for indictable offences. [R. v. Randolph, 4 Can. Cr. Cas. 165, and R. v. Spooner, 4 Can. Cr. Cas. 209, discussed; R. v. Shing, 17 Can. Cr. Cas. 463, dissented from.] The King v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.

SUFFICIENCY OF ALLEGATION; SELLING OR EXPOSING FOR SALE OBSCENE BOOKS.

In an information for exposing for sale and selling obscene books under sec. 207 of Cr. Code 1906, as amended by 8 and 9 Edw. VII. ch. 9, it is necessary to allege that it was knowingly done, and an allegation that it was done "contrary to law"

and "contrary to the form of the statutes," is not sufficient. The King v. Britnell, 20 Can. Cr. Cas. 85, 4 D.L.R. 56.

VERIFICATION BY OATH; AMENDMENT OF INFORMATION; FAILURE TO RESWEAR; SUBSTITUTION OF NAME OF ACCUSED.

A conviction for an offence against the Liquor License Ordinance cannot be sustained under an information and warrant describing the accused as "Big Boy of Calgary, Alberta," where, before the accused pleaded to it, the information was amended, without being resworn to, by striking out the words "Big Boy" and substituting therefor the name of the accused, William Davis, and where his objection to the jurisdiction of the police magistrate to try him on the ground that no sworn information had been laid against him, was overruled and the trial proceeded with. [Regina v. McNutt, 3 Can. Cr. Cas. 184, and Re Conklin, 31 U.C.Q.B. 160, 165, specially referred to; Rex v. Crawford, 6 D. L.R. 380, distinguished.] Rex v. Davis, 20 Can. Cr. Cas. 293, 7 D.L.R. 608.

SUFFICIENCY OF ALLEGATIONS; TIME; CONFLICT OF DATES.

Where the accused is committed under a warrant of commitment for extradition based on an information alleging the offence as of a year prior to the date shewn by the commitment, the information is not a sufficient basis for the commitment, and the prisoner will be discharged in a habeas corpus proceeding. Re William Staggs (No. 1), 20 Can. Cr. Cas. 306, 7 D.L.R. 738.

INTOXICATING LIQUOR; SUFFICIENCY OF INFORMATION.

An information for selling liquor without a license authorizing such sale under the Liquor License Act, ch. 142, R.S.B.C. 1911, sec. 66 need not describe the offence in the exact words of the statute, if the defendant, from the form of the information, receives particulars of the charge such as he himself might ask for if the information had been in the words of the statute. The King v. Campbell, 20 Can. Cr. Cas. 490, 8 D.L.R. 321.

INFORMATION; STATEMENT OF OFFENCE; INSPECTION AND SALE ACT.

An information for an infraction of the Inspection and Sale Act, R.S.C. ch. 85, charging that the accused did unlawfully "offer, expose or have in his possession for sale" ten barrels of apples packed in contravention of that statute, discloses an offence; and an objection by reason of setting forth the alternative methods by which the offence may have been committed must be taken before entering a plea of guilty, and cannot effectively be raised for the first time in certiorari proceedings in respect of a summary conviction similarly worded made upon such plea. Section 725 of the Criminal Code 1906 (former sec. 907 of Cr. Code 1892) applies to validate a summary conviction stating the offence to have been committed in one or other of the different modes specified in the statute whereby a single offence is declared, ex. gr., under the Inspection and Sale Act (Can.) the offering for sale, the exposing for sale or the having in possession for sale. [R. v. McDonald, 6 Can. Cr. Cas. 1, followed.] R. v. Brouse, 21 Can. Cr. Cas. 17, 9 D.L.R. 458.

FOR OBSCENE LANGUAGE; PARTICULARS.

An information for using obscene language is defective if it does not set out the language used, but the defect may be cured by defendant's appearance and plea without taking exception thereto at the hearing. R. v. Ballentine, 22 Can. Cr. Cas. 385.

SUFFICIENCY; DESCRIPTION OF OFFENCE; ASSAULT; AMENDMENT.

An information charging that the accused "threatened" the complainant with an axe, contrary to sec. 291 of the Criminal Code, is sufficient to charge the offence of common assault for which that section of the Code provides. It is not essential that an information before a magistrate should be resworn after being amended at the hearing, if the amendment merely gives greater particularity or certainty of the charge without changing the charge to an offence of a different kind or alleging it as of a time or place materially different from that first alleged. An irregularity in not reswearing an information in a summary conviction matter when materially amended at the hearing is waived by proceeding with the trial without taking the objection. [R. v. Lewis, 6 Can. Cr. Cas. 499, approved.] R. v. Tally, 23 Can. Cr. Cas. 449, 21 D.L.R. 651.

ASSAULT; DEFECT IN INFORMATION; EVIDENCE; DEPOSITIONS; DATE.

If the depositions in a summary conviction matter establish such facts as warranted the justice in convicting of the offence indicated by the information, although not stated in the latter in correct form, Code, sec. 724 applies to validate the conviction regardless of the defect in the information. Where the assaults charged separately against two persons took place as part of one and the same occurrence, and the evidence would have been identical in each case, it is not a ground for quashing the summary conviction in either case that the two cases were tried together, particularly where no exception was taken at the trial. [R. v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210, and R. v. Fry, 19 Cox C.C. 135, 62 J.P. 457, applied.] An objection that a summary conviction for

common assault assigns no date to the offence is cured under Cr. Code, sec. 1124 if the date appears on the depositions. R. v. Tally, 23 Can. Cr. Cas. 449, 21 D.L.R. 651.

FORM; MULTIFARIOUSNESS; VAGRANCY; LIMITATIONS.

It is a ground for dismissing a charge of vagrancy on a summary hearing under Part XV. of the Code that the complaint alleges distinct offences under different sub-sections of Code, sec. 238, and is, therefore, multifarious. [R. v. Code, 13 Can. Cr. Cas. 372, followed; Smith v. Moody, [1903] 1 K.B. 56, referred to.] The term of limitation for summary prosecutions for vagrancy is six months after the offence (Cr. Code, sec. 1142); therefore a complaint is invalid in which the only mention of the time of the offence is that it was within two years last past. R. v. St. Armaud, 25 Can. Cr. Cas. 103.

DESCRIPTION OF OFFENCE.

It is not an objection to an information under the Medical Profession Act, 1906, Alta., ch. 28, practicing medicine without being licensed, that the acts which constitute the practising are not set out in the information as Code, sec. 723, made applicable under the Alberta laws to offences under the provincial statutes, makes a description of the offence sufficient if it is in the words of the section of the statute which creates it. [Re Effie Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424, 5 A.L.R. 400, applied.] Re Wagner, 25 Can. Cr. Cas. 406.

DESCRIPTION OF STATUTORY OFFENCE; LICENSE ACT; CONCERTS.

An information for that the defendant "did conduct and give a concert without obtaining a license so to do from the provincial authorities" is insufficient in form to charge an offence under the Quebec License Law, articles 1292a and 1292b, imposing a penalty upon the manager of any travelling troupe or organization giving concerts or minstrel shows; and a summary conviction made on defendant's default of appearance to such charge will be quashed on certiorari. [For another decision under the same statute, see Collector of Revenue v. Paquet, 25 Can. Cr. Cas. 83.] Lamontagne v. Lanctot, 25 Can. Cr. Cas. 449.

INDECENCY; DEFECTIVE INFORMATION; AMENDMENT; CERTIORARI.

An information for indecency under Cr. Code, sec. 205 is defective if it omits to charge that the act was done wilfully, but the defect is curable in certiorari proceedings (Cr. Code, sec. 1124) if the depositions clearly shew the wilful nature of the indecent act of which the defendant was convicted. [Ex p. O'Shaughnessy, 8 Can. Cr. Cas. 136; R. v. Tupper, 11 Can. Cr. Cas. 199; R. v. Barre, 11 Can. Cr. Cas. 1, referred to.] R. v. Clifford, 26 Can. Cr. Cas. 5, 26 D.L.R. 754.

GOODS IN PROCESS OF MANUFACTURE; DESCRIPTION.

An information or charge for stealing goods in process of manufacture should specify the value of the goods, so that the accused may know whether the prosecution seek to apply the added penalty provided by Cr. Code, sec. 387, in case the value is over $200. An information or charge which, in addition to the date of the alleged offence and the name of the local municipality, gives only the following particulars of the nature of the offence: "did steal a certain quantity of towels, the property of the Dominion Textile Co.," is insufficient because of its vagueness; and such insufficiency being a matter of substance is not amendable by the Court on the trial so as to charge theft of goods in process of manufacture under Cr. Code, sec. 388. R. Leclerc, 26 Can. Cr. Cas. 242, 31 D.L.R. 615.

DATES; DISORDERLY HOUSE.

An information charging the keeping of a disorderly house between certain dates, the last which was the date of the information, excludes the latter date and, semble, also the first date mentioned. [Ex parte Wilson, 14 Can. Cr. Cas. 32, referred to.] R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556.

TIME OF OFFENCE ERRONEOUSLY DESCRIBED; TEMPERANCE ACT.

A summary conviction founded on a proper information charging the offence under the Canada Temperance Act as having been committed within specified dates both within the three months' limitation of the Act will not be set aside because the summons to the accused upon which he failed to attend erroneously described the date of the information so as to make it appear that the time limitation had already expired as to a part of the period specified as the time of the offence. [R. v. Le Blanc, 21 Can. Cr. Cas. 221; 41 N.B.R. 99, distinguished.] Ex parte Johnson; R. v. Limerick, 27 Can. Cr. Cas. 421.

RECOGNIZANCE TO KEEP THE PEACE; INSUFFICIENCY OF INFORMATION.

The complaint on a demand for a recognizance to keep the peace under Cr. Code, sec. 748 (2) is invalid if it does not shew threats and fear of bodily harm. R. v. Buteau, 30 Can. Cr. Cas. 411.

III. Joinder of Counts or Persons.

SUMMARY CONVICTIONS; ONE MATTER OF COMPLAINT ONLY; DUPLICITY; MAGISTRATE'S DUTY TO STRIKE OUT ALL BUT ONE CHARGE.

(1) Upon a summary hearing of a

charge punishable on summary conviction, if the information charges more than one offence all but one should be struck out upon objection taken. (2) Where the objection so taken by the defendant was overruled and evidence was taken upon the several charges until the conclusion of the prosecutor's case when all but one were abandoned, a conviction upon that one is invalid and should be quashed on appeal. The King v. Austin, 10 Can. Cr. Cas. 34.

SIMILAR OFFENCES CREATED BY DOMINION AND PROVINCIAL STATUTES; PROSECUTION; FORM OF INFORMATION.

Where statutes of the Dominion Parliament and Provincial Legislature both prohibit an act, and an information is laid charging as an offence the commission of the prohibited act "contrary to the statute in such case made and provided," such information will be presumed in the absence of a specific identification of the statute, to have been laid under that statute in which the offence is described in the same phraseology as in the information rather than under the statute which covers the offence in different phraseology. The King v. Treanor, 14 Can. Cr. Cas. 443.

JOINING SEPARATE OFFENCES; EVIDENCE RELEVANT TO SOME ONLY.

Upon more than one information for separate offences of a similar character being lodged against a person a magistrate should not hear evidence at the same time as to all the charges, where some of it would be relevant to one, but not to the others. [Hamilton v. Walker, [1892] 2 Q.B. 25; Regina v. Fry (1898), 67 L.J.Q.B. 67; Regina v. McBerny (1897), 3 Can. Cr. Cas. 339, 29 N.S.R. 327, and Rex v. Burke (No. 2) (1904), 8 Can. Cr. Cas. 14, followed; Rex v. Dunkley (1910), 1 O.W.N. 861, and Rex v. Sutherland, 2 O.W.N. 595, distinguished.] The King v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210.

BRIBERY; NAME OF PARTY BRIBED.

Bribery is an act to which it is necessary that two persons be parties the briber and the corrupted party, and an information for the completed offence should include the names of both as parties charged; but, if only an attempt to bribe is alleged, the offence is unilateral and the information is sufficient, if it charges only the person making the attempt. Marsil v. Lanctot, 25 Can. Cr. Cas. 223, 28 D.L.R. 380.

DUPLICITY; ASSAULT; OBSTRUCTING OFFICER; JURISDICTION.

Where a charge of assaulting a Crown land surveyor concluded with a statement that accused had prevented the surveyor from performing his official duties, a summary conviction made by a justice reciting the offence in the same words is bad, as the justice had no jurisdiction to deal with the alleged offence of obstructing the surveyor; the conviction was in effect for two separate charges, although they were tried as one and a single penalty was imposed, which however was excessive even for the assault because of the unauthorized order for payment of damages in addition to the fine, and the conviction could not be amended by the Court under Cr. Code 1124 on certiorari. Ex parte Aylward; R. v. Dugas, 26 Can. Cr. Cas. 144.

INJURY TO PROPERTY.

See Mischief.

INLAND REVENUE.

Keeping illicit still; Discretion of magistrate as to punishment. 7 Can. Cr. Cas. 608.

"MANUFACTURED TOBACCO," MEANING OF.

Under sec. 334 of the Inland Revenue Act (Can.) possession of domestic tobacco cut ready for use after purchase in the raw leaf is illegal unless the tobacco is put up in packages and the packages have revenue stamps attached. Such possession is illegal, although the possessor is not a tobacco manufacturer or trader, and notwithstanding that he purchased same in the raw leaf entirely for his own use, and gave it no other process of "manufacture" than cutting up the raw leaf. R. v. Senecal, 4 Can. Cr. Cas. 137.

DISTILLING SPIRITS AND FERMENTING BEER ONE OFFENCE.

A summary conviction for unlawfully distilling spirits and making or fermenting beer without a revenue license is not void as charging two offences, but it is to be held to charge only one offence by virtue of Code, sec. 907. The Queen v. Joseph McDonald, 6 Can. Cr. Cas. 1.

[Followed R. v. Toy Moon, 19 Can. Cr. Cas. 34.]

UNLAWFUL POSSESSION OF "STILL" OR RECTIFYING APPARATUS.

(1) Under sec. 159 of the Inland Revenue Act, R.S.C. 1886, ch. 34, as amended 1898, ch. 27, it is an offence to have possession of a "still" without the notice or registration provided by the Act, even though such possession be that of a carrier only. (2) The phrase "in any place" used in subsec. (e) of sec. 159 is equivalent to the word "anywhere," and the context does not limit its meaning to distilleries or places used as distilleries. The King v. Brennan; The King v. Kennedy, 6 Can. Cr. Cas. 29.

BREWER'S LICENSE; PROVINCIAL LIQUOR LICENSE REQUIRED TO SELL PRODUCT.

(1) A brewer may properly be convicted under a provincial license law for selling

liquor without a provincial license, athough he holds a license under the Dominion Inland Revenue Act to carry on the trade or business of a brewer. (2) Semble, the license under the Inland Revenue Act applies only as a permit to manufacture as regards the excise duties. The King v. Neiderstadt, 10 Can. Cr. Cas. 292.

SALE OF WOOD ALCOHOL BY EMPLOYEE IN VIOLATION OF LAW.

A sale of wood alcohol in a vessel not labeled "Wood Alcohol, Poison," as required by sec. 372 of the Dominion Inland Revenue, Act, R.S.C. 1906, ch. 51, 7-8 Edw. VII. ch. 34, sec. 27, by a clerk in the absence of and without the knowledge of his employer, renders the latter liable for the penalty imposed by the Act; since the statute prohibits absolutely the sale of wood alcohol except in compliance with its term. [Caldwell v. Bethell, [1913] 1 K.B. 119; Brooks v. Mason, [1902] 2 K.B. 743; Strutt v. Clift, [1911] 1 K.B. 1; Coppen v. Moore, [1898] 2 Q.B. 306, considered.] The fact that sec. 111 of Part II. of the Inland Revenue Act, R.S.C. 1906, ch. 51, expressly declares an employer liable for the failure of his employees to comply with the provisions of the Act with respect to keeping records of sales, which, by sec. 368 of the Act, as amended by 7-8 Edw. VII. ch. 34, sec. 27, is extended to sales of wood alcohol, while the provisions of the latter Act are silent as to the responsibility of an employer for sales of such liquid made by his employees in violation of the Act, does not shew a legislative intention to relieve the employer from liability for such illegal sales, since the two sections deal with entirely different offences. [Paul v. Hargreaves, [1908] 2 K.B. 289, distinguished.] R. v. Russill, 22 Can. Cr. Cas. 131, 14 D.L.R. 792.

WAR TAX; INTENT; MENS REA.

Criminal intent is not an essential element in the offence of vending a patent medicine without affixing the revenue stamp required under the War Tax Act 1915 (Can.); and the dealer is liable to conviction in respect of the failure of his salesman to affix and cancel the stamps at the time of sale as the law required and as he had been instructed to do by the defendant. [See also R. v. McAllister, 22 Can. Cr. Cas. 166, 14 D.L.R. 430.] Patenaude v. Thivierge, 26 Can. Cr. Cas. 138, 30 D.L.R. 755.

WAR REVENUE ACT; COMPLAINT; AUTHORIZATION OF MINISTER; PLEA OF GUILTY.

A summary prosecution under the Special War Revenue Act, 1915, can only be instituted in the name of the Minister of Inland Revenue; and where the complaint is laid by an excise officer it should specially allege the authorization of the Minister, and in default the complaint cannot be amended, as there is no power to substitute a complainant where the original complainant has no status. [Béland v. Boyce (1913), 21 Can. Cr. Cas. 421, 13 D.L.R. 147, applied.] A summary conviction, even upon a plea of guilty, must be set aside if the complaint does not set out the essential ingredient of the offence, ex. gr. under the Special War Revenue Act, 1915, that the accused sold the unstamped goods to a consumer, and not merely that the accused neglected to affix the stamps to certain goods as required by the Act. Ex parte Richard, 26 Can. Cr. Cas. 166, 30 D.L.R. 364.

WAR REVENUE ACT; "PERSON;" "CONSUMER"; PENALTY.

A company operating a retail store in which perfumes are sold is not liable to fine under the Special War Revenue Act 1915, for the default of its salesman to affix a stamp to a package of perfume on making a sale of same, if it has given all proper directions and facilities for carrying out the provisions of the statute; the penal liability which the statute provides is upon the "person selling" and the statute has not in this case made the master criminally responsible for the act of his servant done without his connivance or knowledge. [Somerset v. Hart, 12 Q.B.D. 360, 53 L.J.M.C. 77, applied; and see Annotation on Master's Liability under penal laws for servant's acts, at end of this case.] A sale made at a retail store of an article subject to stamp duties under the Special War Revenue Act, Can., 1915, secs. 14-18, is not shewn to be a sale to a "consumer" as defined by sec. 14 so as to warrant a summary conviction for neglect to affix a tax stamp to the package, if the purchase was made by a revenue officer on behalf of the Department of Inland Revenue. Patenaude v. The Pacquet Co., 26 Can. Cr. Cas. 204, 31 D.L.R. 229.

[Disapproved in Minister v. Thornton, 28 Can. Cr. Cas. 3; Ethier v. Minister, 27 Can. Cr. Cas. 12, 32 D.L.R. 320.]

SALES TO "CONSUMERS"; WAR REVENUE ACT, 1915.

If drug preparations required by the War Revenue Act, 1915, to be stamped on being sold to consumers are sold unstamped to a revenue officer buying only for the purpose of prosecuting the seller, such retail sale may be the subject of prosecution under the Act as by its terms all sales at retail are to be considered as included in the term "selling to a consumer." The scheme of the War Revenue Act, 1915, Can., is to make the employer liable for the penalties which it provides in respect of failure to affix revenue stamps on the retail sale of certain drug preparations, in respect of sales made in his store by his employees, although he

was absent at the time of sale and although general directions had been given the employees not to sell such goods without affixing and cancelling the stamp. [Patenaude v. Paquet Co. (1916), 26 Can. Cr. Cas. 204, disapproved; and see Annotation on "Master's Liability under Penal Laws," 26 Can. Cr. Cas. 208-211.] Ethier v. Minister of Inland Revenue, 27 Can. Cr. Cas. 12, 32 D.L.R. 320.

[Followed in Minister v. Narin, 28 Can. Cr. Cas. 1, 35 D.L.R. 224; Minister v. Thornton, 28 Can. Cr. Cas. 3; Minister v. Bourke, 31 Can. Cr. Cas. 48.]

WAR REVENUE ACT, 1915; "CONSUMERS"; WAR REVENUE; STAMPS; MASTER AND SERVANT.

A sale by retail to a revenue inspector buying for the purpose of finding whether or not the seller was complying with the requirements of the War Revenue Act, 1915, Can., in affixing revenue stamps on goods sold, is a sale "to a consumer" within the provisions of that Act. [Ethier v. Minister of Inland Revenue, 27 Can. Cr. Cas. 12, 32 D.L.R. 320, followed.] The special War Revenue Act, 1915, Can., makes the employer liable for the penalties which it provides in respect of failure of his employees in the course of his employment to affix revenue stamps on the retail sale of certain drug preparations, although general directions had been given by the employer to the employee not to sell such goods without affixing and cancelling the stamp. [See Annotation on "Master's Liability under Penal Laws," 26 Can. Cr. Cas. 208–211.] Minister of Inland Revenue v. Nairn, 28 Can. Cr. Cas. 1, 35 D.L.R. 224.

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POSSESSION OF UNSTAMPED TOBACCO.

Workman engaged merely in cutting plug tobacco and putting it into packages for their employer are not the persons to be charged in place of their employer with an offence under the Inland Revenue Act, Can., sec. 356, for having unstamped tobacco in possession while not a licensed manufacturer. R. v. Young, 30 Can. Cr. Cas. 137.

INLAND REVENUE ACT; STAMP ON CANADIAN LEAF TOBACCO; "RETAILER."

In a prosecution based upon the regulations of the Inland Revenue of August 1st, 1918, against a "retailer" of Canadian leaf tobacco it is essential to allege in the summons that the defendant is a retailer, cultivator or packer of tobacco, as the case may be. Hardy v. Lachance, 30 Can. Cr. Cas. 288.

WAR REVENUE ACT, 1915; ADHESIVE STAMP TO BE AFFIXED.

When the Special War Revenue Act, 1915, requires that every person selling any of the articles mentioned in the Act shall affix an adhesive stamp upon such articles, the object of the law is practically if not literally fulfilled if, instead of affixing one cent upon one of the articles and two cents upon the other, the person selling has affixed a three cent stamp upon one of the two articles, thus covering all the tax to be paid on both. A conviction under such circumstances will be quashed but without costs. Cadotte v. Lazarovitcz, 31 Can. Cr. Cas. 43.

WAR REVENUE ACT; PROPRIETOR RESPONSIBLE FOR CLERK'S FAILURE TO AFFIX STAMP; REVENUE OFFICER; CONSUMER.

Under the Special War Revenue Act of Canada (1915 stats., c. 8) the proprietor of a drug store is responsible for the failure of one of his clerks to affix a revenue stamp on goods sold which require the stamp to be affixed, although the sale was made without his knowledge, and the clerk had instructions always to affix stamps where they were required. A revenue officer buying goods requiring stamps to be affixed with a view of taking out a summons for violation of the Act is a consumer within the meaning of the Act. [Ethier v. Minister of Inland Revenue, 27 Can. Cr. Cas. 12, 32 D.L.R. 320, followed.] Minister of Inland Revenue v. Bourke et al., 31 Can. Cr. Cas. 48, 45 D.L.R. 335.

INSANITY.

MURDER; PRELIMINARY ENQUIRY AS TO INSANITY; PROCEEDING WITHOUT ENQUIRY.

On a trial for murder, the Crown moved for an enquiry as to prisoner's sanity and the case was sent over to the next Assizes, the trial Judge remarking: "There will be that preliminary trial first to determine. Of course, when that time arrives, there may not be any doubt about his sanity, or, on the other hand, there may not be any doubt about his insanity." At the next Assizes there was a different Judge. The trial proceeded without the enquiry as to sanity being held as mentioned. It was then objected on behalf of accused that the enquiry should have been held before trial, and a reserved case requested for the opin-

ion of the Court of Appeal. The objection was overruled, and a reserved case refused:—Held, on appeal, that the Judge at the first Assize merely directed counsel how they should proceed at the second Assize, and that the motion should be dismissed. (Per Macdonald, C.J.A.) That the counsel for accused by proceeding to verdict at the second Assize, had waived or abandoned any order that was made, or supposed to have been made, at the previous Assize. (Per Irving and Martin, J.J.A.) The proper order to have been made at the first Assize was to have postponed the trial in the ordinary way, leaving it to the Judge at the next Assize to decide, de novo, the issue as to the sanity or insanity of the accused at the time of such next Assize. (Per Martin, J.A.) Rex v. Watt, 15 B.C.R. 466.

PLEA OF INSANITY; INSTRUCTION THAT NO EVIDENCE IN SUPPORT.

A case may be reserved at the instance of the Crown upon a question of law as to whether there was any evidence of insanity to support the jury's verdict of not guilty upon that ground. The King v. Phinney (No. 1), 6 Can. Cr. Cas. 469.

THEFT; PLEA OF INSANITY; ACQUITTAL.

On a plea of insanity raised to a charge of theft a verdict of acquittal upon that ground (Code, sec. 736) cannot be disturbed on a reserved case granted to the Crown if there was any evidence, however unsatisfactory, to support the plea. The King v. Phinney (No. 2), 7 Can. Cr. Cas. 280.

[Referred to in R. v. Slaughenwhite, 9 Can. Cr. Cas. 89, 37 N.S.R. 424.]

PRELIMINARY ENQUIRY; SUGGESTION OF INSANITY OF ACCUSED; PERSONAL PRESENCE BEFORE THE MAGISTRATE.

(1) A remand by a magistrate in a preliminary enquiry must be by warrant if made for more than three clear days, and it is essential that the accused should be personally present before the magistrate. (2) A remand for eight days for the purpose of a medical examination of the accused as to sanity cannot be made on the mere suggestion of the police officer without bringing the accused personally before the magistrate. Re Sarault, 9 Can. Cr. Cas. 448.

[Distinguished in R. v. Bouchard, 20 Can. Cr. Cas. 95, 4 D.L.R. 317; referred to R. v. Goulet, 20 Can. Cr. Cas. 191.]

ORDER OF LIEUTENANT-GOVERNOR FOR DETENTION AFTER ACQUITTAL OF CRIME ON GROUND OF INSANITY.

(1) A person acquitted on a criminal charge on the ground of insanity and committed to an insane asylum upon the order of the Provincial Lieutenant-Governor under Code, secs. 966 and 969, remaining in custody as a person who has committed a criminal act, and the asylum is as regards such person a "prison." (2) The detention of the person so committed to an asylum is upon an indeterminate sentence of imprisonment for crime and a person aiding and assisting in his escape from the asylum is criminally liable under Code, sec. 192. The King v. Trapnell, 17 Can. Cr. Cas. 346.

INSANITY AS A DEFENCE; IRRESISTABLE IMPULSE; KNOWLEDGE OF WRONG.

A person is not to be acquitted of a criminal charge on the ground of his insanity unless his mind is so affected by that insanity as that he is not capable of appreciating the nature and quality of his act and of knowing that such act was forbidden by law; it is not a sufficient defence that it may be proved that notwithstanding the existence of such appreciation and knowledge on the part of the accused, he had at the time of the offence lost the power of inhabition and had an impulse which he could not resist to commit the crime. The King v. Jessamine, 19 Can. Cr. Cas. 214, 1 D.L.R. 285.

DETERMINING SANITY OF ACCUSED; REMAND IN ABSENCE OF ACCUSED.

Where a person was brought before a magistrate upon a written complaint for an assault upon his wife, who, in her deposition, swore that the accused had twice been confined in an insane asylum, and that since his release therefrom he had continually threatened her with death, and the magistrate remanded the accused to gaol after directing an examination to be made by experts as to his sanity, the magistrate has discretion under sub-sec. 4 of sec. 722 of the Crim. Code (1906), eight days later, on their report not having been made, to sign another remand in the absence of the accused. [Re Sarault, 9 Can. Cr. Cas. 448, distinguished.] The King v. Bouchard, 20 Can. Cr. Cas. 95, 4 D.L.R. 317.

INSANITY AS DEFENCE; DEGREE OF PROOF; PRESUMPTION.

It is misdirection to instruct the jury in a murder trial in which the defence is insanity, that such defence must be made out so as to satisfy the jury "beyond a reasonable doubt," the latter expression having, by long judicial usage, become associated with the idea that more is required than merely being "satisfied" that the fact of insanity is proved. [McNaghten's Case, 10 Cl. & F. 200, considered; R. v. Myshrall, 8 Can. Cr. Cas. 474, referred to.] The rule as to presumption of sanity "until the contrary is proved" (Cr. Code 1906, sec. 19), as applied to a defence of insanity in a criminal case merely requires proof of insanity by a preponderance of evidence to the satisfaction of the jury. [R. v. Jefferson, 72 J.P. 467, 1 Cr. App. Cas. 95, 24 Times L.R. 877, considered.] R. v. Anderson, 22 Can. Cr. Cas. 455, 16 D.L.R. 203.

DEFENCE OF TEMPORARY INSANITY; STATEMENTS BY HUSBAND AS INDUCING CAUSE; RELEVANCY; EXPERT TESTIMONY.

On a charge of murder and a defence of insanity at the time of the commission of the offence, the onus is upon the accused of proving that she was at the time she committed the act in such a state of mind that she was incapable of appreciating the nature and quality of her act and of knowing that it was wrong; and whether statements made to the accused by her husband as to his acts of infidelity with the deceased and other women would have a tendency to make her temporarily insane is a question of fact as to which expert testimony must first be offered before proof of any such statements by the husband becomes relevant. [R. v. Tuckett, 1 Cox C.C. 103, applied.] R. v. Jennie Hawkes, 25 Can. Cr. Cas. 29, 25 D.L.R. 631.

DEFENCE OF INSANITY; MOTION TO QUASH CONVICTION; TRIAL JUDGE'S CHARGE TO JURY.

In a criminal trial where insanity is pleaded as a defence the jury should be told by the trial judge in his charge that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction; and that to establish a defence on the ground of insanity it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect or reason from disease of mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. In considering a portion of the trial judge's charge objected to, such portion must be taken and construed in conjunction with the charge as a whole and will not be a ground for quashing the conviction if it is evident that the jury could not have understood otherwise than that the prisoner was entitled to an acquittal, if they were satisfied that he did not know the nature and quality of the act he was charged with committing or that it was wrong. R. v. Keirstead, 30 Can. Cr. Cas. 175, 42 D.L.R. 193.

INSOLVENCY.

See also Bankruptcy; Extradition.

FRAUDULENT CONCEALMENT OF PROPERTY; QUASI-CRIMINAL PROCEEDINGS UNDER PROVINCIAL LAW; APPLICATION OF RULES OF CRIMINAL EVIDENCE.

In a proceeding of a penal nature involving deprivation of liberty, and brought under a provincial statute for an alleged concealment of property in fraud of creditors, the rules and principles of the criminal law as to the evidence and its effect are applicable, and there must be clear and conclusive evidence to justify a conviction. A finding that an insolvent has secreted a part of his property with the intent of defrauding his creditors is not supported by evidence merely of a discrepancy between two financial statements made by him a few months apart, and the failure of the insolvent to account for the deficit in his affairs other than as being the result of an extravagant expenditure of capital in living expenses. Bryce v. Wilks, 5 Can. Cr. Cas. 445.

FOREIGN BANKRUPT; FRAUDULENT CONCEALMENT OF ASSETS.

The essence of the offence of fraudulent concealment of assets by a bankrupt under the law of the United States is the continuance of the concealment after adjudication of bankruptcy and the appointment of a trustee, whose title relates back to the date of the adjudication, and extradition will not be refused merely on the ground that the act of concealment is alleged to have taken place before the date of the adjudication. United States v. Webber (No. 1), 20 Can. Cr. Cas. 1, 5 D.L.R. 863.

INSTRUCTION TO JURY.

See also Trial; New Trial.

Ambiguity; Effect. 1 Can. Cr. Cas. 48.

Judge's failure to submit, in his charge, a ground of defence disclosed. 2 Can. Cr. Cas. 444.

Misdirection on point of law; Substantial wrong. 7 Can. Cr. Cas. 95.

BIGAMY; SECOND MARRIAGE; EXTRA-PROVINCIAL MARRIAGE; MISDIRECTION; FAILURE TO INSTRUCT OF INTENT TO LEAVE PROVINCE TO COMMIT OFFENCE.

The prisoner was convicted of bigamy under 32 and 33 Vict. ch. 20, sec. 58, which enacts that whosoever, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in Canada or elsewhere, is guilty of felony . . . provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in Canada, by any other than a subject of Her Majesty, resident in Canada, and leaving the same with the intent to commit the offence. The first marriage was contracted in Toronto, the second in Detroit, U. S. The Judge at the trial directed the jury that if the prisoner was married to his first wife in Toronto and to the second in Detroit they should find him guilty:—Held, a misdirection, and that the jury should have been told in addition that before they found him guilty they ought to be satisfied of his being at the time of his second marriage a subject

of Her Majesty resident in Canada, and had left Canada with the intent to commit the offence; and held, that it was incumbent on the Crown to prove these matters. Quære, per Wilson, C.J., whether the trial should not have been declared a nullity. Regina v. Pierce, 13 O.R. 226.

CRIMINAL LIBEL; PLEA OF JUSTIFICATION; MISDIRECTION.

The defendant, having been convicted on a criminal information for libel, obtained a rule nisi for a new trial for the rejection of evidence, and for misdirection in ruling that there was no evidence to support the pleas of justification. Upon this rule coming up for argument the Court, under the circumstances, as a matter of indulgence, allowed to be argued, another ground of misdirection, not taken to the charge at the trial, in ruling that the libel implied malice, whereas the jury should have been told that, it being a privileged communication, the inference of malice was repelled. The rule requiring any objections to the charge to be taken at the trial, applies in criminal as well as civil proceedings. The learned Judge at the trial told the jury that the defendant must prove all the charges which he had justified; that the evidence fell far short of doing so, and that in his opinion they should find the pleas of justification against the defendant. This was not so much a direction on the law as the strong observation on the evidence, and therefore not open to the objection of misdirection. But if so open, there was no misdirection, for the defendant was bound to such proof, and the observation was justified by the evidence set out in this case. (Per Harrison, C.J.) There was evidence, upon the facts stated below, to go to the jury in support of the pleas of justification; and the defendant was entitled to a new trial for the misdirection. (Per Wilson, J.) Regina v. Wilkinson (1878), 42 U.C.Q.B. 492.

TRIAL FOR RAPE; FAILURE TO OBJECT AT TRIAL FOR MISDIRECTION OR NONDIRECTION OF COURT; SUFFICIENCY OF INSTRUCTIONS.

The rule is the same in criminal as in civil cases, at any rate where the prisoner is defended by counsel, that any objection to the charge of the presiding Judge, either for nondirection or for misdirection must be taken at the trial, and if not then taken it cannot be afterwards raised, especially where the evidence fully sustains the verdict. Nondirection is not an available objection where the verdict is not against evidence; and, where the law is clear, it is no misdirection to leave the facts simply to the jury, for they are the judges of the evidence. Misdirection can only be upon a point of law, not on a matter of fact. In this case, the facts as they appeared in evidence, were left to the jury, who were also told that they must be satisfied, before convicting him, that the prisoner had had connection with the prosecutrix "with force and violence and against her will," and further, that "some resistance should be made on the part of the woman" to shew that she really was not a consenting party:—Held, a proper and full direction, and that there was no misdirection. R. v. Fick, 16 U.C.C.P. 379.

DIRECTION TO RENDER A VERDICT OF NOT GUILTY.

In no case of misdemeanour, after verdict of acquittal, will a new trial be granted, on the ground that the verdict is against evidence or the weight of evidence. In cases of nonfeasance, such as nonrepair of a highway, a new trial may be ordered on the ground of misdirection, or improper reception or rejection of evidence; but in cases of misfeasance, such as obstruction of a highway, it is doubtful if a new trial should be granted in any case. Where the defendants were indicted for obstructing a navigable river by the erection of a wharf, and there was no evidence that the part covered by the wharf had even been navigated by vessels of any size, but it was shewn only that the prosecutor was prevented by it from landing there with his skiff, and the wharf was proved not to interfere with the navigation:—Held, that the jury were rightly directed that on this evidence the only verdict which could be rendered was not guilty. Such a direction is not so much a direction on the law as a strong observance on the evidence, which may properly be made in a proper case without being opened to the charge of misdirection. The Queen v. Port Perry and Port Whitby R. Co., 38 U.C.Q.B. 431.

INSTRUCTION AS TO CREDIBILITY OF WITNESS.

On a trial for murder, the Crown having made out a prima facie case by circumstantial evidence, the prisoner's daughter, a girl of fourteen, was called on his behalf, and swore that she herself killed the deceased without the prisoner's knowledge, and under circumstances detailed, which would probably reduce the guilt to manslaughter:—Held, that the learned Judge was not bound to tell the jury that they must believe this witness in the absence of testimony to shew her unworthy of credit, but that he was right in leaving the credibility of her story to them; and if from her manner he derived the impression that she was under some undue influence, it was not improper to call their attention to it in his charge. As to certain threats alleged to have been uttered by the prisoner, held, that they were clearly admissible, and if undue prominence was given to them in the charge, the attention of the learned Judge should have been called to it by the

prisoner's counsel. Remarks as to alleged misdirection in not directing that the jury must be satisfied not only that the circumstances were consistent with the prisoner's guilt, but that some one circumstance was inconsistent with his innocence. The prisoner's witness having stated that death was caused by two blows from a stick of certain dimensions, held, that a medical witness previously examined for the Crown was properly allowed to be recalled to state that, in his opinion, the injuries found on the body could not have been so occasioned. Remarks as to evidence of confessions, and an objection that the whole statement was not given. And as to the effect in criminal cases of a belief by the jury that false evidence has been fabricated for the prisoner, or false answers to questions. Regina v. Jones (a), (1868), 28 U.C.Q.B. 416.

EVIDENCE OF ALLEGED FORMER OFFENCE AND ACQUITTAL ON PRIOR INDICTMENT THEREFOR; SUBSTANTIAL WRONG OR MISCARRIAGE OBVIATED BY JUDGE'S INSTRUCTION.

Upon a trial and conviction for theft the fact that evidence was admitted for the Crown in respect of a transaction between the complainant and the accused which had been the subject of a prior indictment against the accused for theft, on which prior indictment the accused had been acquitted, will not invalidate the conviction, if the jury were informed of such acquittal and instructed in accordance with the prior verdict that the first transaction was in fact a loan repayable on the date of the offence now charged. The King v. Menard, 8 Can. Cr. Cas. 80.

JUDGE'S CHARGE; DUTY TO EXPLAIN OTHER OFFENCES FOR WHICH JURY MAY CONVICT; MURDER AND MANSLAUGHTER.

(1) Upon a criminal trial it is the duty of the trial Judge, in his charge to the jury, to define the crime charged, and to explain to the jury the difference between it and any other offence for which the jury may convict the accused under the same indictment. (2) Failure to instruct the jury in a trial for murder upon the distinction between murder and manslaughter is a ground for ordering a new trial. (3) A Court of criminal appeal should direct a new trial upon a case reserved by the trial Judge after the trial in respect of such omission in the Judge's charge to the jury, although no objection thereto was taken by the defendant's counsel during the trial. The King v. Wong On (No. 3), 8 Can. Cr. Cas. 423.

[Followed in R. v. Scherf, 13 Can. Cr. Cas. 386; relied on in R. v. Barrett, 14 Can. Cr. Cas. 475.]

HUSBAND AND WIFE JOINTLY ACCUSED; ADMISSION BY ONE OF THEM INCRIMINATING THE OTHER.

(1) Where two prisoners are being jointly tried for an offence, a voluntary admission made by one of them is evidence against himself only, and if it implicates a fellow prisoner the trial Judge should warn the jury that the statement is evidence only against the person making it and should not be considered in weighing the evidence against the fellow prisoner. (2) Semble, the prisoner jointly charged and likely to be implicated by the statement of the other accused person, would have good ground for applying to be separately tried, in order to prevent the statement being put in even with such warning, as evidence before the jury by which he is to be tried. (3) Such a statement of one prisoner, if proved, must be proved in toto, and the Court would not be justified in directing that the name of others thereby implicated to suppressed by the witness proving the statement of the accused. The King v. Martin, 9 Can. Cr. Cas. 371.

[Referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 238; referred to in R. v. See Woo, 16 Can. Cr. Cas. 214.]

MURDER; NO EVIDENCE TO REDUCE HOMICIDE TO MANSLAUGHTER; JUDGE'S CHARGE.

Where on the trial for murder the evidence was that the deceased had been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidently, and no case of culpable homicide of less degree than murder was presented on the evidence, there could be no objection to a charge by the trial Judge to the jury that the offence could not be reduced by them from murder to manslaughter, but that their verdict should be either for acquittal or one of guilty of murder. Gilbert v. The King (No. 2), 12 Can. Cr. Cas. 127.

[Relied on in R. v. Scherf, 13 Can. Cr. Cas. 389; followed in R. v. Barrett, 14 Can. Cr. Cas. 469; discussed in R. v. Daley, 16 Can. Cr. Cas. 175.]

ATTEMPT TO COMMIT RAPE.

On the trial of an indictment to commit rape if the only issue involved is as to the identity of the prisoner, it is unnecessary for the trial Judge to point out to the jury that the law permits the finding of a lesser offence than the one charged. The King v. Clarke, 12 Can. Cr. Cas. 299.

CIRCUMSTANTIAL EVIDENCE; MISDIRECTION AS TO ROOM FOR DOUBT.

(1) On a trial for murder where the evidence is circumstantial, it is for the jury alone to pronounce on the question of the truth of the alleged circumstances deposed to, and also as to what inferences which the facts would warrant shall be drawn from the circumstantial evidence. (2) It is error and ground for a new trial for the trial Judge to instruct the jury that they cannot doubt that certain inferences are

to be drawn on points material to the issue. The King v. Collins, 12 Can. Cr. Cas. 402.

CHARGE TO JURY; RIGHT OF JURY TO FIND FOR LESSER INSTEAD OF GRAVER OFFENCE; MISDIRECTION; NEW TRIAL; RAPE; ASSAULT; CR. CODE 1906, SECS. 299, 1016, 1018.

If the Judge allows the indictment to go generally to the jury, it is not competent for him to withdraw from their consideration a verdict for any lesser offence which may be included in the indictment. The King v. Scherf, 13 Can. Cr. Cas. 382.

[Relied on in R. v. Barrett, 14 Can. Cr. Cas. 475.]

MURDER; EVIDENCE AT TRIAL; COMMENT THEREON IN JUDGE'S CHARGE; NO QUESTION OF FACT WITHDRAWN FROM JURY.

A Judge presiding at a criminal trial may, in his charge to the jury, state his own opinion as to what inferences of fact may be drawn from the testimony, while leaving it to the jury to believe or disbelieve any portion of the evidence and to draw their own inferences therefrom. The King v. Swyryda, 15 Can. Cr. Cas. 138.

DISREGARD OF INSTRUCTION; VERDICT LEGAL.

A conviction on the uncorroborated testimony of an accomplice is legal, although the jury was advised by the trial Judge not to convict on such evidence. The King v. Reynolds, 15 Can. Cr. Cas. 209.

[Followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497; distinguished in 1 R. v. Ratz, 21 Can. Cr. Cas. 343, 12 D.L.R. 678.]

MURDER; REDUCING CHARGE TO MANSLAUGHTER; QUESTION FOR JURY; OMISSION TO DIRECT JURY ON LAW APPLICABLE TO ISSUE RAISED ON EVIDENCE.

(1) The presumption that a man intends the natural consequences of his act may be rebutted by shewing that his mind was so affected by his state of intoxication that he was then incapable of knowing that what he did was likely to cause serious injury. (2) The extent of the intoxication of the accused at the time he beat his wife to death with an iron poker is a proper one to be considered by the jury on his trial for murder, and where there was evidence from which the jury might find that his intoxication was such that he was incapable of forming any intention whatever, it is the duty of the trial Judge to charge the jury as to the law applicable to such a state of facts on the question of the intent involved in the charge, although no request for a direction thereon was made by prisoner's counsel. (3) The Court of Appeal may order a new trial where the jury has not been directed as to a material question raised upon the evidence which might, with a proper direction, have resulted in a verdict of manslaughter instead of murder. The King v. Blythe, 15 Can. Cr. Cas. 224.

[Followed in R. v. Daley, 16 Can. Cr. Cas. 177; referred to in R. v. Monvoisin, 18 Can. Cr. Cas. 122.]

MURDER; NONDIRECTION OF JURY AS TO FAILURE OF PROOF; DIRECTION NOT ASKED AT TRIAL; NO ESTOPPEL WHERE PREJUDICE TO ACCUSED.

(1) A substantial wrong may be occasioned to the accused within the meaning of Code, sec. 1019 by a mere nondirection as well as by a misdirection, and the jury should have been told to disregard the statement so made by the Crown counsel. (2) The accused is not estopped from raising such question of nondirection by the failure of his counsel to ask a direction at the trial. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. v. Sylvester, 19 Can. Cr. Cas. 314, 1 D.L.R. 186.]

ROBBERY; THEFT FROM THE PERSON; JUDGE'S CHARGE.

(1) On the trial of an indictment charging robbery with violence and stealing from the person, if there is evidence on which the jury might find simple theft, a new trial must be ordered if the trial Judge in effect directed the jury that the accused must be acquitted unless they found not only that the accused stole the money, but that he stole it from the person of the prosecutor. (2) Where a crime of less degree than that charged in the indictment and for which lesser crime a verdict might be given under Code, sec. 951, is presented on the evidence, the jury must be instructed regarding such lesser crime as well as the greater crime stated in the indictment. (3) While the accused by reason of such misdirection derived a chance of acquittal to which the law did not entitle him, the jury may have been led to convict of "theft from the person" through unwillingness to wholly acquit the prisoner, while they might, if properly instructed, have convicted of simple theft only. (4) Where there is a prejudicial misdirection by the trial Judge, the accused is not deprived of his right to a new trial because of his failure to complain of the misdirection at the time. The King v. Daley, 16 Can. Cr. Cas. 168.

MURDER; EVIDENCE OF ACCOMPLICE; CORROBORATION; QUESTION FOR JURY.

The trial Judge having charged the jury that it was not usual or proper to convict on the uncorroborated evidence of an accomplice, but that the case could not be taken from them, and having fairly pointed out to the jury the points as to which there was corroboration and also those as to which there was no corroboration, the conviction should not be set aside on a claim of mis-

direction. The King v. McNulty, 17 Can. Cr. Cas. 26.

[Followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497.]

JUDGE'S CHARGE AGAINST ACCUSED; FACTS LEFT TO JURY.

It is not error for the trial Judge to have charged the jury strongly against the accused on the uncontradicted evidence for the Crown, if he left the facts entirely to the jury as to whether the accused was or was not guilty. The King v. Michaud, 17 Can. Cr. Cas. 86.

MURDER; TRIAL JUDGE STATING TO JURY HIS IMPRESSIONS FROM THE EVIDENCE; SUGGESTION OF REPORT AFTER FIVE MINUTES' ADDITIONAL CONFERENCE; SUGGESTION OF POWER TO RECOMMEND TO MERCY.

(1) On a trial for murder by stabbing, it is not error to admit evidence of the finding in the prisoner's room, where he was arrested, of knives belonging to him capable of producing the fatal wound. (2) The trial Judge is at liberty to state to the jury his own impressions of the evidence, provided he makes it clear to the jury that they are the sole judges of the facts. (3) It is not error on a trial for murder for the trial Judge to call back the jury at the usual hour of adjournment after they had been deliberating two hours upon a verdict and ask them, on again retiring, to see if they could agree in five minutes, and at the same time to remind them that they could, if the saw fit, recommend to mercy. The King v. Ventricini, 17 Can. Cr. Cas. 183.

[Referred to in Hoo Sam, 19 Can. Cr. Cas. 267, 1 D.L.R. 569, 20 W.L.R. 571.]

INDECENT ASSAULT; JUDGE'S CHARGE THAT JURY MAY CONVICT OF ATTEMPT.

On a charge of indecent assault where there is no evidence to go to the jury upon the question of attempt if they found against the principal charge, but the trial Judge directed the jury that, if they could not find the prisoner guilty of indecent assault they might find him guilty of an attempt, and the jury found a verdict for the attempt only, the conviction will be set aside. The King v. Menary, 18 Can. Cr. Cas. 237.

LANGUAGE OF THE JUDGE.

It is not misdirection for the trial Judge charging the jury to speak of an admission against his interest, made by the accused as a "confession" and to use the word "confession" synonymously for a statement against his interest. The King v. Hoo Sam, 19 Can. Cr. Cas. 259, 1 D.L.R. 569.

DEFINING CHARACTER OF OFFENCE.

On a criminal trial an instruction is not erroneous by which the jury were told, in substance, that the accused would be guilty of the offence of procuring under Cr. Code 1906, sec. 216 (f), only if they found that, at the time the accused induced a woman to enter a brothel she was not already an inmate of such a place. The King v. Mah Hung, 20 Can. Cr. Cas. 40, 2 D.L.R. 568.

CORRECTNESS OF INSTRUCTION TO JURY; SHOOTING WITH INTENT TO MURDER.

On the trial of an indictment for shooting with intent to murder, it is proper that the jury be directed that if the evidence so warrants, a verdict may be rendered of shooting with intent to maim or to do grievous bodily harm. The King v. Kerr, 20 Can. Cr. Cas. 70, 3 D.L.R. 720.

MURDER; MANSLAUGHTER.

Upon a trial for murder, upon a request for a charge of manslaughter upon the alleged ground that the accused shot the deceased while "in the heat of passion caused by sudden provocation," the charge was properly refused where nothing was said in the evidence as to the accused having been aroused to a heat of passion and the circumstances were, in the view most favourable to the defendant, (1) that he was on the scene with the criminal intent to steal; (2) that he believed the deceased to be a secret police officer; (3) that the only provocation suggested by the defence was that such officer came up to the accused at a place where he was lurking under circumstances justifying suspicion and thereupon pointed a pistol toward him and told him "to go to hell." [R. v. Eberts (No. 1), 20 Can. Cr. Cas. 262, 7 D.L.R. 530, affirmed; Cr. Code 1906, sec. 261, referred to.] Eberts v. The King (No. 2), 20 Can. Cr. Cas. 273, 7 D.L.R. 538.

SLIGHTING OF PRISONER'S DEFENCE IN SUMMING UP.

It is a serious flaw in a criminal case if the directions to the jury are not as carefully put in regard to the prisoner's case as is the case of the prosecution. (Dictum per Ritchie, J.) [Rex v. Walton, 1 Cr. App. R. 227, approved.] The King v. Graves (No. 2), 20 Can. Cr. Cas. 384, 9 D.L.R. 30.

INSTRUCTION AS TO ADMISSIONS.

In instructing the jury on a criminal trial the Judge may properly direct the jury that it is for them to credit or not the exculpatory part of the story given by the accused in an implicating admission made to a fellow prisoner in the gaol, if the jury consider it not to be plausible and that it is open to them at the same time to credit other portions of the admissions if they see fit. R. v. Farduto, 21 Can. Cr. Cas. 144, 10 D.L.R. 669.

HOMICIDE; INSTRUCTION TO JURY; PRISONER'S LETTER.

On the trial of a murder charge the construction of a letter written by the accused and placed in evidence is for the Judge and

not for the jury, and where the letter itself is a request to make false statements in aid of his defence, the trial Judge may tell the jury that they should take into consideration the prisoner's action in endeavouring to manufacture evidence to mislead the Court by concocting the scheme as disclosed in his letter, to account for the money found on him. A slightly inaccuracy in the Judge's charge to the jury in referring to certain evidence as having been given at the preliminary enquiry whereas it was in fact given at the trial itself, and the depositions at the preliminary enquiry were not then put in as evidence, but the preliminary enquiry was referred to in the testimony, will not constitute a ground for setting aside a conviction, where the inaccuracy could not have prejudicially affected the prisoner. R. v. Haynes, 23 Can. Cr. Cas. 101.

COMMENT ON FAILURE OF ACCUSED TO TESTIFY; CANADA EVIDENCE ACT.

A direction to the jury on a criminal trial that the accused had failed to account for a particular occurrence, as to which, by reason of the testimony adduced against him, the onus was cast upon him to answer, is not a comment upon the failure of the accused to testify, and does not contravene sec. 4 of the Canada Evidence Act, R.S.C. 1906, ch. 145. [R. v. Aho, 8 Can. Cr. Cas. 453, 11 B.C.R. 114, applied.] R. v. May, 23 Can. Cr. Cas. 469, 21 D.L.R. 728.

INSURANCE LAWS.

PROVINCIAL INSURANCE COMPANY; REGISTRATION.

An insurance company incorporated under the provisions of a provincial law is not entitled to carry on a fire insurance business in another province without being registered or licensed under the laws of such other province or of the Dominion of Canada. The person who manages and carries on the business of such unregistered and unlicensed insurance company in a province other than that by which it was incorporated is liable to summary conviction therefor under the provisions of the Insurance Act of Canada, R.S.C. 1886, ch. 124, sec. 22. The Insurance Act of Canada is intra vires of the Parliament of Canada as regards the provisions thereof controlling provincial companies doing business in Canada outside of the limits of the province under the laws of which they were incorporated. R. v. Holland, 4 Can. Cr. Cas. 72.

INTENT.

DEMAND WITH MENACES; INTENT TO STEAL, see Menaces.

IRREGULAR VERDICT ON QUESTION OF, see Verdict.

Murder; Similar insurance of others effected by accused. 1 Can. Cr. Cas. 5.

Illegal conspiracy; Nature of; Motive. 1 Can. Cr. Cas. 261.

Animus manendi; Extra territorial acts. 1 Can. Cr. Cas. 172.

In Criminal conspiracy. 1 Can. Cr. Cas. 262.

Assault with intent to murder. 5 Can. Cr. Cas. 541.

Rebutting criminal intent; Mitigating circumstances. 7 Can. Cr. Cas. 276.

MENS REA; KNOWLEDGE OF UNLAWFUL ACT.

If a man knowingly does acts which are unlawful, the presumption of law is that the mens rea exists; ignorance of the law will not excuse him. R. v. Mailloux, 3 Pugs. (N.B.) 493.

TO BE INFERRED FROM FACT.

Where a prisoner is indicted for feloniously wounding with intent to do grievous bodily harm, the intention may be inferred from the fact. R. v. Le Dante, 2 Gel. & Ox. (N.S.) 401, 8 N.S.R. 401.

MURDER; LIFE INSURANCE.

To prove the alleged motive of securing life insurance moneys, in a trial for murder, evidence is properly admissible, as a part of the res gestæ of all applications for insurance made practically at the same time and forming parts of one transaction, although some of the applications were refused and no insurance effected thereupon. R. v. Hammond, 1 Can. Cr. Cas. 373.

[Referred to in R. v. Sunfield, 13 Can. Cr. Cas. 11.]

POISONING; INTENT; PROOF OF.

Evidence is admissible on a charge of murder by poisoning to shew the administration of the same kind of poison by the prisoner to another person, as proving intent. The Queen v. Sternaman, 1 Can. Cr. Cas. 1.

PROOF OF INTENT; THEFT; EVIDENCE OF SIMILAR ACTS.

To shew the animous of an act, evidence of previous and subsequent conduct in the commission of other acts of a like character is admissible, although such other acts are in themselves crimes. R. v. McBerny, 3 Can. Cr. Cas. 339.

[Followed in R. v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210; R. v. Burke, 3 Can. Cr. Cas. 15; relied on in R. v. Reid, 12 Can. Cr. Cas. 354; R. v. Bigelow, 8 Can. Cr. Cas. 134; referred to in Ex parte Monahan, 17 Can. Cr. Cas. 53; R. v. Sing, 6 Can. Cr. Cas. 156, 9 B.C.R. 254; Re Cross, 3 Can. Cr. Cas. 177.]

"UNDERTAKING" TO TELL FORTUNES.

Deception is an essential element of the offence of "undertaking to tell fortunes"

under sec. 396 of the Criminal Code, and to uphold a conviction for that offence there must be evidence upon which it may be reasonably found that the accused was asserting or representing, with the intention that the assertion or representation should be believed, that he had the power to tell fortunes, with the intent in so asserting or representing of deluding and defrauding others. R. v. Marcott, 4 Can. Cr. Cas. 437.

PROOF OF IMMORAL RELATIONSHIP; MOTIVE.

Where the question of motive is an important element in the case, and the motive charged depends on the alleged improper relations of the accused with a certain female, evidence is admissible to prove such relations, although it tends to shew that he is of bad character, and notwithstanding the general rule which prevents the prosecution from adducing evidence of the general bad character of the accused as a circumstance in proof of the charge. R. v. Barsalou (No. 2), 4 Can. Cr. Cas. 347.

DRUGS FOR PROCURING MISCARRIAGE; UNLAWFUL ADVERTISEMENT; LABEL WITH CAUTION AGAINST USE.

On a charge under Code, sec. 179 (c) of advertising a medicine intended or represented as a means of causing miscarriage and in support of which the printed advertisement alone is relied on, the words of the advertisement must be taken in their natural and primary sense, with the same strictness as in a case of criminal libel. Without proof of the ingredients of a medicine advertised as a "female regulator," or other proof of the intent for which the medicine was sold, it should not be inferred from the fact that it was labelled with a printed "caution" against the use of the medicine during pregnancy, that it was intended or represented as a means of causing miscarriage. The King v. Karn, 5 Can. Cr. Cas. 543.

[Reversed in R. v. Karn, 6 Can. Cr. Cas. 479.]

ENTERING A DWELLING HOUSE IN THE NIGHT TIME WITH INTENT; ASSAULT IN EFFORTS TO BREAK OUT.

(1) On an indictment for being unlawfully in a dwelling house by night with intent to assault a written verdict of "guilty of being in the house unlawfully, also guilty of assault," is a good verdict of guilty on the charge, as the assault necessarily includes the intent. (2) To complete the offence of being unlawfully in a dwelling house with intent to assault, it is sufficient that the intent originated after the entry, and that the assault was threatened by the accused in his efforts to escape from the house after being discovered therein. (3) Semble, the verdict as to intent while in the house is not affected by the circumstance that the same count of the indictment charged also the entering of the house with intent to make the assault. The King v. Higgins, 10 Can. Cr. Cas. 456.

BIGAMY.

An absence of mens rea is not to be inferred from the knowledge of the husband that a divorce has been decreed by the foreign Court on his wife's application and from his having first obtained legal advice that he could legally marry again. The King v. Brinkley, 12 Can. Cr. Cas. 454.

[Referred to in R. v. Hamilton, 17 Can. Cr. Cas. 413; followed in R. v. Bleiler, 19 Can. Cr. Cas. 250, 1 D.L.R. 878.]

BONA FIDE BELIEF OF CHEATING AT GAME.

(1) Where the loser in a card game was informed shortly after its termination that he had been cheated and thereupon, in the bona fide belief (whether mistaken or not) that such was the case, assaulted the winner and by force took from him a part of the money won in the game, such assault and retaking does not constitute theft or robbery. (2) Under such circumstances the accused may properly be convicted of common assault. The King v. Ford, 12 Can. Cr. Cas. 555.

ABDUCTION; KNOWLEDGE BY ACCUSED OF FATHER'S OBJECTION; MENS REA.

The offence of unlawful taking under Code, sec. 315 does not depend on mens rea and the object or intention with which the girl was taken is not material, where the objection of the person having unlawful control over her is known to the accused. The King v. Holmes, 16 Can. Cr. Cas. 7.

[Followed in R. v. Yorkema, 16 Can. Cr. Cas. 191.]

AUTOMOBILE SPEED REGULATIONS; OWNER'S STATUTORY LIABILITY TO PENALTY FOR ACTS OF OTHERS; DOCTRINE OF MENS REA NOT APPLICABLE.

The doctrine of mens rea or guilty knowledge does not apply to that offence under the Quebec Motor Vehicles Act in view of the clause therein (article 1406), which provides that the "owner" shall be held responsible for any violation and for accidents or damages caused by his motor vehicle upon a highway. The King v. Labbe, 17 Can. Cr. Cas. 417.

UNLAWFUL USE OF A BEVERAGE TRADEMARK ON BOTTLES.

Some offences require a criminal intent, mens rea, but that rule does not apply to all criminal offences and in particular does not apply to the offence under sec. 490 of the Cr. Code, of unlawfully using a beverage trademark on bottles. [R. v. Beckwith, 7 Can. Cr. Cas. 450, specially referred to.] The King v. Coulombe, 20 Can. Cr. Cas. 31, 6 D.L.R. 99.

INTENT; MENS REA.

In construing a statute creating an offence

against public order and punishable as a crime there is a presumption that mens rea, an evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient until met by clear and definite enactment overriding such presumption. [Sherras v. De Rutzen, [1895] 1 Q.B. 918, 921; Chisholm v. Doulton, L.R. 22 Q.B.D. 736, applied.] R. v. McAllister, 22 Can. Cr. Cas. 166, 14 D.L.R. 430.

INTERDICTION.

SALE OF LIQUOR BY LICENSEHOLDER TO PERSON INTERDICTED BY INSPECTOR'S NOTICE.

(1) On a charge against a licenseholder for supplying liquor to a person interdicted by the license inspector as an habitual inebriate under the Liquor License Act (Ont.) the prosecutor must not only prove the notice of interdiction but also that the interdict was in the habit of drinking to excess. (2) Where a summary conviction was made without evidence that the interdict was in an habitual inebriate, the prosecutor will not be allowed on the defendant's appeal from the conviction, to supplement his case by producing such evidence on the appeal and the conviction will be quashed. The King v. Morrison, 15 Can. Cr. Cas. 215.

INTERPRETATION.

Note on interpretation of enabling words. 2 Can. Cr. Cas. 55.

Note on interpretation of criminal statutes. 5 Can. Cr. Cas. 363.

"Part" headings of Code; Effect of. 5 Can. Cr. Cas. 372.

NATURE AND ELEMENTS OF CRIME.

The term criminal law, used in sec. 91 of the British North America Act, must include every act or omission which was regarded as criminal by the law of the province when the B.N.A. Act was passed, and which was not merely an offence against a by-law of a local authority. [Regina v. Wason, 17 A.R. 221, considered and commented on.] Regina v. Shaw, 7 Man. L.R. 518.

OF STATUTE; "MAY."

When a statute confers an authority to do a judicial act upon the conference of certain circumstances, and for the benefit of an interested party, the exercise of the judicial authority so conferred is imperative and not discretionary when applied for by the interested party. Fenson v. New Westminster, 2 Can. Cr. Cas. 52.

INTERPRETATION OF CODE.

The Criminal Code should be construed as complete and exhaustive as to matters of procedure with which it deals. The King v. Snelgrove, 12 Can. Cr. Cas. 189.

"NOSCITUR A SOCIIS" RULE OF INTERPRETATION.

Although a common gaming house is a "disorderly house" for the purposes of indictment under Code, sec. 228, it is not so as to the offence of vagrancy in keeping or being an inmate of a disorderly house under Code, sec. 238 (j), and the meaning of the words "disorderly house" as used in the latter section as well as in Code, sec. 773 is governed by the rule "noscitur a sociis" and is therefore restricted to houses of the same class or kind as houses of ill-fame or bawdy houses. The King v. Lee Guey, 13 Can. Cr. Cas. 80.

[Discussed in R. v. Nar Singh, 14 Can. Cr. Cas. 456; specially referred to in R. v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276.]

APPEAL FROM SUMMARY CONVICTION; "MORE THAN FOURTEEN DAYS BEFORE" THE SITTINGS.

(1) In computing the time which must intervene between the conviction and the sittings of the Court hearing an appeal under Code, sec. 750, the term "more than fourteen days before the sittings" means that fifteen days at least must intervene between the date of conviction and the date fixed for the sittings. (Per Townshend, C.J., and Meagher, J.) (2) The term "more than fourteen days before the sittings" means that fourteen days only need intervene between the date of conviction and the date fixed for the sittings. (Per Russell, J.) The King v. Johnston, 13 Can. Cr. Cas. 179.

SUNDAY OBSERVANCE; ALTERNATIVE FRENCH VERSION OF QUEBEC STATUTE MORE FAVOURABLE TO ACCUSED; CONSTRUCTION OF STATUTE.

(1) In construing penal statutes of the Province of Quebec which are enacted concurrently in both the English and French languages, that version is to be taken which is most favourable to the accused. (2) By carrying on a "moving picture" show on Sunday at which an admission fee is charged, the proprietor thereof does not violate the Quebec Sunday Observance Act prohibiting the pursuit of any business or calling (exercer aucun négoce ou métier) as the corresponding words of the French version of the statute are restricted to the sale of goods, mercantile affairs and the manual occupations. (3) An exhibition of "moving pictures" showing events in the life of Napoleon Buonaparte without verbal explanation or musical accompaniment, is not a theatrical performance, within the prohibition of that statute. The King v. Charron, 15 Can. Cr. Cas. 241.

"UNLAWFUL" CARNAL KNOWLEDGE; WHERE "UNLAWFUL" MEANS "NOT LAWFUL" AS DISTINGUISHED FROM "CRIMINALLY PUNISHABLE."

The term "unlawfully" as used in Code, sec. 217 means not unlawful or not sanctioned by law. The King v. Karn, 15 Can. Cr. Cas. 301.

[Distinguished in R. v. Sam Sing, 17 Can. Cr. Cas. 363.]

DEPUTY ATTORNEY-GENERAL; AGENT OF ATTORNEY-GENERAL.

(1) The Deputy Attorney-General of Saskatchewan is not an "agent" of the Attorney-General within Code, sec. 873A. (2) Section 31 of the Interpretation Act, R.S.C. 1906, ch. 1, which enacts that words empowering a minister of the Crown to do anything shall include his lawful deputy unless a contrary intention appears, does not validate a charge so laid by the Deputy Attorney-General as Code, sec. 2 (Sub-sec. 2), expressly declares that in the Code the term Attorney-General shall means the Attorney-General or Solicitor-General of the province. The King v. Duff (No. 2), 15 Can. Cr. Cas. 454.

[Specially considered in Re The Criminal Code and Re The Lord's Day Act, 16 Can. Cr. Cas. 459.]

UNREGISTERED "GRANT" OR "PRIVILEGE;" CONVICTION QUASHED.

(1) An equity of redemption is not such a right as comes within the class of transactions mentioned in Code, sec. 421, viz., unregistered sales, grants, mortgages, hypothacs, privileges or incumbrances of or upon real property. (2) The term "privilege" is not used to designate any right, title or interest in lands in the province of Ontario. (Per Meredith, J.A.) The King v. McDevitt, 17 Can. Cr. Cas. 331.

MEANING OF WORD "FAMILY."

An illegitimate child, whether resident with the father or not, is included in the term "family" as used in sec. 238 of the Criminal Code. The King v. Barthos, 17 Can. Cr. Cas. 459.

MINING ENGINEER; PROFESSION EMPLOYMENT; INDEPENDENT CONTRACTOR.

The words "agent or employee" in the statute 8-9 Edward VII., ch. 33, sec. 3 (Can.) respecting secret commissions do not apply to professional men, and a mining engineer engaged to make a report on a mine is not within the statute. The King v. Dici, 18 Can. Cr. Cas. 51.

EJUSDEM GENERIS RULE OF CONSTRUCTION; LIMITATION.

(1) The ejusdem generis rule of construction is not to be applied where it would defeat the object sought to be accomplished by the Legislature and where the legislative intention can be collected from the language used in the statute. (2) The manufacture of asphalt paving material under conditions which constitute a nuisance is ejusdem generis with the refining of coal oil and the manufacturing of gas, both of which are specially mentioned in sec. 72 of the Ontario Public Health Act, but, whether of that class or not, the carrying on of the business of manufacturing asphalt paving material under such conditions and without the consent of the municipality is an offence under that Act as included within the general clause "any other noxious or offensive trade, etc., or such as may become offensive," which clause follows the list of specific trades for which the consent of the municipality is required. The King v. Barber Asphalt Paving Co., 18 Can. Cr. Cas. 261.

POSTAL LAWS; "SENDS," MEANING OF.

The word "sends" in sec. 136 of the Post Office Act, as applying to prohibited competition with the postal service, is not limited to cases in which the ultimate delivery to the addressee is intended to be made otherwise than through the postal service. The King v. Baxter, 18 Can. Cr. Cas. 340.

"PRIZE FIGHTING;" "ENCOUNTER" AND "FIGHT," MEANING OF.

In the statutory definition of a prize fight (Cr. Code 1906, sec. 31) as an "encounter or fight" with fists or hands between two persons who have met for such purpose by previous arrangement, the words "encounter" and "fight" are synonymous. The King v. Fitzgerald, 19 Can. Cr. Cas. 145.

MEANING OF "CHARACTER" AS USED IN CR CODE 1906, SEC. 212.

The words "previously chaste character" as used in the Criminal Code 1906, sec. 212, as to seduction under promise of marriage, do not necessarily imply that the female shall be "virgo intacta." The King v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.

MEANING OF WORD "SCAB."

The term "scab" as applied to one who takes the place of a striking workman, is one of opprobrium, meaning a very mean, low man, or one to be despised. The King v. Elderman, 19 Can. Cr. Cas. 445.

CONSTRUCTION OF STATUTE; "GREATER SPEED THAN ONE MILE IN FOUR MINUTES."

(1) In sec. 20 of the Motor Vehicle Act, 2-3 Geo. V. (Alta.) ch. 6, the expression "greater speed than one mile in four minutes" mean any speed for any distance less than a mile which if continued would result in a full mile being covered in less than four minutes, the word "speed" as therein used meaning rate of motion, and the words "one mile in four minutes" simply supplying the measure of the same. (2) Upon a question of construction of certain words

in a statute, if the words in themselves are susceptible of either of two meanings, the Court will adopt the more reasonable construction. [Sec. 20 of Motor Vehicle Act, 2 and 3 Geo. V. (Alta.) ch. 6, construed.] The King v. Ley, 20 Can. Cr. Cas. 170, 7 D.L.R. 764.

MEANING OF "VERDICT."

The word "verdict" in sec. 1021 of the Cr. Code is confined to the findings of a jury. The King v. Murray and Fairbairn, 20 Can. Cr. Cas. 197, 8 D.L.R. 208.

"PUBLIC PLACE" DEFINED.

An hotel is not a "public place" within the meaning of sec. 13 of 2 Geo. V. ch. 55, amending the Liquor License Act (Ont.); such a "public place" must be a street, square, park or other open place. [Case v. Story, L. R. 4 Ex. 319, referred to.] The King v. Cook, 20 Can. Cr. Cas. 201, 8 D.L.R. 217.

MEANING OF "NECESSARIES" AS USED IN CAN. CR. CODE 1906, SEC. 242.

"Necessaries" for failing to provide which for his wife or children, a husband is liable under sec. 242 of the Cr. Code, are such things as are essential to preserve life, since such word is not used in its ordinary legal sense, and what will constitute necessaries must be determined in view of the circumstances of each particular case. [R. v. Brooks, 5 Can. Cr. Cas. 372, approved.] The King v. Sidney, 20 Can. Cr. Cas. 376, 8 D.L.R. 256.

MARGINAL HEADINGS.

The marginal headings to the sections of a statute are not to be looked at to limit the plain meaning of the text. R. v. Battista, 21 Can. Cr. Cas. 1, 9 D.L.R. 138.

[Compare R. v. Shand, 8 Can. Cr. Cas. 45, 51.]

STARE DECISIS; TERRITORIAL COURT DECISIONS.

The Supreme Court of Alberta is not bound to follow as a precedent the decision of the former Supreme Court of the North-West Territories having jurisdiction over the territory part of which is now the Province of Alberta, in a criminal case involving the interpretation of a section of the Criminal Code of Canada. R. v. Thompson, 21 Can. Cr. Cas. 80.

RECURRING PHRASES IN STATUTE.

In the interpretation of the Criminal Code where the same words occur in different sections they should be given the same meaning unless a contrary intention appears. R. v. Romer et al., 23 Can. Cr. Cas. 235.

RETROACTIVENESS OF STATUTE.

A statute should not be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction. Collector of Revenue v. Boisvert, 24 Can. Cr. Cas. 138.

UNIFORMITY OF DECISION.

The Court of Criminal Appeal in one province should follow the decision of a Court of like jurisdiction in another province in the interpretation of the Criminal Code unless very strong ground be shown for a different course. R. v. Sam Jon, 24 Can. Cr. Cas. 334.

EJUSDEM GENERIS; QUEBEC LICENSE LAW.

A general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words, so in sec. 1292 (a) added in 1915 to the Quebec License Law, R.S.Q. 1909, the requirement of a license fee for any "traveling troupe or organization exhibiting trained animals, or acrobatic feats, or curios and freaks or giving concerts and minstrel shows or any other similar shows" is to be interpreted, both as to the word "concerts" and the term "other similar shows," by reference to the class of show specifically mentioned and as not applying to high-class entertainments given by artists distinguished in their profession. Collector of Revenue v. Paquet, 25 Can. Cr. Cas. 83.

RULES OF COURT; CR. CODE, SEC. 576.

Crown Rules made under Cr. Code, sec. 576 have the same effect as though embodied in the Code and are to be so construed. R. v. Dean, 28 Can. Cr. Cas. 212, 37 D.L.R. 511.

INTERPRETER.

CRIMINAL TRIAL; CHINESE WITNESSES; OFFICIAL INTERPRETER; STATUS OF; OBJECTION FOR CAUSE.

The trial Judge has no power to direct that the official interpreter appointed by the Government shall not act in the trial of an indictment because of a charge brought forward by counsel for the defense that the interpreter had previously been actively engaged in assisting in the prosecution. The King v. Wong On (No. 1), 8 Can. Cr. Cas. 342.

FOREIGN WITNESSES; PARTIAL KNOWLEDGE OF ENGLISH LANGUAGE; TESTING COMPETENCY TO ANSWER IN ENGLISH.

(1) When it is sought to examine a witness through an interpreter in a foreign tongue, the opposing counsel may be given leave first to question the witness in English for the purpose of testing the witness's competency to speak English. (2) Where a foreign witness examined in chief through an interpreter has some knowledge of English, the counsel entitled to cross-examine may do so in English without the intervention of the interpreter, and may also, if he

chooses, put questions through the interpreter. The King v. Wong On (No. 2), 8 Can. Cr. Cas. 343.

SUMMARY CONVICTION OF FOREIGNER; INTERPRETING AT TRIAL.

A foreigner has no absolute right at his trial for a criminal offense to have the evidence interpreted in a language which he understands, and a magistrate's conviction and commitment is not subject to attack on habeas corpus on a claim that the attempted interpretation was defective or inefficient. The King v. Meceklette, 15 Can. Cr. Cas. 17.

[Followed in The King v. Sylvester, 19 Can. Cr. Cas. 302; referred to in R. v. Walker, 16 Can. Cr. Cas. 97; referred to in R. v. Pfister, 19 Can. Cr. Cas. 93.]

UNSATISFACTORY INTERPRETER; DUTY OF TRIAL JUDGE.

If an interpreter is found by the trial Judge not to be correctly interpreting the evidence either from incapacity or dishonesty, the Judge may discharge the jury and postpone the trial so that another interpreter may be procured, but where no such facts are shewn, although the interpreter was considered by the Judge to be inapt, there is no substantial wrong entitling the accused to a new trial. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. v. Sylvester, 19 Can. Cr. Cas. 314, 1 D.L.R. 186.]

PRISONER IGNORANT OF THE ENGLISH LANGUAGE; LIMITS OF HIS RIGHT TO HAVE EVIDENCE TRANSLATED.

A prisoner who is ignorant of the language in which the trial proceedings are conducted has no inherent right to be furnished with a literal translation of all that takes place at the trial; where the substance of the evidence in chief of a witness called on behalf of the prisoner is explained to him, the omission to explain to him in like manner what the witness said on cross-examination is not a ground for quashing a conviction, the prisoner having been represented by counsel and having suffered no prejudice by the omission. [The King v. Meceklette, 18 O.L.R. 408, 15 Can. Cr. Cas. 17, followed.] The King v. Sylvester et al., 19 Can. Cr. Cas. 302, 1 D.L.R. 186.

WRITTEN STATEMENT OF ACCUSED; INTERPRETER; ACCURACY OF TRANSLATION.

A statement made by the accused upon a preliminary enquiry and reduced to writing and signed by the accused under sec. 684 (3) of the Cr. Code 1906, is none the less admissible under Cr. Code, sec. 1001, at the subsequent trial because the Crown tenders the evidence of the magistrate that it was taken through an interpreter, nor is the onus cast upon the Crown to prove that the interpreter correctly interpreted to the accused the statutory warning and the written statement as translated into the language spoken by the accused upon his signing it in English. R. v. Walebek, 21 Can. Cr. Cas. 130, 10 D.L.R. 522.

IMMATERIAL OMISSIONS; EFFECT.

It is sufficient that an interpreter fairly and faithfully gives the substance of the testimony, omitting any irrelevant details. R. v. Bogh Singh, 21 Can. Cr. Cas. 323, 12 D.L.R. 626.

INTOXICATING LIQUORS.

I. Prohibition and Regulation; Statutes, By-laws and Ordinances.
II. Licenses.
  A. Discretion as to Granting.
  B. Cancellation, Revocation; Forfeiture.
III. Unlawful Sales; Offences and Proceedings.
  A. In General.
  B. Sales by Clubs and Their Agents.
  C. Sales by Agent, Clerk, Partner or Tenant.
  D. By Druggists.
  E. To Prohibited Persons.
  F. Prohibited Hours and Days.
  G. Place of Sale.
  H. Seizure and Destruction.
  I. Trial of Offenders.
  J. Second and Subsequent Offences.

ANNOTATIONS.

Application of fines under Can. Temperance Act. 1 Can. Cr. Cas. 24.

Municipal resolution to pay informers under Can. Temperance Act. 1 Can. Cr. Cas. 22.

Sale of liquor by club. 1 Can. Cr. Cas. 31.

Unauthorized penalty on conviction for selling liquor. 1 Can. Cr. Cas. 59.

Illegal sale of intoxicating liquors; Place of sale; Appropriation of goods before delivery. 6 Can. Cr. Cas. 207.

Commitment on distress being dispensed with. 7 Can. Cr. Cas. 436.

Amendment of 1904, Can. Temperance Act; Penalty for violation of Part II.; New section, 100. 8 Can. Cr. Cas. 520.

Canada Temperance Act; Operation in counties and cities; When city excluded from county. 9 Can. Cr. Cas. 538.

Statutory presumptions; Ontario Liquor License Act; 5 Can. Cr. Cas. 430.

Clubs. 4 Can. Cr. Cas. 364.

Proof of license on prosecution. 1 Can. Cr. Cas. 111.

Proof of previous conviction. 1 Can. Cr. Cas. 513.

Restriction on sales to inebriates. 1 Can. Cr. Cas. 534, 536.

Sale to interdicted person after notice

an offence, whether or not with knowledge of identity. 1 Can. Cr. Cas. 534.

Liquor License Ordinance (N.W.T.); Forfeiture of license on second offence. 6 Can. Cr. Cas. 99.

Illegal sale of intoxicating liquors; Place of sale; Appropriation of goods before delivery. 6 Can. Cr. Cas. 207.

Note on liquor license law as affecting disposal to members of club. 2 Can. Cr. Cas. 10.

Warrant to search premises; irregularity in description of official capacity of magistrate. 2 Can. Cr. Cas. 218.

Note on sale of prohibited quantity by shop licensee. 2 Can. Cr. Cas. 330.

Sale at place not authorized by license; appropriation and delivery. 2 Can. Cr. Cas. 518.

Presumptions; Bar appliances as evidence of keeping liquor for sale. 9 Can. Cr. Cas. 9.

Liquor License Ordinance (N.W.T.); Amendment of conviction upon certiorari. 9 Can. Cr. Cas. 138, 140.

Offence of selling without license; Supplying liquor on order from licensee in another district; Place of sale. 9 Can. Cr. Cas. 325.

One bar only; Liquor License Act, R.S.O. 1897. 10 Can. Cr. Cas. 191.

Statutory forfeiture of license for third offence; Increased punishment. 7 Can. Cr. Cas. 459.

Right to search and seizure in and of prohibitory statutes. 24 Can. Cr. Cas. 7.

I. Prohibition and Regulation; Statutes, By-laws and Ordinances.

WHEN A BAR TO PROSECUTION UNDER CANADA TEMPERANCE ACT.

A former conviction is not a bar to a prosecution under the Canada Tenperance Act, unless the offence proved in each case is identical. [Ex parte Whalen, 32 N.B.R. 274, followed.] Ex parte McManus, 32 N.B. R. 481.

SECOND AND SUBSEQUENT OFFENCE.

Section 115, sub-sec. (d), of the Canada Temperance Act declares that "the increased penalty or punishment imposed by sec. 100 shall only be recoverable or be liable to be imposed in the case of offences committed on different days, and after information laid for a first offence":—Held, that the time of laying the first information is not provable by a statement of that fact in the magistrate's certificate of the previous conviction. (Per Allen, C.J., Palmer, King and Fraser, JJ.) That where a justice received such a certificate as proof of the time of laying the information (though the evidence may have been improperly received), the objection did not go to the jurisdiction, and certiorari would not lie. (Per Tuck, J.) Ex parte Edgar, 31 N.B.R. 128.

AFFIRMANCE OF CONVICTION AFTER REMOVAL ON CERTIORARI; REMANDING RECORD TO ENFORCE CONVICTION.

Where a conviction under the second part of the Canada Temperance Act has been removed by certiorari and afterwards affirmed, a procedendo will issue to carry back the record of the proceedings to the magistrate in order that he enforce the conviction. Regina v. Grimmer (1886), 25 N.B.R. 480.

KEEPING LIQUOR; APPLIANCES AS EVIDENCE OF KEEPING.

The defendant was charged with the offence of keeping liquor for sale contrary to the provisions of the second part of the Canada Temperance Act 1878. Evidence was given of the finding of certain of the appliances mentioned in sec. 119:—Held, that apart from the presumption created by that section upon the finding of such appliances, such finding was evidence of a keeping for sale, of the weight of which the magistrate was the proper Judge. Regina v. Brady, 12 O.R. 358.

CONVICTION; COSTS; JURISDICTION.

It is not an excess of jurisdiction in a conviction under the Canada Temperance Act to award costs other than those provided for by 52 Vict. ch. 45, sec. 2. (Per Fraser, Tuck and Hanington, JJ.) (Palmer and King, JJ. dissenting). Ex parte Bourque, 31 N.B.R. 509. Ex parte Howard (1893), 32 N.B.R. 237.

CONVICTION FOR ENDEAVOURING TO INDUCE WITNESS TO ABSENT HIMSELF FROM TRIAL AFFIRMED; CRIMINAL CODE, SEC. 154.

Defendant was convicted in a summary way before two justices of the peace, under the Canada Temperance Act, sec. 121, for tampering with a witness subpœnæd on the trial of a charge of violation of the second part of the Canada Temperance Act, by endeavouring to induce him to absent himself from the trial:—Held, affirming the conviction and dismissing the appeal with costs, that the special provision contain in the section of the Act under which the conviction was made, was not repealed by the Criminal Code, sec. 154, or by other provisions of the Code. The Queen v. Gibson, 29 N.S.R. 88.

CONVICTION FOR OFFENCE WITHIN THREE MONTHS; PREVIOUS CONVICTION DURING SAME PERIOD; DISTINCT OFFENCES.

A conviction for selling liquors contrary to the Canada Temperance Act, stating the commission of the offence within three months previous to the information, is valid, though the defendant was previously convicted of a similar offence committed within the same period; it appearing that the two offences were distinct. A person may be convicted of several offences under the Act, committed within the period

of three months. Ex parte Hopper (1888), 27 N.B.R. 496.

CONVICTION UNDER.

The convictions in this case were held bad for not alleging that the Canada Temperance Act, 1878, was in force within the county. Regina v. Elliott, 12 O.R. 524.

[See Regina v. Walsh, 2 O.R. 206, and Regina v. Bennett, 1 O.R. 445.]

CONVICTION UNDER; IRREGULARITY OF SERVICE; SERVICE BY REGISTERED LETTER.

Application for certiorari to remove a conviction under the Canada Temperance Act on the ground of insufficient service or for want of service of the summons. The constable went to residence of defendant in the country where the offence was committed and knocked at the door. A young woman opened a window and asked him what he wanted. He said he wanted to see defendant. She replied that defendant was not home. The constable then said he had a paper for defendant, whereupon the young woman left the window and the constable threw the paper (copy of summons) into the room through the window. This was on Dec. 1st, 1896. The constable swore to these facts on the return of the summons on Dec. 4th, and also that he had tried to open the outside door of defendant's house at the time of service, but could not do so, and that the young woman appeared to be over sixteen years of age. He also swore that he had been at this house on a previous occasion on other business, and this same young woman had spoken of the defendant as her mother. After taking the evidence of the constable the justices adjourned the Court until Dec. 11th, and afterwards sent a registered letter to defendant containing a notice that the trial had been so adjourned. On Dec. 11th, the Court again met and proceeded with the evidence, and a conviction was made against defendant, who did not appear. Defendant obtained a rule nisi on her own affidavit stating that she was not at the place spoken of, and did not arrive home until Dec. 5th, and that she had no knowledge of the alleged delivery of a paper writing against her:—Held, that the evidence of service given by the constable was good prima facie evidence of service, and that defendant's affidavit was not sufficiently explicit, and that there had been sufficient notice to her of the time and place of hearing, and that being so, it rested upon the defendant to shew affirmatively that she had not received the registered letter with the notice of adjournment. Rule discharged. Ex parte Quirk (1897), 33 C.L.J. 405.

IMPRISONMENT IN DEFAULT OF PAYING FINE.

The magistrate at the close of the case made a minute of adjudication, in which he stated that he found the defendant guilty and imposed a fine of fifty dollars and costs, to be paid by a date named, and awarded imprisonment for thirty days in default of payment. Afterwards when drawing up the formal conviction, the magistrate adopted the form I. 1, in the schedule to the summary Convictions Act, directing that in default of payment by the day named, the penalty should be levied by distress and sale, and awarding imprisonment for thirty days in default of insufficient distress:—Held, that the conviction in the form I. 1, was the proper conviction to be made under the combined provisions of sec. 107 of the Canada Temperance Act, 1878, and secs. 42 and 57 of the Summary Convictions Act, and not the form I. 2, to which form the minute of adjudication apparently pointed. Regina v. Brady, 12 O.R. 358.

IMPROPER SERVICE OF SUMMONS; QUASHING CONVICTION.

A summons was issued for selling liquor contrary to the Canada Temperance Act, which was served by leaving it with defendant's wife at his hotel. The defendant not appearing at the time and place mentioned in the summons for the hearing, and on the constable proving on oath the manner in which the summons had been served, the police magistrate proceeded ex parte to hear and determine the case, and convicted the defendant of the offence charged, and imposed a fine. At the time of the service of the summons the defendant was absent in the States as a witness at a trial there, and there was no evidence that his wife was informed by the constable of the purport of the summons, while defendant stated that he knew nothing of the matter until four or five days after the conviction had been made, when he received a letter from his wife stating that some magistrate's papers had been left for him at the hotel:—Held, that under sec. 39 of R.S.C. ch. 178, there must in such cases be evidence before the magistrate that a reasonable time has elapsed between the service of the summons and the day appointed for the hearing, and there being no such evidence here, the magistrate acted without jurisdiction and the conviction must be quashed. [Regina v. Ryan, 10 O.R. 254, overruled.] Regina v. Mabee (1889), 17 O.R. 194.

ADJOURNMENT FOR ONE WEEK; MEANING OF.

Sec. 46 of the Canada Temperance Act provides that the hearing may be adjourned to a certain time and place, but no such adjournment shall be more than a week:—Held, that the week must be computed as seven days exclusive of the day of adjournment. Regina v. Collins, 14 O.R. 613.

AMENDMENT OF CONVICTION UNDER THE ACT.

A conviction under the Canada Temper-

ance Act, which varies from the minute of adjudication in omitting to provide for payment of "the costs and charges of the distress" in the event of the defendant being imprisoned for nonpayment of the fine, is defective. Such conviction may be amended under secs. 117 and 118 of the Act. Ex parte Conway (1892), 31 N.B.R. 405.

ADJOURNMENT TO CONSIDER JUDGMENT; AMENDING DATE OF OFFENCE; REVIEW ON CERTIORARI.

Upon an information for an offence against the Canada Temperance Act, a police magistrate heard all the evidence within the proper time, and at the close of the evidence announced in presence of the parties that judgment would be reserved for two weeks from that day, at which appointed time judgment was duly pronounced:—Held, that 32 and 33 Vict. ch. 31, sec. 46 (d), which is to be read into the Canada Temperance Act by virtue of sec. 107, applies only to an adjournment of the hearing or the further hearing of the information or complaint, which is quite a distinct thing from the adjudication or determination of the charge after the hearing is completed. Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty or the amount proper to be imposed, or taking advice as to the law applicable to the case. Notwithstanding the adjournment after the close of the hearing for fourteen days in order to consider of and give judgment, the police magistrate had jurisdiction, and the conduct of the proceedings was not even irregular. Regina v. French, 13 O.R. 80, distinguished. There was an amendment of the original information by changing the date of the offence from the 10th to the 23rd of February, and the parties agreed that the evidence taken should stand for the purposes of the amended charge instead of having a needless repetition of it:—Held, that this course was unobjectionable. The defendant's application for a certiorari was refused, with costs. Regina v. Hall (1887), 12 P.R. (Ont.) 142.

ARREST ON SUNDAY; DEFAULT OF PAYMENT OF FINE.

On Sunday, January 10th, Archibald Frecker was arrested on a warrant of commitment issued by the parish court Commissioner for the parish of Chatham, in the county of Northumberland, in default of payment of fine for violation of the Canada Temperance Act, and was sent to gaol:—Held, that the arrest being on Sunday, was void, and that prisoner must be forthwith discharged from custody. The order was made exempting the gaoler from liability. Ex parte Frecker (1897), 33 C.L.J. 248.

CONVICTION FOR SECOND OFFENCE; BIAS OF MAGISTRATE; DISQUALIFYING INTEREST IN CASE; EXCESSIVE COSTS.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act:—(1) It was contended that the magistrate had a disqualifying interest in the prosecution, because he had employed and paid agents to secure conviction under the Act, and because he was a strong temperance advocate, with an alleged bias in favour of the prosecution in cases under the Act. It was not shewn that the magistrate was interested or engaged in promoting or directing the prosecution of this offence, or defraying the expenses of it, or paying agents for evidence to be given upon it:—Held, that it was not to be inferred from anything alleged to have been done by the magistrate in other prosecutions, that the same was done by him in this; and that the statements were of too loose and vague a character to support a finding that the magistrate was disqualified from sitting. (2) At the hearing the defendant attempted to shew by witnesses that the magistrate had a disqualifying interest in the case, but the magistrate refused to admit such evidence:—Held, that the evidence was inadmissible, and even if admissible, the rejection of it would not afford ground for quashing the conviction. Regina v. Sproule, 14 O.R. 375, not followed. (3) It was also contended that the magistrate exceeded his jurisdiction by ordering the defendant to pay $3 as inspector's fee, $2 for an interpreter, and $1 justice's costs:—Held, that the fees to be paid to witnesses in prosecutions such as this are not established by any law, and such are to be allowed, under sec. 58 of the Summary Convictions Act, as to the justice seems reasonable; and an interpreter may properly be treated as a witness. In any case, however, the award of costs was within the jurisdiction of the magistrate, and certiorari would not therefore lie (being taken away by the statute under which the conviction was made) on the ground of want of jurisdiction; and the erroneous allowance of certain items of costs would not warrant the quashing of the conviction. (4) The information specifically charged that the defendant had been previously convicted under the Act, and the affidavit filed by the defendant did not deny the fact, but only the evidence of it:—Held, that the question whether the defendant had been previously convicted or not was a matter within the jurisdiction of the magistrate, and his finding as to it was conclusive:—Held, also, that the provisions of sec. 115 of the Canada Temperance Act are directory only. Regina v. Brown (1888), 16 O.R. 41.

MINUTE OF CONVICTION; STATEMENT OF FINE AND MODE OF ENFORCEMENT; VARIANCE OF ADJUDICATION AND CONVICTION; AMENDMENT.

The minute of a conviction made under the Summary Convictions Act, 32 and 33 Vict. ch. 31, sec. 42, should state the adjudication of the justices, both as to the amount of the fine, and the mode of enforcing it, whether by distress or imprisonment so as to be a complete judgment in substance. Therefore, where the minute of conviction under the Canada Temperance Act, 1878, stated only that the justices adjudged the defendant to pay a fine of $50 and costs, a conviction which was subsequently drawn up, after the justices had separated, awarding distress in default of payment of the fine, and for want of distress, imprisonment for a certain time, was quashed—the justices having no power, after their adjudication, to add to, or vary their judgment. Regina v. Perley and Hartt; In re White (1885), 25 N.B.R. 43.

NECESSARY PROCEEDINGS TO GIVE MAGISTRATE JURISDICTION UNDER THE ACT.

The Canada Temperance Act, 1878, does not per se make the selling of intoxicating liquor an offence; it is only after the second part of the Act has been brought into force by the proceedings indicated for that purpose in the first part, which proceedings cannot be judicially noticed but must be proved, and in the absence of such proof the magistrate acts without jurisdiction:—Held, therefore, that the convictions were bad, for they did not allege that the Act was in force, nor was it proved otherwise, and therefore, as the jurisdiction of the magistrate did not appear, the writ of certiorari was not taken away by sec. 111 of the Act. Regina v. Walsh, 2 O.R. 206.

OFFENCE COMMITTED WITHIN THREE MONTHS LAST PAST; ANSWERING PARTIAL OFFENCE.

The defendant may be convicted of an offence against the Canada Temperance Act, committed on the 8th July, 1892, under an information laid on the 5th September, 1892, that the defendant within three months then last past, namely, on or about the 8th July, 1892, at Sussex, sold intoxicating liquors, etc., though he had been previously acquitted on an information in similar terms laid on the 18th July, 1892. (Palmer, J., dissenting.) A person charged with violating the Canada Temperance Act within a period of three months must come prepared, not to answer all the violations he may have committed during those three months, but to answer any one during that period which the prosecution may give evidence of. (Per Landry, J.) Ex parte Whalen (1894), 32 N.B.R. 274.

QUI TAM ACTION AGAINST MAGISTRATE BY DEFENDANT'S FATHER AS BIAS; CERTIORARI TO REMOVE CONVICTION.

On an application for a rule nisi for a certiorari to remove a conviction under the C.T.A., the fact that a qui tam action was pending against the magistrate who made the conviction at the suit of the defendant's father for a penalty for not making the returns required by the C.T.A. of convictions entered by him under the Act, was not a sufficient ground or bias to take away his jurisdiction in a case against the son. Rule refused. Ex parte Thos. Gallagher (1897), 33 C.L.J. 547.

SALE OF LIQUOR; KEEPING LIQUOR; CONVICTION ON FIRST CHARGE AFTER HEARING EVIDENCE OF SECOND; PREJUDICE; TIME FOR PAYMENT OF PENALTY.

Defendant was summoned to appear before two justices of the peace to answer two charges for violations of the Canada Temperance Act, one for selling intoxicating liquor contrary to the provisions of the Act, and the other for keeping such liquor for sale. After hearing evidence on the first charge, the justices heard formal evidence of the service of the second summons. They then dismissed the second charge and convicted defendant on the first:—Held, that the case was sufficiently distinguished from Hamilton v. Walker (1892), 2 Q.B. 25, by the fact that no evidence was heard on the second charge that would be likely to prejudice the minds of the justices in the consideration of the first. The minute of conviction mentioned no definite time for the payment of the penalty:—Held, that the conviction must be taken to have required payment to be made forthwith. The information taken on the 21st September, 1894, alleged the offence of selling to have been committed between the 1st day of September, "last past," and the 20th September, 1894:—Held, that the expression "last past," though ambiguous, did not vitiate the conviction, as defendant had a complete defence in law to anything beyond the three months. The Queen v. Butler (1896), 32 C.L.J. 594.

SALE OF LIQUOR; KEEPING LIQUOR FOR SALE; IDENTITY OF CHARGE; AUTREFOIS CONVICT.

T. was convicted on the 16th May, for selling liquor between the 21st January and the 18th April preceding, contrary to the Canada Temperance Act, he was subsequently convicted for unlawfully keeping liquor for sale between the 14th February and the 24th March in the same year:—Held, that the onus was on him 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, and did not sustain a defence of autrefois convict. Regina v. Marsh; In re Tennant (1886), 25 N.B.R. 371.

SALE OF LIQUOR NEAR PUBLIC WORKS; JURISDICTION OF MAGISTRATE; SALE AT A VILLAGE.

The defendant C. and others were contractors employed in constructing a portion of the line of the Canadian Pacific Railway on the north shore of Lake Superior, fifty miles north of the mouth of the Michipicoten River, where there is a post of the Hudson Bay Company and a small collection of houses and stores known by the name of the village of Michipicoten River. At this place the defendant C. and his co-contractors had their headquarters, and had constructed a supply road to the line of the railway where their operations were being carried on. The plaintiff brought to this village in a small sailing vessel a quantity of intoxicating liquors, intending to sell them there. The defendant C. and his co-defendant B., who were justices of the peace, having jurisdiction in the district of Algoma, assuming to act under ch. 32, R.S.O. (1877), "An Act respecting the sale of intoxicating liquors near public works," caused the liquors to be seized and destroyed, and the plaintiff to be arrested, fined and imprisoned:—Held, that this was a village within the meaning of R.S.O. ch. 32, sec. 1, and therefore that the prohibition contained in the Act did not apply and that the justices had no jurisdiction. Bond v. Conmee (1889), 18 Ont. A.R. 398.

DISTRESS FOR NONPAYMENT OF FINE; REPLEVY OF GOODS SEIZED.

A distress to enforce payment of a fine upon a conviction under the Canada Temperance Act, is not a proceeding in right of the Crown—the fine being payable by the Dominion statute 49 Vict. ch. 48, and the order-in-council made thereunder, to the local authority bearing the expense of enforcing the law. Goods seized under a distress warrant for nonpayment of a fine imposed by a conviction, are not replevisable by the person against whom the distress issued, unless the magistrate who issued it acted without jurisdiction. If an action of replevin brought in a County Court is improperly removed into this Court under the Consol. Statutes ch. 37, sec. 201, the plaintiff should move to set aside the order for removal. Quære, whether an order to remove can be made ex parte. Hannigan v. Burgess (1888), 26 N.B.R. 99.

TAKING AWAY RIGHT TO CERTIORARI IN CERTAIN OFFENCES.

Held, that sec. 111 of the Canada Temperance Act, 1878, 41 Vict. ch. 16 (Dom.), taking away the right to certiorari, applies to convictions for all offences against the preceding sections of the Act, and does not relate merely to offences against sec. 110. (Cameron, J., dissenting.) Regina v. Wallace (1883), 4 O.R. 127.

THIRD OFFENCE; TWO PRIOR CONVICTIONS FOR OFFENCES OF SAME NATURE; JURISDICTION OF MAGISTRATE.

The defendant was convicted of having sold intoxicating liquor contrary to the provisions of the Canada Temperance Act, the conviction stating that the defendant was formerly convicted of a first and second offence against said Act, and that this was the third offence. The certificate produced to prove the prior convictions simply stated that Elias Clark was convicted as for a first and second offence against the Canada Temperance Act 1878, setting forth the dates of the convictions, but not stating the nature of the offence, or whether against the first or second part of the Act;—Held, that 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 as neither the record of conviction nor the evidence shewed this, the conviction must be quashed. Semble, that if the conviction were well drawn the similarity of name of the person mentioned in the certificate and the defendant would afford proof of identify. The 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. Held, following Regina v. Riley, 12 P.R. 98, 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. Regina v. Clark, 15 O.R. 49.

JURISDICTION OF POLICE MAGISTRATE; ADJUDICATION OUTSIDE OF TERRITORIAL JURISDICTION.

The police magistrate for the county of Bant, whose commission excluded the city of Brantford, convicted the defendant of an offence against the Canada Temperance Act, committed at a place in the county outside of the city. The information was laid, the charge was heard and adjudicated upon, and the conviction was made in the city of Brantford:—Held, that the magistrate had no jurisdiction to adjudicate in the city of Brantford, and that what he did was not authorized by 41 Vict. (D) ch. 4, sec. 9. Regina v. Beemer (1888), 15 O.R. 266.

FAILURE TO PROSECUTE; CERTIFICATE OF DISMISSAL; INQUIRY INTO BONA FIDES OF PREVIOUS PROSECUTION.

The certificate of dismissal provided for by the 43rd section of the Summary Convictions Act may be granted as well where the informant neglects to appear, and the complaint is dismissed on that ground, as where he does appear and the information is dismissed on the merits:—Held, also, that the magistrate or other officer before whom an information for an offence against the Canada Temperance Act is being heard, if a certificate of dismissal of a prosecution for the same alleged offence is relied on as a bar to his proceedings, has a right to enquire whether the previous prosecution was real and bona fide, or was instituted fraudulently and collusively. (Weldon and Wetmore, JJ., dissenting.) Ex parte Phillips (1884), 24 N.B.R. 119.

KEEPING INTOXICATING LIQUORS; PARTNERS; JOINT CONVICTION AND FINE; VALIDITY.

A conviction of A. and B., who were in partnership, for an offence several in its nature (keeping intoxicating liquor for sale), adjudging that they, for their said offence, should forfeit and pay $50, and in default of payment, be imprisoned for forty days, is bad. The penalty ought to be imposed on the parties severally. Ex parte Howard and Crangle (1885), 25 N.B.R. 191.

PREVIOUS CONVICTIONS.

In a prosecution for a third offence under the Canada Temperance Act, it is sufficient to put in certificates of the previous convictions without otherwise identifying the defendant as the party named therein. Identity of name is evidence of identity of person. Ex parte Dugan, 32 N.B.R. 98.

PROVING ADOPTION OF.

The fact that the Canada Temperance Act, 1878 (second part), is in force in any county, etc., must be proved like any other fact necessary to give jurisdiction. Regina v. Elliott, 12 O.R. 524.

PURCHASER OF LIQUOR; AIDER AND ABETTOR.

Held, following Ex parte Barker, 30 N. B.R. 406, that a purchaser of intoxicating liquor, sold in violation of the Canada Temperance Act, is not liable to conviction as an aider, abettor, counsellor or procurer in respect to the sale made to him. Ex parte Armstrong, 30 N.B.R. 423.

DEFECTIVE WARRANT OF COMMITMENT; REFUSAL BY BAILIFF OF PENALTY AND COSTS; DATING OF WARRANT.

A prisoner having been convicted of an offence under the Canada Temperance Act, an application for her release was made under a habeas corpus, and a writ of certiorari was also issued:—Held, that the writ of certiorari must be superseded, and following Regina v. Wallace, 4 O.R. 127, that such writ cannot issue merely for the purpose of examining and weighing the evidence taken before the magistrate. Held, also, that it was not necessary to serve a minute of the conviction on the defendant, as sec. 52 of 31 and 32 Vict. (D.) ch. 31, only requires such service in case of an order, and that defendant must take notice of the conviction at her peril. Held, also, that when a distress warrant has been issued and returned, the truth of the return cannot be tried upon affidavits. It was alleged, but denied, that the bailiff had refused to receive the penalty and costs. Held, however, that his duty was to execute the warrant of commitment and that he had no authority to receive such payment. The warrant of commitment, which was not issued until after the return of the distress warrant, was dated the 14th June, and the distress warrant was not returned before the 17th June. Held, that the warrant of commitment need not be dated at all if not issued to soon. It was alleged also that too large a sum had been charged for costs, but, held, lastly, that the conviction being regular on its face, and not shewing any excess of jurisdiction, such an irregularity (even if it existed) could not be enquired into on the present application. The prisoner was, therefore, remanded. Regina v. Sanderson, 12 O.R. 178.

QUASHING CONVICTION FOR NOT ALLOWING TO MAKE A FULL DEFENCE.

On a prosecution under the Canada Temperance Act for selling liquor the information on its face purported to be laid before D. and A., two justices of the peace, and both signed the summons. The summons to the defendant was to appear before two justices of the peace for the county as may be there to answer the information, etc. The hearing was before D. and A. 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 A. 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 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; his reason for suspecting and believing that liquor was sold, etc. Whom did he see before laying the information? Did he see A., C. or M.? Had C. and M. anything to do with the selection of the magistrate, etc.? The magistrates ruled that he was not bound to answer the questions, and he refused to do so. For the defence, with alleged view of shewing the interest of A.,

he was called as a witness, but he refused to be sworn and give evidence. The defendant was convicted:—Held, that the justices properly refused to allow the disclosure of the source 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 A. and the other alleged members of the association, and in refusing to allow A. to be sworn as a witness, the defendant was deprived of the right of making a full defence as authorized by sec. 30 of 32 and 33 Vict. (D.) ch. 31, and the conviction therefore could not be maintained and must be quashed. Regina v. Sproule (1887), 14 O.R. 375.

REVIEW OF CONVICTION; AMENDMENT.

Under secs. 117 and 118, Canada Temperance Act, 1878, the Court, upon the motion to quash, might dispose of the case upon the merits upon the material returned with the certiorari and that in this case the conviction, being warranted by the evidence, ought to be affirmed and the minute of adjudication amended so as to conform to it. Regina v. Brady, 12 O.R. 358.

THIRD OFFENCE; EVIDENCE OF PRIOR CONVICTIONS; DEFENDANT'S FAILURE TO APPEAR.

The defendant, having been summoned for selling liquor contrary to the second part of the Canada Temperance Act, appeared with his counsel at the hearing and pleaded not guilty, when evidence was given for the prosecution justifying a conviction; but, at the defendant's request, an adjournment was granted. At the adjourned hearing, at which neither defendant or his counsel appeared, evidence was given of the service of the summons and of the facts that transpired at the prior hearing, and certificates of two prior convictions were put in, and the identity of the defendant proved. The defendant was found guilty and convicted of a third offence against the said Act:—Held, that the defendant, having once had the opportunity to defend, could not, by his failure to appear at the adjourned hearing, defeat the administration of justice; and therefore he was properly found guilty in his absence. Held, also, that the proof of the former convictions by the certificates was sufficient. [Regina v. Kennedy, 10 O.R. 396, at p. 402, not followed.] Regina v. Kennedy (1889), 17 O.R. 159.

VARIANCE OF CONVICTION FROM INFORMATION; VALIDITY.

An order nisi for a certiorari to remove a conviction under the Canada Temperance Act was granted on the ground that the information and summons were for an offence committed between 28th November and 15th December, while the conviction was for an offence between 28th November and 1st December, and the evidence shewed the offence was committed between 1st December and 15th December:—Held, following Ex parte Daley, that the magistrate, having jurisdiction by virtue of a good information and summons, certiorari was taken away, and the Court could not look into the evidence. Order discharged. Ex parte Sarah McKinnon, 33 C.L.J. 503.

AMENDMENT OF INFORMATION.

An amendment of an information for "selling liquor" to an information for "keeping for sale" is not authorized in respect of proceedings under the Canada Temperance Act, for the magistrate cannot determine in the defendant's absence whether or not the latter has been "materially misled" by the variance (sec. 116). Ex parte Doherty, 1 Can. Cr. Cas. 84.

[Referred to in Ex parte LeBel, 16 Can. Cr. Cas. 367; distinguished in Ex parte Tompkins, 12 Can. Cr. Cas. 552; appr. R. v. Lyons, 10 Can. Cr. Cas. 134.]

CLUB; SALE OF LIQUOR TO MEMBERS.

The disposal of liquors to the members of a social club by the club steward acting for the club who owned the same is an offence against the Canada Temperance Act, if such were a device to evade its provisions. Ex parte Coulson, 1 Can. Cr. Cas. 31.

[Referred to in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

EXCESSIVE PENALTY.

A conviction under the Canada Temperance Act imposes a "greater penalty than is authorized," by awarding ninety days' imprisonment on nonpayment of a fine where the statute prescribes a limit of three months, as such term may possibly be more than three months. R. v. Gavin, 1 Can. Cr. Cas. 59.

[Dist. R. v. Oberlander, 16 Can. Cr. Cas. 250; R. v. Doherty, 3 Can. Cr. Cas. 509; R. v. Brindley, 12 Can. Cr. Cas. 171; referred to in Brunet v. Montreal, 17 Que. S.C. 85; considered in R. v. Rudolph, 17 Can. Cr. Cas. 206.]

MAGISTRATE; BIAS OR INTEREST.

A magistrate is not disqualified on the ground of pecuniary interest from adjudicating upon an offence under the Canada Temperance Act, because he received a fixed appropriation voted by a municipal council, in addition to his regular salary as magistrate, for his services in connection with the enforcement of the Canada Temperance Act, and because such appropriation is paid out of a fund created by the imposition of fines thereunder. Ex parte McCoy, 1 Can. Cr. Cas. 410.

[Followed in R. v. Suck Sin, 18 Can. Cr. Cas. 271.]

SECOND OFFENCE.

A conviction for a second offence under the Canada Temperance Act must shew

that the second offence was committed after the information had been laid for the first offence. Ex parte Le Blanc, 1 Can. Cr. Cas. 12.

ORDER FOR FORFEITURE OF LIQUOR SEIZED.

An order made for the forfeiture of intoxicating liquor seized under a search warrant in proceedings under the Canada Temperance Act is bad unless there was an information upon which to base the search warrant. Ex parte Kavanagh, 2 Can. Cr. Cas. 267.

IMPRISONMENT IN DEFAULT OF PAYING FINE.

A conviction under the Canada Temperance Act may by virtue of Cr. Code, sec. 872 (b) direct imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods. Ex parte Casson, 2 Can. Cr. Cas. 483.

[Referred to in R. v. McKinnon, 12 Can. Cr. Cas. 422; followed in R. v. Whiting, 14 Can. Cr. Cas. 417.]

MILITARY CANTEEN; CANADA MILITIA ACT, R.S.C., CH. 41.

Officers and men of the Canadian active militia while in training at a camp of exercise have an equal right with members of the Canadian Infantry school corps to purchase intoxicating liquors at an infantry school canteen, under conditions of the Queen's Regulations for the Army, and this notwithstanding that the second part of the Canada Temperance Act is in force in the district. Ex parte Patchell, 3 Can. Cr. Cas. 75.

COMPANY; SALE OF INTOXICATING LIQUORS BY.

The president of an incorporated company acting as manager thereof is responsible for an illegal sale of intoxicating liquors, made by one of the company's clerks acting under his general directions, and may be convicted, in respect of such sale, of an offence under the Canada Temperance Act. Ex parte Baird, 3 Can. Cr. Cas. 65.

INFORMATION BEFORE ONE JUSTICE OF THE PEACE.

Notwithstanding sec. 842 of the Criminal Code, where a prosecution for an offence under the Canada Temperance Act is to be proceeded with before two justices of the peace, the information must be laid before two justices. Ex parte White, 3 Can. Cr. Cas. 94.

[Referred to in Re Paul (No. 1), 20 Can. Cr. Cas. 160, 7 D.L.R. 24.]

SEARCH WARRANT FOR LIQUORS; DESCRIPTION OF PREMISES.

A search warrant for intoxicating liquors issued under the Canada Temperance Act is not invalid because it does not shew on its face that the premises directed to be searched are within the territorial jurisdiction of the magistrate. It is not necessary that the premises directed to be searched should be described in the search warrant by metes and bounds or with other particularity of a like nature, and a direction to search the dwelling house of a named person in a certain township is sufficient. A direction to search several buildings or places in respect of any one charge may be made by the one search warrant. A warrant affords absolute justification to the officer executing it if it has been issued by competent authority and is valid on its face, although the warrant may in fact be bad and although it be set aside by reason of a failure to comply with legal requirements. A judgment on certiorari quashing a search warrant for intoxicating liquors issued under the Canada Temperance Act does not constitute a judgment in rem in respect of the liquors seized. A judgment on certiorari quashing a search warrant for intoxicating liquors issued under the Canada Temperance Act is not res judicata as to the constable who executed the warrant, if he was not a party to and had no notice of the certiorari proceedings. Sleeth v. Hurlbert, 3 Can. Cr. Cas. 197.

[Referred to in McKeen v. Colpitts, 15 Can. Cr. Cas. 495; R. v. Sweeney, 1 D.L.R. 477.]

TWO JUSTICES RECEIVING THE INFORMATION.

The issue of a summons, whether in relation to an offence punishable summarily or to an indictable offence, is a judicial act. Notwithstanding sec. 105 of the Canada Temperance Act and sec. 842 of the Criminal Code, an information charging an offence under the Canada Temperance Act must be laid before two justices, who must concur in directing the issue of the summons, but it is not necessary that the information or the summons issued thereon should be signed by more than one of such justices. R. v. Ettinger, 3 Can. Cr. Cas. 387.

EXCESSIVE PENALTY IN DEFAULT OF DISTRESS.

Where in a summary conviction it was adjudged that in default of payment of the fine and of the amount taxed to the prosecutor for his costs, and in default of sufficient distress therefor, the defendant be imprisoned for a term specified, unless such fine and costs, etc., and the costs of the commitment were sooner paid, the words "costs of the commitment" irregularly included therein may be treated as surplusage, and their inclusion will not invalidate the conviction, if, in fact, there are no costs of commitment apart from the costs taxed and allowed in the conviction

and warrant of commitment. R. v. Doherty, 3 Can. Cr. Cas. 505.

[Distinguished in R. v. King, 4 Can. Cr. Cas. 426; relied on in R. v. Townsend (No. 3), 11 Can. Cr. Cas. 156.]

DISMISSAL; TRIAL DE NOVO ON APPEAL; COSTS.

Code, sec. 883 which authorizes the Court on hearing an appeal from a summary conviction or order of a justice, to try the case upon its merits and to make a new conviction or order, applies to an appeal by the prosecutor from the justice's order dismissing the complaint. Where an order is made allowing the prosecutor's appeal and convicting the accused of an offence against the Act the costs of the appeal may be included in the costs awarded by the conviction, and the payment thereof may be enforced by a distress warrant and imprisonment in default. R. v. Hawbolt, 4 Can. Cr. Cas. 229.

[Referred to in Victoria v. Belyea, 12 B.C.R. 115.]

CONSTITUTIONAL LAW; POWER TO CONFER SUMMARY JURISDICTION.

Sec. 103 of the Canada Temperance Act, R.S.C. (1886), ch. 106, as amended by 51 Vict. ch. 34, sec. 6, enabling any two justices of the peace to adjudicate upon prosecutions under that Act, is intra vires of the Parliament of Canada. The King v. Wipper, 5 Can. Cr. Cas. 17.

PARISH COURT COMMISSIONERS IN NEW BRUNSWICK; AUTREFOIS ACQUIT; IDENTITY OF CHARGE; ONUS.

The dismissal of a prior charge under the Canada Temperance Act in which the offence was laid as between certain dates is not necessarily a bar to a subsequent prosecution for an offence committed within the same period of time, but the question of identity of offence is for the magistrate. Upon a defence that the accused had been formerly acquitted in summary proceedings before magistrates for the same alleged offence, the onus of proving the identity of the charge is upon the defendant. The Parliament of Canada has not the power to give a Provincial Court a jurisdiction which is not within the scope of such Court's powers as established by the Provincial Legislature. Sec. 103 of the Canada Temperance Act, R.S.C. 1886, ch. 106 (amended by 51 Vict. ch. 34, sec. 6) is ultra vires of the Dominion Parliament in so far as it purports to confer jurisdiction upon Parish Court Commissioners in New Brunswick to entertain prosecutions thereunder. Summary conviction for a third offence under the Canada Temperance Act was quashed on the ground that one of the prior convictions relied upon was made by a Parish Court Commissioner, the jurisdiction of which Court under provincial law did not extend to such prosecutions. Ex parte Flanagan, 5 Can. Cr. Cas. 82.

[Referred to in Ex parte LeBel, 16 Can. Cr. Cas. 370; considered in R. v. Johnson, 17 Can. Cr. Cas. 174.]

INFORMATION BEFORE ONE MAGISTRATE AND TRIAL BEFORE ANOTHER; INVALIDITY; THIRD OFFENCE; PROVING PREVIOUS CONVICTION.

Sec. 104 of the Canada Temperance Act, as amended 1888, ch. 34, has the effect of giving to a police or stipendiary magistrate before whom an information was laid the exclusive jurisdiction to try the case, and a conviction made by another stipendiary magistrate on the same information is void. Where such an information and conviction thereon are produced in a subsequent prosecution as proof of a previous conviction (C.T. Act, sec. 115 (b)), the record of conviction is of no more force than if signed by one who had ceased to be a magistrate before the date thereof, and is not evidence. A defendant imprisoned on a conviction for a third offence under the Canada Temperance Act is entitled to be discharged on habeas corpus if the conviction relied upon as proving a previous conviction for a second offence was made by a police or stipendiary magistrate irregularly proceeding under and by virtue of an information in respect of second offence laid before another police or stipendiary magistrate or magistrate vested with the authority of two justices. The King v. MacDonald, 5 Can. Cr. Cas. 97.

KEEPING LIQUOR FOR SALE; SEARCH WARRANT; ORDER FOR THE DESTRUCTION OF THE LIQUOR; DISQUALIFICATION OF PROSECUTOR.

The prosecutor of a charge of keeping liquor for sale contrary to the Canada Temperance Act, being personally liable for costs in the event of the prosecution failing, is, though a peace officer, disqualified from executing a search warrant or order for the destruction of the liquor in respect of which the information was laid. Ex parte McCleave, 5 Can. Cr. Cas. 115.

[Distinguished in Stone v. Vallee, 18 Can. Cr. Cas. 223; Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15; referred to in Ex parte Wilson, 15 Can. Cr. Cas. 270; R. v. LeBlanc, 21 Can. Cr. Cas. 221; distinguished in Ex parte Dewar, 15 Can. Cr. Cas. 274.]

PROOF OF PREVIOUS CONVICTION; STATUTORY INTERROGATION OF ACCUSED AFTER CONVICTION; DEFENDENT ABSENT BUT REPRESENTED BY SOLICITOR; INTERROGATION OF SOLICITOR.

A solicitor appearing for the accused at the trial before a magistrate of a charge of a second or subsequent offence against the Canada Temperance Act represents his

client for the purpose of being interrogated as to the previous conviction although the client is not then present; and the magistrate, on his failure to answer, is justified in receiving evidence of the previous conviction. The King v. O'Hearon, 5 Can. Cr. Cas. 187.

[Referred to in R. v. Coote, 17 Can. Cr. Cas. 229.]

SALE OF INTOXICATING LIQUORS; JUDICIAL SALE BY SHERIFF.

The Canada Temperance Act does not prohibit judicial sales of intoxicating liquors. Under a warrant of distress upon a conviction for an offence against the second part of the Canada Temperance Act, the defendant's property must be levied on, though it consists of intoxicating liquors only, and is in a place where the second part of the Act is in force. On a habeas corpus application under Consol. Statutes, N.B., ch. 41, sec. 4, it may be shewn that the constable's return to the warrant of distress, that there was not sufficient property to satisfy it, is false, and that therefore the commitment based thereon, under which the party is imprisoned, was improperly issued. Ex parte Fitzpatrick, 5 Can. Cr. Cas. 191.

JUSTICES OF THE PEACE; DISQUALIFICATION; MEMBERSHIP IN TEMPERANCE ALLIANCE.

Justices of the peace, who belong to an association (a temperance alliance) of which the president is the party prosecuting, and to which association any fine to be imposed upon the accused for the offence against the liquor law with which he is charged would be paid under resolution of the Municipal Council, are disqualified from trying the charge, and will be presented by a writ of prohibition from so doing. The fact that between the time when the information was received by such justices and the hearing of the charge, the justices had withdrawn from the association, does not validate the proceedings. Daigneault v. Emerson, 5 Can. Cr. Cas. 534.

INTOXICATING LIQUOR SENT BY EXPRESS, C.O.D.; PASSING OF PROPERTY; DELIVERY BY EXPRESS AGENT; RECEIPT OF PRICE.

Where intoxicating liquors are sold in a district where the Canada Temperance Act is not in force to be delivered by express c.o.d. at a place where the Act is in force, the express agent who makes the delivery and collects the price is not thereby guilty of the offence of selling contrary to the Act. The Queen v. Cahill, 6 Can. Cr. Cas. 204.

THIRD OFFENCE; TIME OF, AS REGARDS PROSECUTION FOR PRIOR OFFENCES.

A third offence under the Canada Temperance Act to be punishable as such must be one committed after the information has been laid for the second offence, and a summary conviction made as for a third offence committed before the information for the second offence will be quashed for want of jurisdiction. Ex parte McCoy, 7 Can. Cr. Cas. 485.

[Followed in R. v. Jordan, 15 Can. Cr. Cas. 132.]

THIRD OFFENCE; CONVICTION; OMISSION TO RECITE THAT INFORMATION FOR FIRST OFFENCE PRECEDED THIRD OFFENCE.

(1) A conviction for a third offence under the Canada Temperance Act is valid if it follows the statutory form without reciting that such third offence was committed after information laid for the first offence, if such was in fact the case. (2) The fact that the information for the first offence had preceded the commission of the alleged third offence as required by statute, may be shewn by affidavit filed in answer to a certiorari application. The King v. Swan, 8 Can. Cr. Cas. 86.

LOCAL VOTE; BRINGING PROHIBITORY CLAUSES INTO EFFECT IN COUNTY; SUBSEQUENT ESTABLISHMENT OF CITY WITHIN THE COUNTY; OPERATION OF STATUTE CONTINUES.

(1) The prohibitory clauses of the Canada Temperance Act remain in force in the whole district which comprises the "county" when the Order-in-Council proclaiming Part II. of the Act came into operation in the county, notwithstanding that a portion thereof has since been incorporated as a city. (2) Semble, the detaching from a district which has adopted a prohibitory liquor law as a part of its territory and the addition of such part to another district, leaves the portion of territory so dealt with still subject to such liquor law. The King v. McMullin, 9 Can. Cr. Cas. 531.

FIRST OFFENCE; FINE NOT LESS THAN $50 OR IMPRISONMENT NOT EXCEEDING ONE MONTH.

The provision of the Canada Temperance Act, sec. 100, which fixes the penalty at "not less than $50 or imprisonment for a term not exceeding one month," applies to so limit the term of imprisonment only when imposed as a punishment in the first instance, and not when imposed for default of payment of the penalty. Where a fine is imposed in the first instance, the punishment in default or payment may be for any term not exceeding three months under Code, sec. 872. The King v. William Blank, 10 Can. Cr. Cas. 358.

[Referred to in R. v. Clark (No. 1), 12 Can. Cr. Cas. 19; followed in R. v. Whiting, 14 Can. Cr. Cas. 417.]

CHARGE OF ILLEGALLY SELLING LIQUOR; CONVICTION FOR KEEPING FOR SALE; ILLEGALITY; DISTINCT OFFENCE.

Upon a summons of illegally selling liq-

uor contrary to the Canada Temperance Act, the magistrate has no jurisdiction to convict for the offence of keeping for sale if the summons was served substitutionally by being left at the defendant's last known place of abode and he does not appear. The King v. Lyons, 10 Can. Cr. Cas. 130.

CONVICTION FOR SECOND OFFENCE; PROOF OF PREVIOUS CONVICTION; CERTIFICATE NOT SHEWING THAT PREVIOUS CONVICTION WAS FOR FIRST OFFENCE.

A certificate that the defendant had been convicted for keeping intoxicating liquor for sale contrary to the Canada Temperance Act is sufficient proof of a previous offence upon which to base a second conviction for keeping for sale, though it does not appear from the certificate, and was not otherwise proved that such previous conviction was for a first offence. Ex parte Batson, 10 Can. Cr. Cas. 240.

[Referred to in Ex parte LeBel, 16 Can. Cr. Cas. 367.]

WARRANT OF ARREST TO ANSWER CHARGE; INFORMATION INSUFFICIENT TO LEAD WARRANT; QUASHING CONVICTION.

(1) A sworn information merely stating that the complainant has just cause to suspect and believe and does suspect and believe that the defendant has committed the offence charged, will not alone authorize a justice to issue a warrant of arrest; the justice must enquire into the facts on which the informant's belief is founded, and exercise his own judgment thereon. (2) On a charge of keeping liquor for sale contrary to the Canada Temperance Act, the accused having been arrested and brought before the magistrate to answer the charge upon such an information without an enquiry by the magistrate into the grounds of suspicion, the magistrate acquired no jurisdiction to proceed with the trial, and a summary conviction was quashed. Ex parte Coffon, 11 Can. Cr. Cas. 48.

[Distinguished in Ex parte Archambault, 16 Can. Cr. Cas. 434; Ex parte Madden, 13 Can. Cr. Cas. 273; referred to in Ex parte O'Regan, 16 Can. Cr. Cas. 121; R. v. Sweeney, 1 D.L.R. 477; specially referred to in R. v. Coulombe, 20 Can. Cr. Cas. 32, 6 D.L.R. 299; followed in Ex parte Grundy, 12 Can. Cr. Cas. 68.]

SEARCH WARRANT FOR LIQUORS; REGULARITY; ISSUING BEFORE PROSECUTION FOR ILLEGALLY KEEPING FOR SALE; INFORMATION FOR SEARCH WARRANT; STATING INFORMANT'S CAUSES OF SUSPICION.

(1) A search warrant for liquors may be issued under the Canada Temperance Act (amendment of 1888) without first laying a charge against the custodian of the liquors for keeping them for sale. (2) An information for a search warrant under the Canada Temperance Act sufficiently states the causes of suspicion and the particulars of the offence if it states that the informant has just and reasonable cause to suspect and does suspect that intoxicating liquor is kept for sale in violation of the statute in a specified hotel, and that the reason for such suspicion is that persons who have there purchased liquor from the hotel keeper (naming him) have told the informant that such hotel keeper is keeping liquors for sale. The King v. Townsend (No. 2), 11 Can. Cr. Cas. 115.

[Affirmed in Townsend v. Cox, [1907] A. C. 514; adopted in Townsend v. Beckwith, 14 Can. Cr. Cas. 357, 42 N.S.R. 310; observed in McNeil v. McGillivray et al., 42 N.S.R. 133, 147.]

COMMITMENT; VARIANCE FROM CONVICTION; CURATIVE CLAUSES.

An objection to a warrant of commitment under the Canada Temperance Act on the ground that it awards imprisonment only, while the conviction also awarded costs and further imprisonment in default of distress, is cured by secs. 117 and 118 of that Act. The King v. Johnston (No. 1), 11 Can. Cr. Cas. 6.

SUBSEQUENT OFFENCE; PROVING PRIOR CONVICTION; MAGISTRATE'S CERTIFICATE.

(1) The fact that information was duly laid for the prior offence must be proved in a charge as for a second or third offence under the Canada Temperance Act, where the increased penalty is to be imposed. (2) The information for the prior offence is not legally proved by the oral testimony of the solicitor acting for the informant on the trial of that charge, whose knowledge of the laying of the information and of the date of same was obtained only by inspection thereof at such trial. (3) The date of the information for the prior offence is not provable by including a statement thereof in a certificate of the magistrate issued under sec. 115 (b) certifying the number of previous convictions. The King v. Hoare, 12 Can. Cr. Cas. 1.

CERTIFICATE OF PREVIOUS CONVICTION; IDENTITY OF DEFENDANT.

(1) Where a certificate of a previous conviction of a person of the same name and description as the accused is put in evidence as proof of a previous conviction without specific evidence of identity and without any question of identity being raised, there is evidence upon which the magistrate may determine whether or not the accused was the person formerly convicted. (2) A conviction upon the pending charge with an increased penalty because of the accused having been previously convicted will not be quashed under such circumstances on the ground that identity was not proved. The King v. O. A. Batson, 12 Can. Cr. Cas. 62.

[Referred to in R. v. Leach, 17 O.L.R. 643, 14 Can. Cr. Cas. 391.]

HABEAS CORPUS; CONVICTION; "CRIMINAL CASE."

(1) A commitment on conviction for an offence against Part II. of the Canada Temperance Act is a commitment in a criminal case and a Judge of the Supreme Court of Canada has power to issue a writ of habeas corpus. (2) Under Part II. of the Canada Temperance Act which enacts that a fine may be imposed of "not less than $50" for a first offence and of "not less than $100" for a second offence, the magistrate cannot impose a fine of more than $50 for a first offence. Re Placide Richard, 12 Can. Cr. Cas. 204.

FINE; IMPRISONMENT IN DEFAULT.

(1) Section 739 of the Revised Criminal Code, 1906, applies to authorize imprisonment forthwith for nonpayment of a fine imposed for a first offence under the Canada Temperance Act without the necessity of a distress, notwithstanding that the statutory form T to the latter Act giving a form of conviction for a first offence thereunder is drawn as for a distress in default of payment. (2) Form T to the Canada Temperance Act, R.S.C. 1906, ch. 152, is not to be deemed to be exclusive of all other forms of convictions for a first offence, and the effect of secs. 135 and 151 (formerly 51 Vict. ch. 34, secs. 9 and 14), is to authorize an alternative adjudication of imprisonment without distress and a corresponding form of conviction framed under the Criminal Code. (3) Upon a summary conviction imposing a fine and imprisonment in default of payment forthwith, a delay of twenty-nine days in issuing the warrant of commitment will not affect its validity. The King v. McKinnon, 12 Can. Cr. Cas. 414.

SUMMARY CONVICTION; CONVICTION NOT SHEWING CONFORMITY WITH LIMITATION.

(1) Where the limitation of time for bringing a prosecution is contained in a separate section of the statute creating the offence, it is not essential to the validity of the conviction that it should shew on its face that the limitation has not been exceeded. (2) Neither the summary conviction nor the warrant of commitment for a third offence against the Canada Temperance Act need shew that the information leading to a prior conviction was laid within the statutory period of three months after the offence. The King v. Clark (No. 2), 12 Can. Cr. Cas. 485.

SEARCH WARRANT FOR LIQUORS.

A search warrant for liquors may be issued under the Canada Temperance Act without first laying a charge against the custodian of the liquors for keeping them for sale. The King v. Townsend (No. 4), Townsend v. Cox, 12 Can. Cr. Cas. 509.

[Discussed in Townsend v. Beckwith, 14 Can. Cr. Cas. 357.]

SELLING AND KEEPING FOR SALE; DISTINCT OFFENCES.

The offence of keeping liquor for sale and of selling liquor contrary to the Canada Temperance Act are distinct offences, and a summons to answer one upon an information for the other is invalid. Ex parte Melanson, 13 Can. Cr. Cas. 251.

SEARCH WARRANT AND ORDER FOR DESTRUCTION OF LIQUORS.

(1) Under the Canada Temperance Amendment Act of 1888, justices of the peace have jurisdiction to issue a search warrant to search for and seize liquors, on information laid therefor, notwithstanding that no prosecution in relation thereto has been brought or is pending. (2) An order under which liquors seized under such warrant were destroyed, and following a conviction consequent on such search, must be quashed before an action can be brought or maintained against the justices who made such warrant and order. [Townsend v. Cox, 12 Can. Cr. Cas. 509, discussed.] Townsend v. Beckwith, 14 Can. Cr. Cas 353.

CONVICTION; IMPRISONMENT IN DEFAULT OF PAYING FINE.

A conviction under the Canada Temperance Act may by virtue of Criminal Code, sec. 739 (b) direct imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods. The King v. Whiting, 14 Can. Cr. Cas. 414.

EVIDENCE; JUDICIAL NOTICE; PROCLAMATION OF CANADA TEMPERANCE ACT IN COUNTY; TIME FROM WHICH EFFECTIVE.

While an Order-in-Council proclaiming the Canada Temperance Act in force in a county must be judicially noticed under Criminal Code, sec. 1128, it must be shewn on a trial for an offence under the Act that the then current liquor licenses had expired, or that there were no liquor licenses in the county, as the case may be, as by sec. 109 of the Canada Temperance Act if there were no licenses the statute becomes operative only after the expiry of thirty days from the date of the Order-in-Council, and if there were licenses, the statute is operative only from a future date contingent upon the expiry of the licenses. The King v. Wallace, 14 Can. Cr. Cas. 427.

[Referred to in R. v. Lorrimer, 14 Can. Cr. Cas. 435.]

PROCLAMATION; TIME FROM WHICH EFFECTIVE.

While an Order-in-Council proclaiming the Canada Temperance Act in force in a

county must be judicially noticed under Criminal Code, sec. 1128, evidence must be given on a trial for an offence under the Act as to the expiry date of liquor licenses, or that there are no liquor licenses in the county, as the case may be, so as to prove that the Act had been brought into force in the county at the time of the alleged offence, as by sec. 109 of the Canada Temperance Act if there were no licenses the statute becomes operative only after the expiry of thirty days from the date of the Order-in-Council, and if there were existing licenses then from a date contingent upon their expiry. The King v. Lorrimer, 14 Can. Cr. Cas. 430.

SECOND OFFENCE; NECESSITY OF PRIOR CONVICTION.

(1) A second offence under the Canada Temperance Act to be punishable as such must be one committed after conviction for the first offence, and a summary conviction made as for a second offence committed after the information was laid for the first offence but before conviction thereon is bad. (2) Sec. 143 of the Canada Temperance Act does not displace the common-law rule in that respect. (3) The information for the second offence must allege the previous conviction. The King v. Jordan, 15 Can. Cr. Cas. 130.

INTOXICATING LIQUORS; STATUTORY DEFINITION; MALT LIQUORS INCLUDED; PROOF OF INTOXICATING QUALITY UNNECESSARY.

(1) The fact that the person selling liquors where the Canada Temperance Act is in force did not know that the beverage he sold was intoxicating and believed it to be nonalcoholic, will not constitute a defence to a prosecution for illegal sale. (2) Where it is shewn that the liquor sold was a malt liquor it is not necessary to prove that it would intoxicate as all malt liquors are included in the statutory definition of "intoxicating liquors" under the Canada Temperance Act. Ex parte Lindsay, 15 Can. Cr. Cas. 252.

[Referred to in Ex parte Horsman, 15 Can. Cr. Cas. 281.]

LIQUOR LAW; EXEMPTION OF SALES FOR MEDICAL PURPOSES; PRESCRIPTION BY PHYSICIAN; REPEAT ORDER BY ORIGINAL PRESCRIPTION.

(1) Where a physician's prescription of the full quantity of intoxicating liquor allowed by the Canada Temperance Act to be sold at any one time for medicinal purposes where that Act is in force, has been filed by a druggist, a memorandum thereon signed by the physician to repeat the order once is not a sufficient certificate or prescription under the Act to warrant the druggist in selling the same quantity to the same individual two days later. (2) There must be a separate prescription for each authorized supply to be filed and recorded under sec. 125 of the Canada Temperance Act. Ex parte Nugent, 15 Can. Cr. Cas. 276.

JURISDICTION OF MAGISTRATE; CHEMICAL ANALYSIS SHEWING SMALL PERCENTAGE OF SPIRITS.

Where the evidence for the prosecution under the Canada Temperance Act shewed that the alleged nonalcoholic beverage in question had intoxicated, the jurisdiction of the magistrate to convict on crediting such testimony is not displaced by expert evidence that the percentage of spirits on analysis of the liquor was about one-half of one per cent. Ex parte Horsman, 15 Can. Cr. Cas. 280.

GOVERNMENT RAILWAY; STATION AGENT KEEPING FOR DELIVERY LIQUOR RECEIVED IN COUNTY WHERE CANADA TEMPERANCE ACT IS IN FORCE.

(1) The restrictions of the Canada Temperance Act as to shipment of liquor to and keeping same for delivery within a county in which that Act has been proclaimed, do not apply to the Crown and therefore not to the Intercolonial Railway of Canada belonging to the Dominion and operated as a public work. (2) A station agent of the Intercolonial Railway who, in that capacity, warehouses and keeps for delivery, in a county where the Canada Temperance Act is in force, intoxicating liquors shipped into such county, is not liable for the offence declared by sec. 117 of that Act (amendment of 7-8 Edw. VII. ch. 71.) Ex parte Walker, 16 Can. Cr. Cas. 11.

STATUTE TAKING AWAY CERTIORARI; LIQUOR SHIPPED BY EXPRESS; LIABILITY OF EXPRESS AGENT FOR "KEEPING FOR DELIVERY."

(1) Where the right of certiorari has been taken away by statute, ex. gr., in cases under the Canada Temperance Act, and the magistrate had jurisdiction over the offence and the person accused, neither the insufficiency of the evidence nor the exclusion of evidence are grounds for granting the writ, as such matters do not go to the jurisdiction. (2) An express agent who as an employee of an express company receives intoxicating liquor shipped into a county where Part II. of the Canada Temperance Act is in force, may be personally liable for keeping liquor for delivery contrary to sec. 127 of that Act as amended, 7-8 Edw. VII. ch. 71. Ex parte Morison, 16 Can. Cr. Cas. 28.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 497.]

SUMMARY CONVICTION; SHIPPING LIQUOR INTO PLACE WHERE CANADA TEMPERANCE ACT PROCLAIMED.

(1) The offence of unlawfully causing intoxicating liquor to be shipped into a place where the Canada Temperance Act has been

proclaimed is at least partly committed in the latter place, and the magistrate there has jurisdiction to summarily convict for the offence a person resident in another county who appears before him charged with the offence. (2) Such jurisdiction may be supported under Code, secs. 584 (b) and 707, as well as under sec. 127 of the Canada Temperance Act (amendment of 1908). (3) Since the amendment of 1909 to Code, sec. 717, it is no longer necessary in a summary conviction matter for the prosecution to negative exceptions in the statute creating the offence, even if they are specified in the same section of the statute and are negatived in the information. Ex parte McIntyre, 16 Can. Cr. Cas. 38.

UNLAWFULLY BRINGING LIQUOR INTO PLACE WHERE CANADA TEMPERANCE ACT IS IN FORCE.

(1) On a charge of unlawfully bringing intoxicating liquor into a city where the Canada Temperance Act has been proclaimed, it is not necessary to negative in the information or conviction, the exceptions contained in sec. 117 of the Canada Temperance Act (amendment of 1908). (2) Bringing intoxicating liquor into a city where the Canada Temperance Act is in force in contravention of the amending sections of 1908 is an unlawful "disposal" of liquor within the terms of sec. 138 of the Act. Ex parte Mitchell, 16 Can. Cr. Cas. 205.

OPERATION OF STATUTE FROM EXPIRY DATE OF LIQUOR LICENSE THEN EXISTING.

Where a proclamation bringing into force part of the Canada Temperance Act in any county was issued several years prior to the offence charged thereunder and remains unrevoked, it is not necessary to prove the date of liquor license expiry on which the proclamation would take effect, as none of such licenses could legally be in force for more than one year. Ex parte Edwards, 16 Can. Cr. Cas. 522.

SUMMARY CONVICTION; PARISH COURT COMMISSIONER IN NEW BRUNSWICK; JURISDICTION OF TWO JUSTICES.

(1) A Parish Court Commissioner appointed under the laws of New Brunswick with the power of two justices of the peace is authorized to try prosecutions under the Canada Temperance Act and is a "magistrate" under sec. 131 thereof, which confers jurisdiction on magistrates having the power of two justices. (2) The omission of the words "Parish Court Commissioner" from the Canada Temperance Act on its re-enactment as consolidated does not shew an intention to deprive that official of jurisdiction, for the special mention of officials of that designation was no longer necessary because they had since been qualified with the authority of a magistrate under Provincial law. Ex parte Monahan, 17 Can. Cr. Cas. 53.

THIRD OFFENCE.

(1) A certificate of a former summary conviction under the Canada Temperance Act, in respect of an offence charged to have been committed between dates covering a period of three months, but dated two weeks after the expiry of that period, is prima facie evidence of an offence, within the statutory limit of three months prior to the commencement of the prosecution, although the date of laying the information was not proved. (2) If the prior conviction was invalid on the ground that the information was not laid within three months after the offence, the onus is upon the accused to shew the fact where it does not appear on the certificate. The King v. Woodlock, 17 Can. Cr. Cas. 203.

SPECIAL COURT TO TRY BALLOTING OFFENCES; ADJOURNMENT FOR SENTENCE; ONT. ACT, 1902.

(1) The Ontario Legislature has power to enact as part of a statute respecting the sale of intoxicating liquors that a vote of the electors of the province shall be taken upon the question of bringing the Act into force, and that the restrictive part of the statute shall become operative only upon an affirmative vote of a stated proportion of the electors and upon a proclamation to be thereupon issued. (2) The provision contained in the Liquor Act (Ont.) 1902, for the designation of a County Judge to "conduct the trial" of persons accused of illegal acts in the taking of the vote of the electors and making the procedure of the Ontario Election Act applicable thereto constitutes the Judge selected thereunder a special Court to summarily try the offenders without the right to a trial by jury. (3) A County Judge duly designated and acting under the Liquor Act (Ont.) 1902, may, after finding the accused guilty, adjourn the Court to a later date for the purpose of passing sentence upon him. (4) Such Judge may issue the preliminary process in a prosecution under that statute in the county for which he holds his judicial commission and may hold the trial in another county. The King v. Walsh, 6 Can. Cr. Cas. 452.

[Referred to in Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 252.]

CERTIORARI; GRANT OF, BEFORE TERMINATION OF PROCEEDINGS BELOW; SUBSEQUENT SENTENCE OF ACCUSED BY INFERIOR COURT; WARRANT OF COMMITMENT INVALID; DISCHARGE ON HABEAS CORPUS.

The Ontario statute, 2 Edw. VII., ch. 12, sec. 15, as to the amendment of convictions under Provincial Acts, applies only to summary proceedings before a justice of the peace, and not to proceedings taken under

the Liquor Act (Ont.) 1902 before a County Judge specially designated under the latter Act. The King v. Foster, 7 Can. Cr. Cas. 46.

[Referred to in R. v. Carlisle, 7 Can. Cr. Cas. 481.]

PROVINCIAL OFFENCES; APPOINTMENT OF OFFICER TO TRY; INCORPORATION OF PENALTY CLAUSES OF ANOTHER STATUTE.

(1) A provincial legislature has power to enact a statute containing a proviso that certain parts thereof shall not come into force until a proclamation by the Lieutenant-Governor to be issued only upon an affirmative vote of the electorate of the province; and the Ontario Liquor Act, 1902, is intra vires. (2) A provincial legislature may create a special tribunal for the trial of offences against its own enactments; or may designate as such tribunal in one county the County Judge already commissioned by Federal authority for another county. (3) The effect of sec. 91 of the Liquor Act, 1902, is to include amongst the punishments which may be imposed by such tribunal for corrupt practices at the voting, not only the penalties for the recovery of which special provision is therein made, but also the imprisonment which may be imposed in the first instance under sections of the Election Act declared in general terms to apply mutatis mutandis. (4) A commitment by a tribunal of inferior jurisdiction may be severable, and when imprisonment is ordered for a term in default of payment of a fine and costs, the prisoner is not entitled to his release on habeas corpus during the first term because of the costs not being ascertained in the commitment, but leave will be reserved to him to reapply at the expiration of the first term. (5) A conviction is not invalid for failure to state therein the date of the offence, if the time for bringing the prosecution is not limited by statute. The King v. Carlisle, 7 Can. Cr. Cas. 470.

[Applied in R. v. Collette, 16 Can. Cr. Cas. 281, 291, 19 Que. K.B. 132.]

SELLING LIQUOR WITHOUT LICENSE BY WHOLESALE OR RETAIL; CONVICTION.

A license to sell spirituous liquors, whether by wholesale or retail, is now necessary either in the case of a tavern or a shop, and in the case of a shop it must not be consumed on the premises or sold in quantities less that a quart. Therefore the sale of a bottle of gin without a license is contrary to law; and semble, that even if a license be necessary only on a sale by retail, the sale of a bottle, value sixty cents, would be a sale by retail. It is not necessary, in a conviction for selling liquor without license, to mention the statute under which the conviction took place; nor that it should appear on the face of the conviction that the prosecution commenced within twenty days of the commission of the offence, nor to specify that it is a first or second offence; nor to whom the liquor was sold; neither is it illegal to award imprisonment in default of distress, etc. Regina v. Strachan (1870), 20 U.C.C.P. 182. N.W.T. ORDINANCE 1891-92.

The Canada Criminal Code applies to prosecutions under the Liquor License Ordinance (N.W.T.), 1891-92, for the enforcement of penalties thereunder. R. v. Wilson, 1 Can. Cr. Cas. 132.

STATUTORY RESTRICTION OF CERTIORARI PROCEEDINGS.

The Liquor License Act of Nova Scotia, 1895, sec. 117, applies to prohibit the granting of a certiorari in respect of any conviction thereunder, unless the applicant makes an affidavit negativing the charge as laid in the information; and without such affidavit, the Court cannot grant the writ, although the sole questions raised are as to validity of the License Act as regards wholesale transactions, and as to whether the conviction which shewed the exact quantity of liquor admittedly sold was not a wholesale transaction. R. v. Bigelow, 2 Can. Cr. Cas. 367.

LIMITATION OF TIME FOR PROSECUTION; AMENDMENT OF INFORMATION.

An information for illegal selling of liquor under the Ontario Liquor License Act cannot be amended so as to charge an offence of a date more than thirty days before the amendment is made. The power of amending information under the Liquor License Act, sec. 104, under which the justice may "substitute for the offence charged therein any other offence" against the Act, is controlled by the limitation of time for laying a fresh information (sec. 95), and as to the substituted offence is to be treated as laid on the date of the amendment. R. v. Hawthorne, 2 Can. Cr. Cas. 468.

[Referred to in R. v. O'Connor, 20 Can. Cr. Cas. 81, 3 D.L.R. 23.]

"TEMPERANCE DRINKS"; PERCENTAGE OF ALCOHOL.

Diluted lager beer shewing on analysis an average strength of 2.05 per cent of alcohol, is an intoxicating liquor within the prohibition of the Ontario Liquor License Act. R. v. McLean, 3 Can. Cr. Cas. 323.

[Referred to in R. v. Bigelow, 41 N.S.R. 501.]

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the validity of the License Act as regards wholesale transactions, and as to whether the conviction which shewed the exact quantity of liquor admittedly sold was not a wholesale transaction. Bigelow v. R., 4 Can. Cr. Cas. 337.

[Followed in R. v. McLeod, 6 Can. Cr. Cas. 26.]

INSPECTOR'S EXEMPTION FROM COSTS.

On a prosecution under a Liquor License Act by a license inspector and an appeal by the defendant from the conviction obtained, costs will not be awarded to the inspector on the dismissal of the appeal, if by statute he is exempt from liability to pay costs had the decision been against him. The Queen v. Learment, 5 Can. Cr. Cas. 151.

APPEAL FROM CONVICTION; AFFIDAVIT NEGATIVING GUILT; STATUTORY REQUISITES.

(1) A Territorial Ordinance enacting that no appeal shall lie from a conviction under a Territorial Ordinance unless the appellant shall, within the time limited for giving notice of appeal, make an affidavit before the justice who tried the case that he did not, by himself or otherwise, commit the offence, is not ultra vires of the Legislative Assembly. (2) Such enactment is not inconsistent with sec. 880, of the Cr. Code, made applicable to the Territories by the North-West Territories Act. (3) The omission to make such affidavit within the time prescribed deprives the Court to which the appeal is given of jurisdiction, and such omission cannot be waived so as to confer jurisdiction. Cavanagh v. McIlmoyle, 6 Can. Cr. Cas. 88.

[Referred to in R. v. McLeod, 6 Can. Cr. Cas. 97; discussed in R. v. Easley (No. 1), 10 Can. Cr. Cas. 285.]

REGULATIONS BY LICENSE COMMISSIONERS; GAMES OF CHANCE PROHIBITED ON LICENSED PREMISES.

(1) It is competent for license commissioners under the Ontario Liquor License Act to prohibit all card playing or games of chance on the licensed premises, whether or not anything is staked on the game. (2) Euchre is a game of chance, and not a game of mere skill. (3) If games of chance are played on licensed premises in contravention of a regulation of the commissioners, and in the absence of the licensee, the latter is liable to conviction therefor if his agent has failed to take due precautions for the enforcement of the regulation. The King v. Laird, 7 Can. Cr. Cas. 318.

STATED CASE; EXPOSING LICENSE IN WAREHOUSE; BREWER'S LICENSE.

(1) A wholesale brewer's license under the N.S. Liquor License Act need not be kept exposed in the warehouse, and is not subject to the requirements of sec. 55 of the Act. (2) Notwithstanding sec. 127 of the N.S. Liquor License Act a case may be stated by a stipendiary magistrate to the Supreme Court in respect of a question of law arising on a prosecution under the Act. The King v. Oland (No. 1), 8 Can. Cr. Cas. 206.

BREWERS AND DISTILLERS; "LICENSE SIGN" OVER DOORS.

Brewers licensed as such under the N.S. Liquor License Act are not subject to the regulation (sec. 56) requiring a "license sign" to be exhibited over the door of the premises. The King v. Oland (No. 2), 8 Can. Cr. Cas. 208.

CONCURRENT LEGISLATIVE POWER; TEMPERANCE ACT OF 1864; QUEBEC LICENSE LAW, 1900.

(1) The legislature of the Province of Quebec has no power to repeal any portion of the Temperance Act of 1864 enacted by the former Province of Canada; and sec. 97 of the Quebec License Act of 1870 purporting to repeal certain sections thereof in so far as the same relates to the Province of Quebec and to matters within the control of the provincial legislature, is of no effect. (2) The repeal of secs. 1 to 10 inclusive of the Temperance Act of 1864 by the Canada Temperance Act, 1878, left still in force as provincial legislation the sections of the Quebec License Law of 1870 embodying similar provisions to those contained in the sections so repealed. (3) The Quebec provincial statute, 49 and 50 Vict. ch. 3, sec. 4 (now sec. 68 of the Quebec License Law), declaring that the sale of intoxicating liquors without a license in municipalities where the Canada Temperance Act is in operation shall be held to be a contravention of the provincial license law, is within the legislative powers of the province. (4) A prosecution for selling liquors without license will lie under the Quebec License Law of 1900, although such sale took place in a district in which the Temperance Act of 1864 is in force and had been so continuously since Confederation. (5) The fact that the offence was an infraction of the Temperance Act of 1864 does not prevent its being also an offence under a provincial law and punishable under either or both, the federal and provincial jurisdiction to constitute the sale an offence, being concurrent. Ex parte O'Neil, 9 Can. Cr. Cas. 141.

QUEBEC LICENSE LAW 1900; CERTIORARI: PRELIMINARY DEPOSIT.

The deposit of $50 which is a condition of a certiorari under the Quebec License Law (1900) is a deposit in security and not in sequestration. Wing v. Sicotte, 10 Can. Cr. Cas. 171.

INSPECTOR'S APPEAL ON DISMISSAL OF COMPLAINT; LIMITED RIGHT; DIRECTION OF ATTORNEY-GENERAL; NO APPEAL FROM DISMISSAL ORDER OF A POLICE MAGISTRATE.

(1) The limited right of appeal by a license inspector under the Ontario Liquor License Act upon the dismissal of his complaint does not include dismissal orders made by a police magistrate of a town, acting in his capacity of police magistrate and not as an ex officio justice. (2) Sec. 118 (6) of the Liquor License Act, R.S.O. 1897, ch. 245, which permits an appeal to the County Court Judge by direction of the Attorney-General in all cases in which an order has been made "by a justice or justices" dismissing an information, does not include a police magistrate within the term "justice or justices." The King v. Smith, 10 Can. Cr. Cas. 362.

WILFUL VIOLATION OF PROVINCIAL STATUTE; PROHIBITION (LIQUOR) ACT (P.E.I.), 1900.

(1) Code, sec. 164 does not make indictable the wilful violation of a provincial statute which in itself provides a penalty and mode of punishment. (2) A provincial Legislature has power to include in a provincial statute prohibiting the sale of intoxicating liquors and providing for its enforcement by fine and imprisonment, a clause depriving the accused of any right of appeal. The King v. McMurrer; McMurrer v. Jenkins, 18 Can. Cr. Cas. 385.

LIQUOR IN VICINITY OF PUBLIC WORKS UNDER CONSTRUCTION; UNLAWFUL POSSESSION FOR GIVING AWAY OR SELLING.

(1) A commissioner of police appointed under R.S.C. 1906, ch. 92, is a person "fulfilling a public duty" within the terms of the Ontario statute, R.S.O. 1897, ch. 88, and is entitled to notice of action thereunder before suit is brought against him for a return of a fine and costs alleged to have been irregularly levied upon the plaintiff by the commissioner in virtue of his office in respect of plaintiff's possession of intoxicating liquor within a prohibited district in alleged contravention of Cr. Code, secs. 150 and 151. (2) Where an order for the forfeiture and destruction of intoxicating liquor seized was made by a commissioner of Dominion police assuming to act under the authority of Code, sec. 614 in the presence of the owner of the liquor brought before him by the seizing officer, and the commissioner had, by statute, jurisdiction over the subject-matter and over the owner in respect thereof, a notice of action must be given within six months under R.S.O. 1897, ch. 88, even if the forfeiture was irregularly made or was wholly void or contrary to natural justice, and was not reduced to writing; and semble, the action itself must be brought within six months under Cr. Code, sec. 1149. (3) The Dominion Parliament has power to make it a crime to be in possession of liquor for the purpose of giving it or selling it to another person within a defined distance of any public work under construction; and Code, sec. 143 is therefore not beyond the legislative power of the Canadian Parliament. Geller v. Loughrin, 18 Can. Cr. Cas. 461.

[Specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

HABEAS CORPUS; LOCAL OPTION BY-LAW.

(1) Not withstanding the Habeas Corpus Act, R.S.O. 1897, ch. 83, there is no appeal to the Ontario Court of Appeal from the unanimous judgment of the Court below refusing to discharge the prisoner on habeas corpus where he is held under a conviction under the Ontario Liquor License Act, unless the Attorney-General certifies under sec. 121 of the latter statute (R.S.O. 1897, ch. 245) that the point in dispute is of sufficient importance to justify an appeal. (2) A conviction for selling liquor or keeping liquor for sale in contravention of a local option municipal by-law prohibiting the issue of liquor licenses is a conviction under the Liquor License Act for selling or keeping for sale "without a license," and is subject to the same limitations as to review on certiorari and habeas corpus as a conviction against a nonlicensee in a district in which licenses are issued. Re Leach and Fogarty, 18 Can. Cr. Cas. 487.

REGULATION OF SALES OF INTOXICATING LIQUORS; COMPELLING THE DISCHARGE OF PARTY FROM WHOM LIQUOR WAS PURCHASED.

The Ontario Legislature was acting within its powers in passing sec. 13 of Act 2 Geo. V. (Ont.), ch. 55, providing that in a municipality in which a by-law, under sec. 141 of the Liquor License Act, R.S.O. 1897, ch. 245, prohibiting the sale by retail of liquor is in force, a person found upon a street or in any public place in an intoxicated condition owning to the drinking of liquor shall be guilty of an offence against the Liquor License Act aforesaid, and, upon any prosecution for such offence, he shall be compelled to state the name of the person from whom and the place in which he obtained such liquor, and in case of his refusal to do so, he shall be imprisoned for a period not exceeding three months or until he discloses such information. [Hodge v. The Queen, 9 App. Cas. 117, followed.] The King v. Riddell, 19 Can. Cr. Cas. 400, 4 D.L.R. 662.

CONSTITUTIONAL LAW; OFFENCE OF BEING FOUND DRUNK.

It is competent for a provincial legislature to declare it an offence against its liquor laws for a person to be found in an intoxicated condition in a public place; sec. 141 of the Liquor License Act, R.S.O. 1914,

ch. 215, as amended by 4 Geo. V. (Ont.) ch. 3 and 5 Geo. V. ch. 39 is, therefore, intra vires, and is not overridden in counties in which Part II. of the Canada Temperance Act has been proclaimed by anything contained in the latter Act. [Atty.-General for Ontario v. Atty.-General for Canada, [1896] A.C. 348, applied.] R. v. Scott, 28 Can. Cr. Cas. 346.

PROVINCIAL AND FEDERAL LEGISLATION.

The prohibitions of the Ontario Temperance Act as to the sale and possession of intoxicating liquors are superseded by the Canada Temperance Act in any district in which Part II. of the latter Act has been brought into force. Atty.-General Ont. v. Atty.-General Can., [1896] A.C. 348, applied; R. v. Scott (1916), 37 O.L.R. 453, distinguished.] R. v. Thorburn, 29 Can. Cr. Cas. 329, 39 D.L.R. 300.

SUSPENDED OPERATION OF STATUTE IN CERTAIN LOCALITIES; N.S. TEMPERANCE ACT.

The Nova Scotia Temperance Act, 1910, is to be considered as having come into force in its entirety on the passing thereof subject to the suspension of certain provisions in particular localities in terms of the statute; and as to the City of Halifax, the suspension ceased as to the operation of Part II., dealing with penalties for the infraction of Part I., when the legislature in 1916 amended sec. 3 of the Act by declaring that Part I. should apply to every part of the Province of Nova Scotia in which the Canada Temperance Act is not in force. The provision of the Interpretation Act, R.S.N.S., ch. 1, sec. 8, to the effect that the repeal of any enactment "shall not revive any Act or provision of law repealed by such enactment or prevent the effect of any saving clause therein" does not prevent Part II. of the Nova Scotia Temperance Act, 1910, being applicable in the City of Halifax upon Part I. becoming applicable in that city, notwithstanding the form of the amending statutes, N.S. Acts, 1911, ch. 33, and N.S. Acts, 1916, ch. 22. Where a statute merely intercepts a particular class of cases from a general prior law which continues in force, a repeal of the intercepting statute returns that class of cases to the operation of the general law. Ex parte Bradbury; R. v. Chief Constable, 27 Can. Cr. Cas. 68, 30 D.L.R. 756.

[Followed in Re Nova Scotia Temperance Act, 28 Can. Cr. Cas. 176, 36 D.L.R. 690.]

CANADA TEMPERANCE ACT; LIQUOR FOR PERSONAL USE; SEARCH WARRANT.

The exception created by sub-sec. (2) of sec. 117 as to intoxicating liquor "sent, shipped, brought or carried to any person" for his personal use does not apply to a person who personally brings liquor for his own use into a county where Part II. of the Canada Temperance Act is in force; consequently a conviction is properly made under sec. 117 (c) where the accused brought the liquor in by railway as his personal baggage although intending it solely for his own use. A search warrant for liquors under the Canada Temperance Act will not be quashed on certiorari because of its being given to the informant to execute in his capacity as a constable. [R. v. Heffernan, 13 Ont. R. 616, referred to.] R. v. Swarts, 27 Can. Cr. Cas. 90, 32 D.L.R. 786.

[Applied in R. v. Lake, 28 Can. Cr. Cas. 138.]

SALES IN PROHIBITED DISTRICT; QUEBEC LICENSE LAW.

A district collector of provincial revenue in Quebec may prosecute for illegal sales of liquor without a license in a municipality having a local option by-law without first giving a notice to the municipality requiring them to prosecute under art. 1108, R.S. Que. 1909; but he is to give that notice if he wishes to charge the municipality with the costs of a prosecution instituted by him in case of its default. Gelinas v. Jolin, 27 Can. Cr. Cas. 392, 34 D.L.R. 700.

ANNULMENT OF EXISTING LICENSES; CONSTITUTIONALITY.

So much of sec. 3 of ch. 22 of the Nova Scotia Acts of 1916 as purports to annul liquor licenses is intra vires. Liquor licenses granted in Nova Scotia and which had not expired by lapse of time when sec. 3 of N.S. Acts 1916, ch. 22, came into force, were annulled by that legislation. Part II. of the Nova Scotia Temperance Act is in force both in the City of Halifax and in the County of Halifax. [Re Bradbury, 27 Can. Cr. Cas. 68, 30 D.L.R. 756, 50 N.S.R. 298, followed.] The effect of the Nova Scotia Temperance Act is to prohibit a brewer in Nova Scotia from keeping for sale or selling in Nova Scotia intoxicating liquors which have been manufactured by such brewer who holds a brewers' license granted under the Inland Revenue Act; and such prohibitory provisions are intra vires. [Attorney-General of Manitoba v. Manitoba License Holders, [1902] A.C. 73, followed.] Re Nova Scotia Temperance Act, 28 Can. Cr. Cas. 176, 36 D.L.R. 690.

WHERE FEDERAL LAW SUPPLEMENTARY TO PROVINCIAL LAWS.

The prohibitory liquor regulations under Order-in-Council No. 589 Can., passed under the War Measures Act, 1914, Can., do not apply where the offence could be prosecuted under a provincial liquor law, as the Order-in-Council itself declares the regulations are to be construed as supplementary as to the prohibitory laws in force in the provinces. R. v. Stone, 30 Can. Cr. Cas. 11.

CANADA TEMPERANCE ACT; PROCLAMATION; JUDICIAL NOTICE.

A proclamation putting into force Part II. of the Canada Temperance Act need not be proved in a prosecution thereunder for the court is bound to take judicial notice of it. Forgues v. Gauvin, 30 Can. Cr. Cas. 302.

INLAND REVENUE ACT; UNLICENSED DISTILLING; "MASH OR WASH"; SACCHARINE MATTER.

The exception made by the Inland Revenue Act, R.S.C. 1906, ch. 51, sec. 199, as to home-made beer for domestic use does not apply to a mash made without any distillation from raisins and water. The possession of such a fermented intoxicant is illegal if it were suitable for the manufacture of spirits. R. v. Banni, 31 Can. Cr. Cas. 55.

II. Licenses.

A. Discretion as to Granting.

COMMISSIONERS; KNOWINGLY ISSUING LICENSE CONTRARY TO LAW; MENS REA.

A member of a Board of License Commissioners, who, with the knowledge of all the facts, issues a license contrary to the provisions of the Liquor License Act, Con. Stat. N.B. 1903, ch. 22, is guilty under sec. 59 of "knowingly" issuing a license contrary to law, though there is no evidence of a corrupt motive or criminal intent. Ex parte Blaine, 11 Can. Cr. Cas. 193.

LICENSES; DESCRIPTION BY STREET NUMBER.

Where licensed premises are on the corner of two streets with street numbers on each street, a license as for one of such numbers is a license for the whole of the premises. [Reg. v. Raffles, 1 Q.B.D. 207, 45 L.J.M.C. 61, referred to.] The prohibition of the Quebec Licensing Law (sec. 1040) against a restaurant with a liquor license having any door communicating with the street unless it opens directly into the bar, is not infringed by the mere fact that a door has been allowed to remain in the structure of the building if it is kept permanently locked. [Brigden v. Heighes, 1 Q.B.D. 330; Tassel v. Ovenden, 2 Q.B.D. 383, referred to.] R. v. Lambert, 22 Can. Cr. Cas. 156.

B. Cancellation, Revocation; Forfeiture.

WHETHER TIME OF MEETING TO CONSIDER APPLICATIONS FOR LICENSE IMPERATIVE.

The Liquor License Act, 1887, provides that in cities all applications for licenses shall be considered by the mayor at a meeting to be held "not later" than the 1st April in each year; and that no liquor shall be sold without license, under a penalty:—Held, that it was no defense to a charge for selling liquor without a license that the meeting to consider the applications for licenses had not been held till after the 1st April, and that the defendant's application for a license had then been refused. Quære, whether the provisions of the Act relating to wholesale licenses are ultra vires. Ex parte Driscoll, 27 N.B.R. 216.

KEEPING LIQUOR FOR SALE AFTER CANCELLATION OF LICENSE; NOTICE OF CANCELLATION REQUIRED.

(1) The holder of a license which has been cancelled is only subject to the penalties imposed by law if he continues to occupy the licensed premises and sell intoxicating liquors therein after having received from the collector of revenue of the province notice that his license has been so cancelled, and until such notice has been given his continuing to occupy the said premises and sale of liquors therein is not an offence under the Licensing Act (Quebec.) (2) Failure to prove that notice of cancellation of the license has been given in conformity with the Licensing Act, R.S. Que. 1909, sec. 1077, constitutes a serious irregularity which will warrant the issue of a writ of certiorari. Metropole Co. v. Recorder's Court, 18 Can. Cr. Cas. 492.

III. Unlawful Sales; Offences and Proceedings.

A. In General.

EVIDENCE SUFFICIENT TO PROVE THE OFFENCE UNDER THE ACT.

It appearing upon the hearing of an appeal from a conviction for selling spirituous liquor without a license contrary to the Municipal Act of 1892, sec. 204, subsec. 3, that the liquor sold was intoxicating, but no evidence being given as to its having been produced by distillation, it was held that the evidence was insufficient to sustain the conviction. Re Kwong Wo (1893), 2 B.C.R. 336.

SALE OF LIQUOR WITHOUT LICENSE; CONVICTION OF SERVANT.

The defendant, a servant of one Ward, the keeper of an unlicensed tavern, was convicted of selling liquor in her master's absence. Cameron, J., held the conviction good, the case being undistinguishable in principle from Regina v. Williams, 42 U.C. Q.B. 462, though he would otherwise have held the master alone responsible, under the Liquor License Act, R.S.O. ch. 181. Quære, per Cameron, J., as to the power of the local Legislature to limit, or authorize municipalities to limit, the number of licenses: and as to the effect of the decision of the Supreme Court in city of Fredericton v. The Queen, 3 Sup. Ct. 505. Regina v. Howard, 45 U.C.Q.B. 346.

SALE OF LIQUOR WITHOUT LICENSE; JURISDICTION OF STIPENDIARY MAGISTRATE; COMPETENCY; REMOVAL OF PROCEEDINGS.

Defendant was convicted by the stipen-

diary magistrate for the town of Dartmouth for unlawfully selling liquor by retail without license, contrary to the provisions of the Liquor License Act of 1895, ch. 2, sec. 56, and an order was obtained from a Judge at Chambers removing the conviction into this Court. The magistrate having jurisdiction to try and decide the question whether the defendant sold liquor in the town without license, and there being no objection to his competency, or to his jurisdiction over the subject-matter, and no objection that there was any want of any essential preliminary jurisdiction:—Held, that the Court could not entertain an objection that the magistrate erroneously found a fact which, though essential to the validity of his order, he was competent to try. The Queen v. Walsh (1897), 33 C.L.J. 537.

THREAT OF PROSECUTION; MENACES.

A demand of money from a hotel keeper under threat of prosecution for selling intoxicating liquor in prohibited hours, contrary to a Liquor License statute if the demand be not complied with, may constitute the offence under Cr. Code, sec. 404, of demanding money with menaces, "with intent to steal the same." R. v. Gibbons, 1 Can. Cr. Cas. 340.

SELLING IN "QUANTITIES OF NOT LESS THAN THREE HALF-PINTS;" CONCURRENT SALES TO ONE PURCHASER.

Whether the disposal at the same time and to the same purchaser by a shop licensee, of a quantity of intoxicating liquor of less than three half-pints, and of intoxicating liquor of another kind and put up separately which together made the total quantity purchased more than three half-pints, constitutes a "selling, bartering or trafficking" in liquors in quantities of not less than three half-pints is a question of fact for the decision of the magistrate; and a conviction therefor under the Liquor License Act (Ont.) should not be quashed if the magistrate's finding is that the sale was in prohibited quantities. R. v. Cunerty, 2 Can. Cr. Cas. 325.

LEASE OF PREMISES FOR ILLEGAL PURPOSE.

Where unlicensed hotel premises are leased by the occupant to another as a mere cover to enable the lessor to continue the business, including the sale of liquors, and the agreement is illegal in purpose and design to the knowledge of both parties, it passes no title, and the lessor who remained in possession of the premises is liable to conviction as an "occupant" thereof within the meaning of the Nova Scotia Liquor License Act, 1895, in respect of an illegal sale of liquor made therein. On an appeal from a conviction under the said Act, the case is to be tried de novo, and the Judge is at liberty to pronounce a new finding upon the facts, whether or not new evidence has been taken before him. R. v. McNutt, 4 Can. Cr. Cas. 392.

[Referred to in R. v. Farrell, 16 Can. Cr. Cas. 423, 21 O.L.R. 540; followed in R. v. Baird, 13 Can. Cr. Cas. 245.]

UNLICENSED HOTEL; LEASE OF BAR; COLLUSIVE ARRANGEMENT TO DEFEAT STATUTE.

An hotel proprietor is properly convicted as a principal for the offence of selling intoxicating liquors without a license, notwithstanding that the sale was made under cover of a lease of the bar-room made by him to another party, if such lease be found to be a collusive arrangement to enable the lessor to obtain the profits and advantages of the illegal sale of liquor therein without a license. The Queen v. Learment, 5 Can. Cr. Cas. 151.

UNLAWFULLY SELLING LIQUOR WITHOUT LICENSE; STATUTORY PRESUMPTION; REBUTTAL.

Where under a liquor license law, the statute makes proof of the fact of sale by a person who is "suffered to be in or upon the premises" presumptive evidence that the sale took place with the authority and by the direction of the occupant of the premises, and declares that the burden of proof that the sale took place without the occupant's authority or direction shall be thrown upon such occupant, a conviction of the latter will be supported if the facts appear which give rise to the statutory presumption, notwithstanding the express denial under oath by the accused that he had given any authority or direction to sell, or that he knew of the sale being made. The magistrate trying such a charge may give effect to the statutory presumption as against the unqualified denial by the accused under oath, if he does not give credence to such denial; and the accused can only be said to have satisfied the burden of proof, which the statute casts upon him, when his denial is believed. The King v. Conrod, 5 Can. Cr. Cas. 414.

[Referred to in R. v. Rogers, 11 Can. Cr. Cas. 259; Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424; R. v. Allington, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

RESTAURANT-KEEPER SENDING OUT FOR LIQUOR AT CUSTOMER'S REQUEST IN NONLICENSE TOWN.

A restaurant-keeper who procures liquor for a guest in a nonlicense town but is unable to state from whom his messenger obtained the liquor, is properly convicted under the Quebec License Law, which makes delivery of the liquor equivalent to a sale thereof except where the delivery is gratuitous. The King v. Gunn, 10 Can. Cr. Cas. 148.

[Referred to in R. v. Rogers, 11 Can. Cr. Cas. 261.]

INLAND REVENUE; BREWER'S LICENSE; PROVINCIAL LIQUOR LICENSE REQUIRED TO SELL PRODUCT.

(1) A brewer may properly be convicted under a provincial license law for selling liquor without a provincial license, although he holds a license under the Dominion Inland Revenue Act to carry on the trade or business of a brewer. (2) Semble, the license under the Inland Revenue Act applies only as a permit to manufacture as regards the excise duties. The King v. Neiderstadt, 10 Can. Cr. Cas. 292.

STATUTORY PRESUMPTION AGAINST OCCUPANT; "SALE, BARTER OR TRAFFIC;" WHISKEY DETECTIVE; CREDIBILITY.

(1) Summary convictions made under New Brunswick provincial laws are subject to review by a Judge of the Supreme or County Court. (2) The statutory presumption under sec. 99 of the Liquor License Act (N.B.) against the occupant of premises where an allegal sale of liquor takes place is a conclusive and not a rebuttal one. (3) In order that the statutory presumption against an occupant should arise, the transaction must be shewn to be one of sale, barter or traffic, and not the mere act of a servant in complying with a request of a stranger to go out and purchase liquor for him with money then handed to him. (4) The evidence of a whiskey detective or "spotter" who is shewn to be under a contract of remuneration according to the convictions obtained through his efforts, should not receive credence in a liquor law prosecution when the slightest doubt attaches to it. The King v. Rogers, 11 Can. Cr. Cas. 257.

INTOXICATING LIQUOR; ILLEGAL KEEPING FOR SALE; PRESUMPTION; DUTY OF DEFENDANT TO REBUT; R.S.N.S. 1900, CH. 100.

The statutory presumption of keeping liquor for sale which arises upon the finding of liquor under a search warrant issued under a liquor license law, is supported by the circumstance that the liquor was kept concealed in an unusual manner. The King v. McNutt, 11 Can. Cr. Cas. 26.

SELLING WITHOUT LICENSE; PRICE OF ADMISSION INCLUDING FREE BEER.

Where admission tickets for a dance are sold with the understanding that the holders are entitled to free beer thereat, and beer is supplied accordingly by the proprietors entitled to share in any profits realized, such disposal of the liquor constitutes a sale thereof by the proprietors, and, if unlicensed, they are properly convicted under a liquor license law for unlawfully selling liquor without a license. The King v. Huber, 14 Can. Cr. Cas. 447.

EVIDENCE; SELLING LIQUOR WITHOUT LICENSE; TWO SEPARATE OFFENCES CHARGED FOR SAME DAY.

Where charges for separate offences at different hours of the same day are laid under a liquor license law, the magistrate has a discretion on the trial of one of the charges to rule out questions on cross-examination of the witnesses for the prosecution as to their presence at the time and place of the other offence, and to confine the enquiry to the hours specifically mentioned in the information. The King v. Butterfield, 15 Can. Cr. Cas. 101.

SUMMARY CONVICTION; SELLING LIQUOR; KEEPING FOR SALE.

(1) Where the accused was summoned to answer a charge of selling liquor without a license and at the hearing there being evidence of possession of liquor but no evidence of sale the charge was amended to one for "keeping for sale" and the defendant was refused an adjournment and was convicted, the Court on certiorari will quash the conviction for want of evidence of keeping for sale, but not, under the circumstances of the case, on the ground of the refusal of the adjournment. (2) In order to displace the magistrate's jurisdiction on the ground of the refusal of an adjournment asked by the defence, more must be shewn than an amendment of the information and a refusal to adjourn the hearing, as to which the magistrate has a wide discretion. The King v. Milkins, 17 Can. Cr. Cas. 20.

INFORMATION; SEARCH WARRANT.

(1) In describing an offence in an information or search warrant, a variation from the precise words of the statute is not fatal, if the words used are such as bring the case within the plain meaning of the enactment. (2) An information under a liquor law charging that liquor was "kept" by the accused in violation of the statute sufficiently charges a "keeping for sale" where that is the only "keeping" of liquor which the statute prohibits. (3) The causes of suspicion need not be set forth in the information for a search warrant under the Prohibition Act (P.E.I.) as that statute provides a special form which does not provide for the insertion of the causes and therefore Code form No. 1 does not apply. (4) It is the duty of a peace officer executing a search warrant to have it with him at the time of its execution, and it will be presumed until the contrary is shewn that such duty was performed. (5) An inspector under the Prohibition Act (P.E.I.) may execute a search warrant for liquor although himself the prosecutor, and he may legally act as assistant to the peace officer to whom a search warrant is directed. Fanning v. Gough, 18 Can. Cr. Cas. 66.

EXHIBITING LIQUOR SIGN OR DISPLAYING BOTTLES AND CASKS AT UNLICENSED PLACE.

To constitute the offence under sec. 111 of the Ontario Liquor License Act, as amended by 2 Geo. V. ch. 55, sec. 9, in an unlicensed place, of keeping up a bar sign or of displaying bottles and casks so as to induce a reasonable belief that liquors are sold there it is essential that what is done should induce a belief that (a) premises in fact unlicensed are licensed or (c) that liquor, i.e., intoxicating liquor, is "sold or served therein;" the statute requires something more to be shewn than what would be necessary and proper for the sale of non-intoxicating liquors. Rex v. Bevan, 20 Can. Cr. Cas. 237, 8 D.L.R. 86.

LIQUOR TAX LAW; CERTIORARI; SUFFICIENCY OF INFORMATION; RETAIL LICENSEE SELLING IN QUANTITY IN EXCESS OF LICENSE LIMIT.

(1) An information for selling liquor without a license authorizing such sale under the Liquor License Act, ch. 142, R.S.B.C. 1911, sec. 66, need not describe the offence in the exact words of the statute, if the defendant, from the form of the information, receives particulars of the charge such as he himself might ask for if the information had been in the words of the statute. (2) A licensed retail liquor dealer making a sale of liquor in a larger quantity upon a single sale than his license permits, is properly convicted under the Liquor License Act, R.S.B.C. 1911, ch. 142, of selling liquor without having first obtained a license authorizing him so to do. The King v. Campbell, 20 Can. Cr. Cas. 490, 8 D.L.R. 321.

KEEPING LIQUOR; "CRIMINAL" OFFENCE, WHEN.

A trial and conviction, for keeping liquor for sale contrary to the provisions of the Nova Scotia Temperance Act, 1910, are proceedings on a "criminal charge" within the meaning of sec. 39 (c) of the Supreme Court Act, R.S.C. 1906, ch. 139. (Per Fitzpatrick, C.J., Davies and Anglin, JJ.) Re McNutt, 21 Can. Cr. Cas. 157, 10 D.L.R. 834, quashing appeal from 20 Can. Cr. Cas. 174, 7 D.L.R. 651.

[Applied in R. v. Cody, 23 Can. Cr. Cas. 211, 18 D.L.R. 773.]

INSUFFICIENT ALCOHOL TO PRODUCE INTOXICATION.

The sale of a liquor called "temperance beer" containing so small a quantity of alcohol as not to be capable of producing intoxication when drunk in large quantities, does not violate the Quebec License Law. Collector of Revenue v. Demers, 22 Can. Cr. Cas. 55, 13 D.L.R. 738.

SELLING QUANTITY IN EXCESS OF LICENSE LIMIT.

A restriction whereby the license holder must sell only in quantities not exceeding one quart is infringed when one person buys for a number of persons from the licensee several bottles of liquor, although the quantity intended for any one of them was within the limit. R. v. Campbell, 22 Can. Cr. Cas. 72, 13 D.L.R. 941, affirming 20 Can. Cr. Cas. 490, 8 D.L.R. 321.

EXTRA BAR PROHIBITED.

The maintenance of a separate extra bar in a licensed hotel, although temporary and for one day only, is an infraction of the Liquor License Act, R.S.O. 1897, ch. 245, sec. 65, the inhibiting words of the Act that not more than one bar shall be "kept" meaning that more than one bar should not be had in use and not involving the idea of permanency or continued user. [R. v. Lewis (1905), 41 C.L.J. 842, dissented from; Shelly v. Bethell, 12 Q.B.D. 11, applied. R. v. Genz, 22 Can. Cr. Cas. 110.

CONVICTION UNDER REPEALED STATUTE; SUBSTITUTION OF DIFFERENT PENALTIES BY LATER STATUTE.

A conviction based upon a repealed statute cannot be upheld, and where the defendant is convicted and imprisoned for an alleged unlawful liquor sale under certain sections of the Nova Scotia Temperance Act, 1910, without any reference to a later statute with a different class of penalties which took the place of the repealed statute, the conviction cannot be amended on habeas corpus. [Rex v. Crouse, 21 Can. Cr. Cas. 243, 11 D.L.R. 759, referred to.] R. v. Kaulbach, 22 Can. Cr. Cas. 219, 15 D.L.R. 524.

SHOP LICENCE; MINIMUM QUANTITY IN UNBROKEN PACKAGES.

The holder of a shop license under the Liquor License Act (Ont.) is improperly convicted of selling a less quantity than three half-pints of liquor in a broken package on filling the buyer's order for a half-pint of rum and a half-pint of gin to be mixed together, where there was no appropriation of the goods to the sale or passing of the property therein to the buyer until the bottle, supplied by the seller as a container of the liquor ordered, had been securely corked and handed to the buyer; such bottle is an "unbroken package" under sec. 2 (n) of the Liquor License Act, sale of which by a shop licensee is authorized to a minimum of one half-pint. [Pletts v. Beattie, [1896] 1 Q.B. 519; Jones v. Shervington, [1908] 2 K.B. 545; Nobbett v. Hopkinson, [1905] 2 K.B. 214; and McGregor v. Whalen, 31 O.L.R. 554, referred to; and see R. v. Clarke, 20 Can. Cr. Cas. 486, 9 D.L.R. 517, and note on appropriation of goods on sales of intoxicating liquors, 6 Can. Cr. Cas. 207.] Smith v. Gaipin, 23 Can. Cr. Cas. 318.

TEMPERANCE DRINKS; QUEBEC LICENSE LAW.

The selling of so-called temperance drinks is within the prohibition of the Quebec License Law if they contain any intoxicating principle; evidence that the liquor in question contained from three to five per cent of proof alcohol and that this would intoxicate is sufficient upon which to base a conviction without proof that intoxication had resulted from the sales made. Corriveau v. Simard, 23 Can. Cr. Cas. 156, 18 D.L.R. 703.

KEEPING FOR SALE; STATUTORY PRESUMPTIONS.

The mere finding of liquor does not create a statutory presumption that liquor is kept for sale on the premises unless the special circumstances stated in sec. 102 of the revised Act, R.S.O. 1914, ch. 215, are shewn to exist, for example, the maintenance of a bar. R. v. Nero, 23 Can. Cr. Cas. 167, 18 D.L.R. 688.

LIABILITY OF PURCHASER TAKING DELIVERY FROM CARRIER; PROHIBITED DISTRICT; SEIZURE.

It is not an offence under the Nova Scotia Temperance Act (1910), as amended 1911, for the purchaser of liquor bought in a county under license to personally receive it from the express company on its arrival by railway at the town in which he resides where the prohibition clauses of that Act are in effect; sec. 30 of the Act which prohibits sending liquor or bringing or causing it to be sent or brought applies to the person or agent sending the liquor by a common carrier to the person in the municipality which is not under license and to the person carrying liquor for another at either end of the transit, but not to the purchaser personally taking delivery from the carrier as the consignee of liquor bought in a licensed district. Where there is no reason to suspect that intoxicating liquor consigned by rail from a licensed district to an unlicensed district in Nova Scotia is intended for sale or to be used otherwise than for the personal use of the consignee, the seizure of the liquor is not justified under sec. 36, N.S. Acts, 1911, ch. 33, and the magistrate should order it restored to the consignee. [See Annotation to this case.] R. v. Publicover, 24 Can. Cr. Cas. 1, 21 D.L.R. 203.

PRESUMPTION FROM FINDING LIQUOR; LOCAL OPTION; CONVICTION; AMENDMENT.

A statutory presumption of illegal sale of liquor is raised under sec. 204 of the Liquor License Act, Man., against the person on whose premises is found more intoxicating liquor than is reasonably required for the use of a person not licensed to sell; and by virtue of sec. 215 such presumption will support a conviction for illegal sale without license as being an offence under the same statute although the information was only for unlawful possession of liquors in a local option district and did not allege a sale by the accused. [See R. v. Publicover, 24 Can. Cr. Cas. 1, and Annotation to same.] Under the Liquor License Act, Man., the onus of proving a license to sell is placed upon the accused (sec. 203) and where such onus is not rebutted, a conviction for unlawfully selling without license is justified under sec. 159 on the finding of more than the accused would reasonably require upon his premises if he fails to rebut the statutory presumption of selling which arises thereupon; and the court may make the necessary amendments to a conviction purporting to be for selling in a local option district so as to make it merely a conviction for selling without license without entering into a consideration of the validity of the local option by-law, the provision for sale without license being equally applicable whether or no there was a valid local option by-law. R. v. Palmer, 24 Can. Cr. Cas. 20, 22 D.L.R. 300.

UNLAWFUL SALES; CONTRIBUTION BY SEVERAL TO BUY LIQUORS; LIABILITY OF OCCUPANT.

On a charge under the Liquor License Ordinance, Alta., of selling intoxicating liquor without a license, the effect of sec. 115, sub-sec. 3, of the Ordinance is that proof of consumption of the liquor on the premises of the accused by a group of people gathered together merely for the purpose of drinking, is made conclusive evidence of selling and testimony that the persons so assembled had each contributed to the cost of the liquor and sent for same by messenger, is not admissible to displace the statutory presumption. [R. v. Lightburne, 4 Can. Cr. Cas. 358, followed; and see R. v. Cahoon, 17 Can. Cr. Cas. 65.] R. v. Simulauk, 24 Can. Cr. Cas. 136.

KEEPING FOR SALE; QUEBEC LAW.

The amendment of 1915 to the Quebec License Law, secs. 1011, by which in lieu of the fine of $50 for unlawfully keeping liquors for sale, the fine is made discretionary with the judge with a maximum of $200 does not apply to a prosecution which was pending when the amendment was passed; such case is governed by the prior law when the amendment is not expressly made retroactive, and the court has no discretion to reduce the fixed fine of $50 which it declares. Collector of Revenue v. Boisvert, 24 Can. Cr. Cas. 138.

LIABILITY OF OCCUPANT; PRESUMPTION; SEARCH WARRANT.

Sub-sec. 49 of sec. 49 of the Nova Scotia Temperance Act, as amended by N.S. Acts 1911, ch. 33, sec. 14, is within the legislative powers of a provincial legislature in making the intoxicating liquor under a search warrant prima facie evidence of keeping for sale in contravention of the Act, although sales to persons outside of the prov-

ince are not within the prohibition of the N.S. Temperance Act, and this statutory presumption will apply without any allegation or proof on the part of the prosecution that the keeping for sale was not for the purpose of selling solely to persons outside the province. The statutory presumption of keeping liquor for sale raised against the occupant of premises where liquor is found by officers executing a search warrant under the Nova Scotia Temperance Act has reference not merely to the arrest of the occupant in that event, which sec. 46 authorizes, but applies also against such occupant on being charged with unlawfully keeping the liquor for sale. R. v. Hoare, 24 Can. Cr. Cas. 279. See 25 Can. Cr. Cas. 87.

[Referred to in R. v. Collier, 28 Can. Cr. Cas. 87, 35 D.L.R. 131; dissented from in R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606.]

UNLAWFUL SALES; "SPIRITUOUS, FERMENTED AND MALT LIQUORS."

The Sales of Liquor Act (Sask.) specifically declares by sec. 2, sub-sec. 1, that every spirituous and every fermented and every malt liquor is within the prohibition of the Sales of Liquor Act, and it is therefore unnecessary as to such spirituous, fermented or malted liquors to prove that they are intoxicating or that they contain more than one per cent of alcohol and should therefore be conclusively deemed to be intoxicating under that sub-section. [R. v. Marsh, 39 N.B.R. 119; R. v. Scaynetti, 25 Can. Cr. Cas. 40, referred to.] R. v. McPherson (No. 2), 25 Can. Cr. Cas. 62, 26 D.L.R. 503, reversing 25 Can. Cr. Cas. 60.

"TEMPERANCE" BEER; PERCENTAGE OF SPIRITS.

On an appeal by way of rehearing, from a magistrate's dismissal of a charge of selling intoxicating liquor on the ground that the temperance beer in question was not shown to be intoxicating and that it contained less than 2½ per cent of proof spirits, in consequence of which there was no statutory presumption that it was intoxicating, the judge rehearing the case by consent upon the same depositions as were before the magistrate, may find the alleged temperance beer, which contained over two per cent of proof spirits to have been intoxicating, if he credits the unanswered testimony of a prosecution witness who had consumed a quantity of the same brand, bought from the accused, to the effect that it was intoxicating. [R. v. McLean, 3 Can. Cr. Cas. 327, referred to.] R. v. Willis, 25 Can. Cr. Cas. 297.

Keeping for sale illegally; Search and seizure. R. v. Colton, 26 Can. Cr. Cas. 95.

Statutory presumption of unlawful keeping. R. v. Williams, 27 Can. Cr. Cas. 264.

UNLAWFUL SALES; IDENTITY OF SAMPLE ANALYSED.

To support a conviction for keeping intoxicating liquor for sale based on the seizure in defendant's restaurant of a quantity of hard cider, it must be shewn that the cider sent for analysed and found to be intoxicating within the Liquor License Act was a sample of the identical cider so seized, where there is no other evidence that what was seized was intoxicating. R. v. Hewson, 26 Can. Cr. Cas. 38.

UNLAWFUL SALES; SINGLE PENALTY; LIABILITY OF OCCUPANTS FOR ACTS OF EMPLOYEES.

The summary conviction of the occupant for the illegal sale of liquors made by the employee in contravention of the Liquor License Ordinance, Alta. 1915, ch. 89, because of the statutory liabilities of the occupant under sec. 95 of that Act, is a bar to the subsequent prosecution of the employee in respect of such sale; it is open to the prosecution to proceed with one charge against all responsible for the sale or against any of them, for the one penalty, but not against each for a separate penalty. [R. v. Williams, 42 U.C.Q.B. 462; Ex parte Kelly, 32 N.B.R. 271, applied.] R. v. Martin, 26 Can. Cr. Cas. 42, 28 D.L.R. 578.

CAUSING TO BE "SENT" TO PROHIBITED DISTRICT; N.S. TEMPERANCE ACT.

There being scope for the application of sec. 9 of the N.S. Temperance Act, 1910, as amended by N.S. Acts 1911, ch. 33, without applying it to a charge (laid prior to the amendment of 1915) of unlawfully causing liquor to be sent from the city of Halifax to a prohibition district in Nova Scotia prosecuted in the latter district, full effect must be given to the declaration contained in sec. 3 of the statute to the effect that Part I. thereof shall not apply to the city of Halifax unless and until a proclamation shall bring it into effect there; and where there was no such proclamation and the information, summary conviction, and warrant of distress thereunder disclosed only that the accused caused the liquor to be "sent" from Halifax to the prohibition district without stating that it reached its destination or even left the city of Halifax, the summary conviction discloses no offence under the Act; and such conviction together with the warrant of distress issued thereunder form no answer to a writ of replevin against the constable to recover goods seized to realize the fine illegally imposed. As regards an offence committed prior to the Nova Scotia statutes of 1915, ch. 30, the provision contained in the latter statute implying that a liquor licensee in the city of Halifax might be convicted under secs. 9 and 30 of the Nova Scotia Temperance Act 1910, ch. 2, as amended by N.S. Acts 1911, ch. 33, of sending intoxi-

cating liquor into a prohibited district, is not to be taken into account in construing the Temperance Act as it stood at the time of the alleged offence. Kelly & Glassey v. Scriven, 26 Can. Cr. Cas. 187, 28 D.L.R. 319.

KEEPING FOR SALE; STATUTORY PRESUMPTION; EXCESSIVE QUANTITY.

The keeper of a boarding house who permits a boarder to bring an excessive quantity of intoxicants upon the premises for unlawful consumption is properly convicted of "having" intoxicating liquor for sale in a local option district because of the statutory presumption of sec. 102 (2) of the Liquor License Act, R.S.O. 1914, ch. 215, making possession of an excessive quantity of liquor "conclusive evidence" that it was kept for sale in contravention of the Act. [R. v. Bovin, 22 Can. Cr. Cas. 248, 15 D.L.R. 737, 29 O.L.R. 584, distinguished.] R. v. Kurtemi, 27 Can. Cr. Cas. 223.

UNLAWFUL SALES; PATENT MEDICINE ACT.

A manufacture registered as a proprietor of a patent medicine under the Proprietary or Patent Medicine Act (Dom. Statutes 1908, ch. 56) cannot be prosecuted under the Sales of Liquor Act (Sask.) for selling a "tonic port," as a patent medicine, even if it contains a higher percentage of alcohol than that permitted by the Proprietary or Patent Medicine Act, if it contained medication sufficient to prevent its being used as a beverage. The proper course would be a prosecution under the latter Act. R. v. Druggist Sundries Co., 27 Can. Cr. Cas. 346, 31 D.L.R. 761.

ILLEGAL KEEPING; IRRELEVANT EVIDENCE; STATUTORY PRESUMPTION.

Where the magistrate's discredit of the defendant's evidence on a charge of keeping liquor given in rebuttal of a statutory presumption arising under the Ontario Temperance Act from the finding of a small quantity in defendant's shop, may have been influenced by irrelevant evidence of a kind which would be likely to cause prejudice to the accused, the conviction will be set aside on certiorari. R. v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210, 3 O.W.N. 1469, applied.] R. v. Melvin, 27 Can. Cr. Cas. 350, 34 D.L.R. 382.

[Applied in R. v. Bracci, 29 Can. Cr. Cas. 351.]

ILLEGAL KEEPING; EVIDENCE; RELEVANCY AS TO ANALYSIS.

Where the only legal evidence to support a summary conviction for keeping liquor in contravention of the Ontario Temperance Act does not satisfy the Court hearing a certiorari motion to quash the conviction that the offence was committed (Code, sec. 1124), and the proceedings returned shewed that the magistrate had improperly admitted an invalid certificate of analysis which probably had influenced his finding of guilt, the conviction will be quashed. [R. v. Melvin, 34 D.L.R. 382, 38 O.L.R. 231, applied.] R. v. Schooley, 27 Can. Cr. Cas. 444.

PERMITTING DRUNKENNESS "TO TAKE PLACE;" ALBERTA LIQUOR ACT.

The offence of permitting drunkenness to take place in the house of the accused (Alberta Liquor Act, sec. 36) involved something more than merely permitting drunkenness to exist on the premises; there must be proved against the accused some act or default on his part conducing to or continuing the drunkenness of the person who was allowed to remain on his premises while drunk. R. v. Pomerleau, 28 Can. Cr. Cas. 7, 35 D.L.R. 33.

LIABILITY OF CARRIERS; DELIVERING AT EXPRESS OFFICE.

The effect of sec. 25 of the Liquor Act, Alta., is that only the consignee himself is entitled to take delivery of liquor during its transit by express from a place outside of Alberta to an address in Alberta where the law permits it to be received and kept; and where the express agent had attempted to make delivery at the street address to which the consignment was billed, but, finding that the consignee was no longer there, sent an advice note by mail addressed to him, and, on the advice note being brought in by a person representing himself to be the consignee, delivered the liquor to him at the express office, the express agent is liable to conviction for an infringement of the Act, if it be shown at the trial that the person to whom delivery was made was not the consignee himself, but someone else whom he had sent to get the liquor. The delivery not being at the street address, which was the destination of the package, the accused would be liable whether or not he took reasonable precaution in having the person producing the advice note and receiving the goods identified as the consignee. R. v. Benford, 28 Can. Cr. Cas. 41, 34 D.L.R. 706.

KEEPING FOR SALE; REBUTTING STATUTORY PRESUMPTION FROM QUANTITY.

The statutory presumption of keeping liquor for sale which arises under the Alberta Liquor Act from possession of a large quantity at a private house, may be rebutted by the testimony of the accused denying that he kept for sale; and where there was no evidence of frequenting of the place by others and nothing to throw discredit upon the testimony of the accused, the magistrate is bound to accept his evidence in disproof of the statutory presumption and cannot legally convict in the face of such rebuttal where the case for the prosecution depends on the statutory presumption alone. The Court on certiorari will look at the evidence and set aside a

summary conviction under such circumstances as not supported by any evidence upon which the magistrate could find the accused guilty. [R. v. Emery, 27 Can. Cr. Cas. 116, 33 D.L.R. 556; R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662, applied.] R. v. Barb, 28 Can. Cr. Cas. 92, 35 D.L.R. 102.

N.S. TEMPERANCE ACT; TIME FOR PROSECUTION.

The requirement of the Nova Scotia Temperance Act, 1910, ch. 2, sec. 36, that a prosecution shall be commenced "within three months after the alleged offence" would authorize an information on March 1st for an offence committed on the previous 1st day of December. R. v. Nolan, 28 Can. Cr. Cas. 100, 35 D.L.R. 334.

PRESUMPTIONS AND EVIDENCE OF UNLAWFUL KEEPING.

Under sec. 54 of the Alberta Liquor Act the onus is upon the accused of proving that a package of intoxicating liquor consigned to the accused and received by him from the express company, and which was found in his possession while he was taking it from the express office to his dwelling-house, was not intended for sale on being charged under sec. 23 of the Act with keeping liquor for sale; and this although the liquor was found in an omnibus of which the accused had charge as driver for a local common carrier, the express company's responsibility in respect of the consignment from outside of Alberta having ceased on delivery to the accused. R. v. Collins, 28 Can. Cr. Cas. 105, 35 D.L.R. 296.

TAKING ORDERS FOR LIQUOR; FORWARDING TO DEALER OUTSIDE PROVINCE.

It is an offence under the Ontario Temperance Act to receive in Ontario on behalf of a liquor dealer in another province an order for liquor for beverage purposes to be filled by sending the liquor by express directly from the outside province to the customer; the offence of receiving the order would be complete even if the liquor were not sent. R. v. McEvoy, 28 Can. Cr. Cas. 135.

POSSESSION; STATUTORY PRESUMPTION.

The onus is upon the accused charged with an offence under the Ontario Temperance Act, 1916, Ont. ch. 50, to prove his innocence to the satisfaction of the magistrate after it has been shewn that he was in possession of the liquor (1916, Ont. ch. 50, sec. 88); the onus is not shifted by the mere denial of the offence by the accused in given evidence on his own behalf if the magistrate does not give credence to the denial. R. v. LeClair, 28 Can. Cr. Cas. 216.

PRESUMPTION FROM FINDING ON SEARCH WARRANT.

The finding of intoxicating liquor upon a search made under warrant raises a statutory presumption of keeping for sale under sec. 67 of the Ontario Temperance Act, 1916, only against the occupant of the premises where found and not against another person charged who was the owner of the liquors and had stored it on the premises with the consent of the occupant. R. v. Riddell, 28 Can. Cr. Cas. 317.

UNLAWFUL CONTRACTS; WHOLESALE ORDER SOLICITED BY UNLICENSED PERSON.

The solicitation of an order for liquors within Saskatchewan to be supplied from a point outside Saskatchewan by an unlicensed person was an offence under R.S.S. ch. 130, sec. 13, and no recovery can be had in Saskatchewan upon bills of exchange representing the price of the liquors supplied pursuant to the order so obtained because of the prohibition by that statute of actions founded on a contravention thereof; and this although the plaintiffs had a licensed traveller who could legally have taken the defendant's order but, owing to that traveller's illness, an officer of the plaintiff company, not himself licensed as a commercial traveller for liquors, took the order in his stead. Strang & Co. v. McEwen & Graber, 28 Can. Cr. Cas. 445.

PERMITTING DRUNKEN PERSONS TO MEET IN HOTEL.

A summary conviction of an hotelkeeper for permitting drunken persons to meet on his premises (Liquor Act, Alta., 1916) will be quashed if the evidence shews that the hotel-keeper did everything which could reasonably be expected during severe weather conditions in getting the drunken persons to leave the hotel without placing them in peril by an immediate ejectment. R. v. Creighton, 29 Can. Cr. Cas. 161.

MEDICATED WINE; MORE THAN 2½% PROOF SPIRITS; DRUGGIST; SALE BY.

A patent medicine registered under the Proprietary and Patent Medicine Act (1908, c. 56, Dom.) which contains more than 2½% proof spirits, but is so medicated as to cause nausea and sickness before intoxication is not an intoxication liquor within the meaning of the Alberta Liquor Act (1916, c. 4, s. 23.) R. v. Maclean, 29 Can. Cr. Cas. 270, 40 D.L.R. 443.

PROPRIETARY MEDICINES ACT, CAN.; MANUFACTURER'S LICENSE; OTHER COMPANY.

A manufacturer's certificate granted under the Proprietary Medicines Act, Can., for the manufacture of invalid port wine containing a high percentage of alcohol, is not available by way of justification for the manufacture of the same product by a company other than the registered one, even with the latter's consent, where the manufacture and sale would infringe a provincial liquor law but for the registration. R. v. Redman, 29 Can. Cr. Cas. 304.

POSSESSION OF LIQUOR FOR PURPOSE OF EXPORTATION; ENABLING STATUTE; ULTRA VIRES.

R. v. Western Wine & Liquor Co., 29 Can. Cr. Cas. 307, 39 D.L.R. 397.

BEER LICENSE; APPLIES ONLY TO PREMISES DESCRIBED; HOLDER NOT A LICENSEE AS TO OTHER PREMISES.

A beer license issued under the Intoxicating Liquor Act (N.B. 1916, c. 20, s. 180) authorizes the holder to sell beer or non-intoxicating drinks only on the premises described in it. The holder of such license has no right of appeal as a licensee against a conviction for permitting drunkenness on separate premises owned and occupied by him as a moving picture theatre. R. v. Cady, 30 Can. Cr. Cas. 168, 41 D.L.R. 630.

STATUTORY PRESUMPTIONS; POSSESSION; LIQUOR "CACHE."

A sham transfer of the proprietorship of the premises prior to the finding of intoxicating liquor there illegally kept will not absolve the real possessor of the premises from the effect of the statutory presumption against him under sec. 54 of the Liquor Act, Alta., because of having the liquor in his possession, charge or control. R. v. Clarke, 30 Can. Cr. Cas. 200. See 41 D.L.R. 713.

ILLEGAL POSSESSION; STATUTORY PRESUMPTION FROM RECEIVING.

The consignee who receives at an express office in Ontario a consignment of liquor has cast upon him the statutory onus of proving a legal disposition or possession thereof (Ontario Temperance Act, sec. 88), and if he fails to satisfy the magistrate on his trial for illegally having or keeping the liquor in a place other than his dwelling house that he did not commit the offence a conviction may legally be made. R. v. Moore, 30 Can. Cr. Cas. 206.

DISTRIBUTION OF ORDER BLANKS ADDRESSED TO PERSON OUT OF JURISDICTION.

The systematic distribution in Ontario of printed order blanks for intoxicating liquor along with envelopes addressed for mailing to a place out of Ontario is a "canvassing" or "soliciting" of orders for liquor in contravention of the Ontario Temperance Act, 6 Geo. V., ch. 50. R. v. Lynch-Staunton, 30 Can. Cr. Cas. 209.

CARRIER'S LIABILITY FOR DELIVERING LIQUOR; STATUTORY ONUS.

The effect of sec. 49 of the Ontario Temperance Act, 6 Geo. V., ch. 50, is that a carrier may be convicted of delivering liquor to "a person not entitled to sell and who sells such liquor or who buys for the purpose of reselling," if the magistrate has before him evidence from which he could properly infer that the person taking delivery from the carrier, and who was personally unknown to the carrier, had bought for the purpose of reselling although there was no direct evidence of any resale or as to the identity of the consignee. The onus is upon the carrier to satisfy the magistrate that he had reason to believe, and did believe, that the consignee did not buy to resell. R. v. McEwan, 30 Can. Cr. Cas. 212.

STATUTORY PRESUMPTION FROM POSSESSION; NATIVE WINE; QUANTITY.

Although sales of intoxicating native wine in quantities of over five gallons are allowed by the Ontario Temperance Act, the possession of same by the purchaser throws upon him the onus of proving that he was not guilty of the offence of having the same in his possession for illegal sale or disposal, if charged with that offence. (Ont. Temp. Act. sec. 88.) R. v. Nazzareno, 30 Can. Cr. Cas. 290.

UNLAWFUL TRANSPORTATION; PROHIBITED AREAS; ORDERS-IN-COUNCIL.

Order in Council No. 589, Canada, sec. 4, making it an offence to transport into or deliver in any prohibited area any intoxicating liquor does not apply to transportation beginning and ending in the same prohibited area. R. v. Tunnheim, 30 Can. Cr. Cas. 413.

UNLAWFUL POSSESSION; STATUTORY PRESUMPTION; PLACE OF POSSESSION DIFFERING IN INFORMATION AND DEPOSITIONS.

A charge of having liquor in a boarding house is not sustained by evidence that the accused drank liquor on the street. Such evidence would, under 1917 Ont., ch. 50, sec. 10, have shifted the onus of proof to the defendant on a charge of unlawful possession in the street and the magistrate might have amended the information under 1916 Ont., ch. 78, but not having done so the Court, on a certiorari motion, must quash the conviction. R. v. Kallas, 31 Can. Cr. Cas. 57.

B. Sales by Clubs and Their Agents.

CLUB; SALE OF LIQUORS BY.

(1) The steward of an incorporated club placed in charge of liquors purchased by the club for the use of the members and authorized to allow members only to withdraw liquor from the stock upon payment according to a rate fixed by the directors as sufficient to replace the quantity withdrawn, is, in carrying out such instructions without a liquor license, guilty of illegally keeping for sale contrary to the Ontario Liquor License Act. (2) A withdrawal of liquor from stock by a member or shareholder is under such circumstances a sale by the corporation to him. R. v. Hughes, 2 Can. Cr. Cas. 5.

[Referred to in R. v. Lightburne, 4 Can. Cr. Cas. 361.]

UNINCORPORATED CLUB; LIQUORS FOR MEMBERS ONLY.

(1) An unlicensed person who, as a member of an unincorporated club, purchases with the funds of the club a supply of intoxicating liquors for the use of the members, each of whom, although at liberty to help himself, was to contribute to the keeping up of the fund in proportion to what he used of the supply, is guilty under the Ontario Liquor License Act of the offence of unlawfully keeping liquor for sale. (2) Proof of the consumption of liquor in the premises occupied by a society, association or club within the provisions of sec. 53 of the Ontario Liquor License Act, by any member thereof, constitutes incontrovertible evidence of the sale or keeping for sale of such liquor, and the effect of sec. 53, subsec. 3, which declares that such proof shall be "conclusive evidence" of sale, and that "any member of the club, etc., shall be taken conclusively to be the person who keeps such liquors for sale," is to debar any member of the club against whom the charge is laid from shewing the contrary. (3) Such enactment is intra vires of the Provincial Legislature. R. v. Lightburne, 4 Can. Cr. Cas. 358.

[Referred to in R. v. Cahoon, 17 Can. Cr. Cas. 65, 17 O.W.R. 467.]

KEEPING LIQUORS FOR SALE; WORKMEN'S CLUB; PURCHASING AGENT.

Where several persons constituting a workmen's club appoint another to purchase liquor in bulk for them, each member reimbursing him monthly for the cost of liquor consumed, and the person so purchasing for the club acquires the right of property in the stock of liquors and keeps possession of same, such person may be convicted under a liquor license statute of "keeping for sale" although he made no profit on the transactions. The King v. Cavicchi, 8 Can. Cr. Cas. 78.

[Referred to in R. v. Cahoon, 17 Can. Cr. Cas. 65.]

DISPOSAL OF LIQUOR BY INCORPORATED CLUB TO MEMBERS ONLY.

The supplying of the club's liquors by the steward to the members of an incorporated club at a tariff charge is not a mere distribution of club property amongst the members, but is a sale on behalf of the corporation to the member. The King v. Simmonds, 16 Can. Cr. Cas. 498.

PURCHASING OF INTOXICATING LIQUORS IN BULK BY SEVERAL PERSONS FOR JOINT USE; CLUB.

(1) Persons who contribute to a fund for the purpose of buying intoxicating liquors in bulk and renting a room wherein to drink the same, constitute an association or club within sec. 53 of the Ontario Liquor License Act, and each of them is liable under that section as for keeping liquor for sale. (2) The words "unincorporated society, association or club" in sec. 53 of the Ontario Liquor License Act are not restricted to persons associated under rules and by-laws mutually agreed upon, nor is it necessary that such association should have any officers. The King v. Cahoon, 17 Can. Cr. Cas. 65.

INTOXICATING LIQUORS; TRANSFER TO INCORPORATED CLUB.

Although a formal transfer of the lease and fixtures had been made by the defendant to an incorporated club of which the defendant was president and general manager, it is open for the Court, on proper evidence, to find that the transfer was a mere colourable transaction, entered into with a view to evade the license law and that the defendant, who had previously carried on a licensed liquor business on the premises, and who continued to manage the affairs of the club, was personally guilty of keeping intoxicating liquors for sale in respect of the supply of liquor to alleged club members. The King v. Byng, 18 Can. Cr. Cas. 344.

SALES BY CLUBS; STATUTORY PRESUMPTION.

A boat moored on a river is a "place" or "premises" within sec. 45 of the Liquor License Act, R.S.O. 1914, ch. 215, so as to bring into operation the statutory presumption of keeping liquor for sale where the boat is controlled by a club and it is proved that liquor is consumed there. R. v. Himmelspach, 24 Can. Cr. Cas. 381.

KEEPING FOR SALE; CLUB.

A keeping of intoxicating liquor for sale in contravention of the Sale of Liquor Act, 1915, Sask., ch. 39, is made out where the fund with which the accused bought the liquors from time to time supplied to the so-called members of a club consisted of voluntary contributions by the members in addition to a fixed membership fee paid by each, if the contributions and fees when collected immediately became the property of the accused or of his employer and were not subject to the order or control of the so-called members to whom the liquor was supplied, nor was it any the less a keeping for sale by reason of the fact that any member was at liberty to help himself to liquor whether or not he had made a contribution or had paid the membership fee. R. v. Cordray, 26 Can. Cr. Cas. 377, 30 D.L.R. 541.

NOVA SCOTIA TEMPERANCE ACT; LIQUOR IN CLUB BUILDING; JURISDICTION OF MAGISTRATE.

On an information under the Nova Scotia Temperance Act against the executive officer of a club for unlawfully keeping liquor for sale in the club building, the question is one of fact to be determined by the stipendiary magistrate; no question of jurisdiction arises on which a writ of prohibi-

tion can issue, there being no preliminary question to be decided upon which his jurisdiction depended. [Hawes v. Hart, 18 N.S.R. 42, distinguished.] R. v. Burns, 29 Can. Cr. Cas. 293, 40 D.L.R. 246.

C. Sales by Agent, Clerk, Partner, or Tenant.

RETAILING LIQUOR WITHOUT LICENSE; LIABILITY OF CLERK OR ASSISTANT; FAILURE TO STATE TIME AND PLACE; SPECIFICATION OF KIND AND QUANTITY.

The owner of the shop is criminally liable for any unlawful act done therein, in his absence, by clerk or assistant; as for instance, in this case, for the sale of liquor without license by a female attendant. Secus, semble, if it appeared that the act of sale was an isolated one, wholly unauthorized by him, and out of the ordinary course of his business. In this case the conviction was under 32 Vict. ch. 32 (Ont.), and set out that defendant sold spirituous liquor by retail without license, stating time and place:—Held, sufficient, and that it was not necessary to specify kind and quantity. Regina v. King (1869), 20 U.C.C.P. 246.

RESPONSIBILITY OF HOTEL-KEEPER FOR ACTS OF HIS SERVANTS.

Under sec. 112 of the Liquor License Act, R.S.O. ch. 194, the licensed hotelkeeper is personally responsible for the refusal of his servant to admit an officer claiming the right of search under sec. 130. (Per Hagarty, C.J.O., and Maclennan, J.A.) Sec. 112 does not apply to an offence of that kind, but is limited to offences connected with sale, barter and traffic. (Per Burton and Osler, JJ.A.) In the result the judgment of the County Court of Frontenac, quashing the conviction, was upheld. Regina v. Potter (1893), 20 O.A.R. 516.

SALE OF LIQUOR WITHOUT LICENSE; WIFE AS OCCUPANT WHILE HUSBAND IS IMPRISONED.

Where the husband, the occupant of the house in which the sale took place was in gaol, his wife might be convicted under 37 Vict. ch. 32, sec. 35 (O.), for selling liquor there without license. Regina v. Williams (1878), 42 U.C.Q.B. 462.

ILLEGAL SALES BY LICENSEE, HIS SERVANT, AGENT OR EMPLOYEE; STATUTORY PRESUMPTION.

(1) Where a liquor license law provides that "the person violating" the section thereof relating to sales by licensees during prohibited hours shall for a second or subsequent offence forfeit his license, the forfeiture will result although the offence stated in the prior conviction was not under the license for the same license term but under a previous license, which had since expired. (2) Sec. 64, sub-sec. 5, of the Liquor License Ordinance (N.W.T.), is not ultra vires as constituting an undue interference with the liberty of the subject, although its effect may be to punish a license holder by imprisonment for illegal acts which have been committed by his servant, agent or employee, and which by virtue of the Ordinance are presumed to be the acts of the licensee. (3) An appeal from a summary conviction under the Liquor License Ordinance (N.W.T.) may, under Ordinance of 1901, ch. 33 sec. 21, before the first day of the sittings be expedited by the Judge appointed to take the sittings for which notice of appeal was given. The Queen v. McLeod, 6 Can. Cr. Cas. 94.

VIOLATIONS BY AGENT; REFILLING OF BOTTLES; APPLICATION OF CRIMINAL CODE.

(1) The effect of the Quebec Liquor License Act as regards a charge thereunder against a proprietor of refilling empty bottles on the licensed premises, is that if the offence is committed by any person whatsoever in the employ of the proprietor, tenant or occupant of the premises, or who has been suffered to be there, it is conclusive evidence that it was done with the authority and under the directions of such proprietor, tenant or occupant. (2) In prosecutions brought under the Quebec License Act, the provisions of Part LVIII. of the Criminal Code of 1892 are applicable. (3) It is not in the summary conviction, but in the warrant of commitment thereunder, that the law requires the amount of the expenses of conveying the convicted person to the common gaol to be mentioned and fixed. White v. Leek, 18 Can. Cr. Cas. 337.

UNLAWFUL SALES; LIABILITY OF PROPERTY OWNERS AND OCCUPANTS.

The effect of sec. 112 of the Ontario Liquor License Act (amendments of 1907 and 1908) is to make liable for illegal sales of intoxicating liquor by his tenant on his premises in a local option district an owner of unlicensed hotel premises resident elsewhere and having no knowledge of the infraction of the liquor laws, by reason of the enactments contained in that statute that "in the event of the premises being an unlicensed tavern" the owner who permits any part of it in which liquor is sold or kept for sale to be occupied by any other person shall be "conclusively presumed" to be an "occupant" thereof and that an "occupant" shall be personally liable for any offence committed on the premises by any person who is suffered to remain upon the premises. [Ontario statute 7 Edw. VII. ch. 46, sec. 5, as amended 8 Edw. VII. ch. 54, sec. 6, construed; Rex v. Bradley (1908), 13 O.W.R. 30, approved.] The King v. Bradley, 19 Can. Cr. Cas. 110.

SALES BY CLERK OF COMPANY; LIABILITY OF PRESIDENT.

The president of a company dealing in in-

toxicating liquors may be convicted of shipping liquor in violation of the Canada Temperance Act, although the shipment was made by a clerk but on an order received directly by the president. [Ex parte Baird, 34 N.B.R. 213, specially referred to.] R. v. Holyoke; Ex parte McIntyre, 21 Can. Cr. Cas. 422, 13 D.L.R. 225.

RESTAURANT; AGENT OF CUSTOMER.

A restaurant waiter who obtained no profit on the transaction and who acted in good faith cannot properly be convicted under the Municipal Act, R.S.B.C. 1911, ch. 170, sec. 322, for unlawfully selling liquor without a license, where the customer ordering meals sends him out to an adjoining saloon with the money to buy liquor to be brought back to the customer, as in such case the liquor became the property of the customer and not of the waiter immediately on delivery to the latter at the saloon. [R. v. Gunn, 10 Can. Cr. Cas. 148, distinguished; Pasquier v. Neale, [1902] 2 K.B. 287, referred to.] R. v. Begeotas, 22 Can. Cr. Cas. 113, 8 D.L.R. 1032.

[Approved in O'Sullivan v. Michus, 23 Can. Cr. Cas. 169, 18 D.L.R. 701.]

UNLAWFUL SALE; CONVICTION; INSUFFICIENCY OF EVIDENCE; ACTING AS MESSENGER.

R. v. Davis, 22 Can. Cr. Cas. 187, 8 D.L.R. 1046.

[Referred to in O'Sullivan v. Michus, 23 Can. Cr. Cas. 169, 18 D.L.R. 701.]

AGENTS OR SERVANTS; AFFIDAVIT NEGATIVING OFFENCE; APPEAL; SECOND OFFENCE.

Where the affidavit required from the appellant on appealing from a summary conviction under the Liquor License Act, R.S.S. 1909, ch. 130, negativing the offence refers to agents and servants in the plural while the statute requires the affidavit that the appellant did not, by himself "or by his agent, servant, or employee," etc., commit the offence, the variance is not fatal to the appeal, as the affidavit must be construed as including the agents, etc., individually as well as collectively. [Compare R. v. Skelton, 4 Can. Cr. Cas. 467.] If the hotel proprietor supplies liquor to guests in the dining room of the hotel on Sunday, the exception in the Liquor License Act R.S.S. 1909, ch 130, sec. 65 as to such sales of liquor to be drunk by guests "at their meals at the table," demands that the hotelkeeper shall not sell to any guest more liquor than he reasonably believes a man can drink at the meal and if he supplies a bottle of hard liquor he must see to it that the guest does not carry away in the bottle any leftover portion of its contents. [R. v. Stephens, 1 S.L.R. 509, applied.] A prior conviction of the licensed hotelkeeper for permitting persons to be in the barroom during prohibited hours of sale is not sufficient under sec. 83 of the Liquor License Act, R.S.S. 1909, ch. 130, to warrant a conviction as for a second offence with a consequent forfeiture of license on proof of a latter offence of selling during prohibited hours. R. v. Curran, 22 Can. Cr. Cas. 388, 19 D.L.R. 120.

LIABILITY OF PROPRIETOR OR OCCUPANT; EMPLOYEE AS CUSTOMER'S AGENT.

Illegal sale of intoxicating liquors on unlicensed premises is not made out against a restaurant proprietor where his employee merely acts as the agent of the customer in going out at the latter's request to buy liquors to be consumed in the restaurant and receives for that purpose the exact amount disbursed or to be disbursed, where the consumption of liquor in restaurants not having liquor licenses was not in itself illegal nor did the circumstances disclose any attempt at evasion of the liquor laws. [R. v. Begeotas, 22 Can. Cr. Cas. 113, 8 D.L.R. 1032, approved; R. v. Davis, 22 Can. Cr. Cas. 187, 8 D.L.R. 1046, 4 O.W.N. 358, and Jefferies v. Alexander, 31 L.J. Ch. 14, referred to.] O'Sullivan v. Michus, 23 Can. Cr. Cas. 169, 18 D.L.R. 701.

LIABILITY OF PRINCIPAL FOR OFFENCE OF AGENT.

The act of a bartender in selling liquor to Indians in contravention of the Indian Act, R.S.C. 1906, ch. 81, is one within the scope of his ostensible authority and the hotelkeeper who employed him may be convicted for it. [Police Commissioners v. Cartman, [1896] 1 Q.B. 655, followed; R. v. Gee, 5 Can. Cr. Cas. 148, distinguished.] R. v. Labrie, 23 Can. Cr. Cas. 349.

AGENT TO TRANSMIT BUYER'S ORDER; COMMISSION FROM SELLER.

A person acting in Alberta as agent for others wishing to transmit orders for liquors and the price of same to persons outside of the province for shipment direct to the buyers, does not thereby become liable to conviction for unlawfully "selling" liquor in Alberta, although he is remunerated out of the price with the concurrence of the buyer by a commission allowed him by the liquor dealer to whom the order is sent; "selling" implies a transference of the property in the thing sold unless the statute creating the offence gives it a more extending meaning. [R. v. Wright (1915), 24 Can. Cr. Cas. 321, 33 O.L.R. 237, distinguished.] R. v. People's Wine & Spirit Brokers, 28 Can. Cr. Cas. 16, 35 D.L.R. 115.

D. By Druggists.

EXCEPTION OF SALE BY REGISTERED DRUGGIST.

Where the defence to a summary prosecuton for selling liquor without a license is that the accused was entitled to do so under a statutory exception respecting registered druggists, and by statute the onus

is expressly cast on the accused to prove himself within the exception, and provision made for proving the register by the production of a printed copy thereof, the viva voce testimony of the accused that he is a duly registered druggist is not competent evidence of the fact, and the magistrate may disregard the same, although no objection was taken to the admission of such testimony. R. v. Herrell 3 Can. Cr. Cas. 15.

CONVICTION INVOLVING FORFEITURE OF LICENSE.

Where a licensee is convicted under sec. 122 (3) of the Liquor License Ordinance (N.W.T.) of supplying liquor to an interdicted person with a knowledge of such interdiction, the effect of such conviction being that the license shall be forfeited, an appeal from such conviction is a stay of proceedings and suspends all the consequences of the conviction. The giving of a recognizance under Cr. Code, sec. 880, on an appeal from a summary conviction, operates as a stay of proceedings for the enforcement of any pecuniary penalty imposed by the conviction appealed from. Simington v. Colbourne, 4 Can. Cr. Cas. 367.

PHYSICIANS PRESCRIBING AND FILLING PRESCRIPTIONS; INTOXICATING LIQUORS PRESCRIBED.

A physician is not liable for selling liquor without license under the Quebec License Act in respect of intoxicating liquor prescribed and sold by him in good faith. The King v. Chicoyne, 8 Can. Cr. Cas. 507.

"SPECIALLY LICENSED DRUGGIST OR VENDOR;" MEDICINAL PURPOSES.

Under sec. 118 of the Canada Temperance Act, R.S.C. 1906, ch. 152, the sale of wine by a "specially licensed druggist or vendor" for sacramental purposes upon a clergyman's certificate may be of an unlimited quantity. (Dictum.) Under sec. 119 of the Canada Temperance Act, R.S.C. 1906, ch. 152, the sale for medicinal use of intoxicating liquor upon the certificate of a "legally qualified physician having no interest in the sale" may (by analogy to sec. 118 of the Act as to sacramental wine) be of an unlimited quantity. [Under sec. 125 of the Canada Temperance Act, R.S.C. 1906, ch, 152, the sale of spirituous liquors or alcohol by physicians themselves, chemists or druggists, who are not "specially licensed vendors" (under secs. 118 and 119) is restricted to the ten-ounce quantity. (Dictum.)] The penalty prescribed against physicians by sec. 126 of the Canada Temperance Act, R.S.C. 1906, ch. 152, read with sec. 119, is for giving a certificate for other than strictly medical purposes and the offence in no way depends upon the subsequent use which may be made of the liquor which may be obtained by means of the certificate, and where such certificate is given bonâ fide and with reasonable discretion and upon professional grounds for "strictly medical purposes," the physician is protected. The permission for the sale "for medical purposes" of intoxicating liquor on the certificate of a "legally qualified physician having no interest in the sale" granted by sec. 119 of the Canada Temperance Act, R.S.C. 1906, ch. 152, may include a medical provision for contingencies which may not have arisen at the time of the application for the certificate. R. v. McAllister, 22 Can. Cr. Cas. 166, 14 D.L.R. 430.

PHYSICIAN'S LIABILITY FOR ISSUING UNLAWFUL PRESCRIPTIONS.

A conviction of a physician for "unlawfully giving prescriptions in evasion or violation of the Ontario Temperance Act contrary to sec. 51" will be quashed as made without proof of any offence if there was no evidence that the prescription was given to anyone in evasion or violation of the Act except that 261 liquor prescriptions were shewn to have been issued by the accused within 30 days. R. v. Maclaren, 28 Can. Cr. Cas. 210.

ILLEGAL PRESCRIPTION OR REQUISITION BY PHYSICIAN; PROVING MOTIVE BY OTHER REQUISITIONS.

Under the Ontario Temperance Act, 1916, ch. 50, sec. 51, and 1917, ch. 50, sec. 18, it is necessary to determine whether a physician charged with illegally issuing a requisition for liquor in evasion of the Act acted in good faith in granting the requisition; and this involves a question of motive upon which evidence of other requisitions issued in large numbers by him in a short time may be admitted in proof of mala fides. [Makin v. Att'y-Gen. of N.S.W. [1894] A.C. 57 applied.] R. v. Welford, 30 Can. Cr. Cas. 156.

ILLEGAL PRESCRIPTION BY PHYSICIAN; SUPPLYING INFORMER; INTENT.

The fact that an offence against the Liquor Act (Alta.) was induced by an informer acting in conjunction with the government department charged with the enforcement of the Act, goes only to the credibility of the informer. A conviction of a physician whom the informer had induced to illegally give him a prescription for liquor (Liquor Act, 1916, Alta., sec. 32) is not bad because the informer had no purpose or intention to use the liquor as a beverage. It is enough that the physician's purpose was to enable the informer to obtain liquor for use as a beverage. R. v. Rose, 30 Can. Cr. Cas. 405.

E. To Prohibited Persons.

INTERDICTED PERSON; KNOWLEDGE OF IDENTITY.

(1) Knowledge by the liquor dealer of

the identity of the person supplied with liquor with the person named in the notice is not necessary in order to constitute the offence specified in section 110 of the Liquor License Act (N.B.). (2) A printed notice by a license inspector in his own name prohibiting the sale of liquor to a particular person under the Liquor License Act, 1896 (N.B.), sec. 110, is sufficient, and it is not necessary that he should serve the identical notice received from the relative of the party to be interdicted, nor that the notice should be set forth all that is essential to be proved for the purpose of sustaining a conviction. R. v. Dias, 1 Can. Cr. Cas. 534.

[Referred to in R. v. Bigelow, 41 N.S.R. 505; R. v. Labbe, 17 Can. Cr. Cas. 425.]

SALE BY LICENSEE IN PROHIBITED HOURS; CALLING DEFENDANT AS WITNESS FOR PROSECUTION.

(1) A defendant in a prosecution under the Liquor License Act (Ont.), is compellable to give evidence for the prosecutor, although the prosecutor has first called other evidence as to an alleged specific illegal sale, and has failed to prove the same. (2) A defendant may be compelled to testify for the prosecution as to any illegal sale on the date charged in the information as that on which the offence took place; and the question put to him need not indicate the name of any alleged purchaser, or other particulars which would limit the enquiry to such charges as the prosecution could give particulars of. R. v. Nurse, 2 Can. Cr. Cas. 57.

ORDER OF INTERDICTION; REQUISITES OF.

An order made by a magistrate under sec. 124 of the Ontario License Liquor Act, forbidding the sale of liquor to a person named, is invalid to support a conviction for a contravention thereof, if it does not appear that the order of interdiction was made in open Court, that the person interdicted was summoned before the Court, and that proof was made to the Court of his excessive drinking of liquor, and that the same resulted in a mis-spending, etc., of his estate, or great injury to his health, etc., in the terms of the statute. The order should not prohibit the giving but only the sale of liquor to the interdicted person. R. v. Charles Mount, 3 Can. Cr. Cas. 209.

SALE TO INTERDICTED PERSON; LIQUOR CONSUMED BY OTHERS.

A magistrate's order prohibiting the sale of liquor to an interdicted drunkard under the Ontario Liquor License Act constitutes a prohibition of any sale of liquor to such drunkard even though the same is delivered to and consumed by others and although no portion of the liquor was actually delivered to or consumed by the interdicted person. R. v. Charles Mount, 3 Can. Cr. Cas. 209.

SALE TO MINOR APPARENTLY UNDER AGE OR KNOWN SO TO BE BY THE ACCUSED.

(1) An information under the Liquor License Act (Ont.) charging the sale of liquor to a minor may be amended by adding that the minor was "apparently or to the knowledge of the defendant under the age of twenty-one," although the time for laying a new information for such offence had expired before the amendment was asked. (2) Such an amendment involving only the addition of words necessary to describe the offence intended to be charged but incompletely charged in the information is not the substitution of another and different offence as to which the prescription may apply. The King v. Ayer, 14 Can. Cr. Cas. 210.

[Specially referred to in R. v. O'Connor, 20 Can. Cr. Cas. 76, 3 D.L.R. 23, 3 O.W.N. 840, 21 O.W.R. 691.]

SALE TO MINORS; PROPRIETOR LIABLE ALTHOUGH SALE BY BAR-TENDER MADE CONTRARY TO HIS ORDERS.

The doctrine of mens rea does not apply to the offence of a licensee allowing the sale of liquor on the licensed premises to minors, contrary to the Liquor License Act, R.S.N.S. (1900), ch. 100, and the proprietor may be convicted in respect of the prohibited sale made by his bar-tender without his knowledge and contrary to his orders. The King v. Quirk, 16 Can. Cr. Cas. 391.

SELLING LIQUOR TO MINORS; ONUS OF PROOF.

(1) The so-called appeal to a County Judge from a summary conviction under the Liquor License Act (Ont.) is a rehearing or trial de novo, and the burden of proof is on the prosecutor at such rehearing as well as at the trial before the magistrate. (2) The offences under sec. 78 of the Liquor License Act as amended by 7 Edw. VII. (Ont.) ch. 46, sec. 8, are selling liquor to a minor apparently under 21 and selling to a person known to be the vendor to be under age, and where the minor is not produced before the County Judge and the case is reheard by consent upon the depositions returned by the magistrate, the conviction made by the magistrate is properly reversed by the County Judge if the record of proceedings before the magistrate does not shew that the vendee was either known to the vendor to be under twenty-one or that he was "apparently" under that age. (3) Where the purchaser of the liquor is of adult stature and weight, it is not sufficient for the prosecutor to shew merely that the purchaser is in fact under twenty-one; it is essential that the magistrate should find that he is apparently under twenty-one or was known by the vendor to be under age. (4) Quære, whether the vendee's age can be established by his own testimony. The King v. Farrell, 16 Can. Cr. Cas. 419.

SALES TO INTEMPERATE PERSONS; "PUBLIC PLACE" DEFINED.

An hotel is not a "public place" within the meaning of sec. 13 of 2 Geo. V. ch. 55, amending the Liquor License Act (Ont.); such a "public place" must be a street, square, park or other open place. [Case v. Story, L.R. 4 Ex. 319, referred to.] The King v. Cook, 20 Can. Cr. Cas. 201, 8 D.L.R. 217.

SALES TO PROHIBITED PERSONS; INDIAN ACT; HOTEL KEEPER.

The provisions of the Indian Act (Can.) as to selling intoxicants to Indians will apply to make it an offence to sell to a half-breed if he is a recognized member of an Indian tribe and votes at tribal elections, although he has abandoned the Indian mode of life and draws no government bounties as an Indian. A hotel keeper holding a liquor license is liable to conviction under the Indian Act (Can.) for unlawful sales of liquor made to Indians by his employees within the general scope of their employment although he had expressly forbidden his employees to sell to Indians. R. v. Verdi, 23 Can. Cr. Cas. 47.

F. Prohibited Hours and Days.

PROHIBITED HOURS; EXCEPTION.

Under a statute prohibiting during certain hours the sale of liquor by licensees and providing by way of exception that its provisions shall not apply to restaurant keepers supplying liquor to their guests with meals, a conviction is proper if the supplying of food was used merely as an excuse to enable the licensee to supply liquor. R. v. Sauer, 1 Can. Cr. Cas. 317.

PROHIBITED HOURS; GIFTS OF LIQUOR.

Under the Ontario Liquor License Act the licensee cannot lawfully give away liquor on the licensed premises on Sunday or other prohibited time for business, although the gift be made privately to a friend and in a private room. R. v. Walsh, 1 Can. Cr. Cas. 109.

OFFENCE BY LICENSEE; PROOF OF LICENSE; PROHIBITED HOURS.

A conviction under the Liquor License Ordinance, N.W.T., 1891-92, against a hotel keeper, for allowing his bar to be open during prohibited hours, is invalid, if the information does not allege, nor is proof made, that the accused held a liquor license for the hotel premises. R. v. Henderson, 2 Can. Cr. Cas. 364.

WITNESS; PRIVILEGE; LIQUOR LICENSE ACT (ONT.); PROHIBITED HOURS.

Upon the prosecution under the Ontario Liquor License Act of a person charged as a licensee with having sold liquor during prohibited hours a witness, other than the defendant or the wife or husband of a defendant, may properly refuse to answer any question which he swears may tend to subject him to prosecution for a penalty under that Act. R. v. Askwith, 3 Can. Cr. Cas. 78.

KEEPING BAR OPEN DURING PROHIBITED HOURS; PROOF OF ACCUSED BEING A LICENSEE.

Where the information does not allege that the defendant was a licensee, nor was proof adduced of the fact, a conviction for selling liquor during prohibited hours will be set aside. The Queen v. Davidson, 6 Can. Cr. Cas. 117.

SALOONS; HOTEL BAR-ROOMS; SUNDAY CLOSING.

(1) A municipality has no power under sec. 50, sub-secs. 109 and 110, of the Municipal Clauses Act of British Columbia to pass a by-law closing any kind of licensed premises except saloons. (2) A municipality is not empowered, by sec. 7 of the Liquor Traffic Regulation Act (B.C.), to pass any closing by-law, the intention of the section being to prohibit the sale, inter alia, during such hours as may be prescribed by the municipality under the authority of some other statute. (3) Where a statute creates offences and provides the necessary machinery for the carrying out of its provisions, a by-law to put it in force is unnecessary and bad. Hayes v. Thompson, 6 Can. Cr. Cas. 227.

[Followed in Re Maloney and City of Victoria, 13 B.C.R. 194, 9 B.C.R. 249.]

LIQUOR LICENSE LAW; SELLING BY LICENSEE AFTER HOURS; STATUTORY PRESUMPTION FROM LIGHT IN BAR-ROOM; PENALTY IMPOSED LESS THAN MINIMUM; CONVICTION SET ASIDE; LIQUOR LICENSE ACT, C.S.N.B. 1903.

(1) Under the New Brunswick Liquor License Act, the minimum penalty for selling by a licensee after hours must be imposed although the conviction is founded upon the statutory presumption of sale because of a light in the bar-room. (2) A summary conviction for a penalty less than the statutory minimum will be set aside on appeal under the New Brunswick liquor law. The King v. McIntyre, 14 Can. Cr. Cas. 43.

SALE DURING PROHIBITED HOURS; SERVING TWO PERSONS AT SAME TIME; SEPARATE SALES.

Where a bar-tender of a licensee, permitted to sell intoxicating liquors, sold, during prohibited hours, two separate orders for intoxicating liquors to two individuals both present at the same time and place each man paying for the liquor furnished him, such constitutes two separate and distinct violations of the Saskatchewan liquor license law, and the holder of the license is liable to two separate penalties. [Apothecaries' Co. v. Jones, [1893] 1 Q.B.D. 89, and R. v. Scott, 33 L.J.M.C. 15, distin-

guished.] Mahoney v. Leschinski, 19 Can. Cr. Cas. 169, 1 D.L.R. 535.

"DISPOSAL" OF LIQUOR IN PROHIBITED HOURS; PREVIOUS SALE CONTRACT.

(1) Where a bottle of whiskey was sold by a licensed tavern keeper, during the business hours allowed by the Liquor License Act, and was "laid away" in the kitchen attached to the licensed premises, for the purchaser, who called for it on a Sunday when sales and disposals of liquor are prohibited by the Act, the tavern keeper by then delivering it to the purchaser is guilty of an illegal "disposal" thereof. [Pletts v. Beattie, [1896] 1 Q.B. 519, referred to.] (2) The word "disposal" in sec. 54, of the Liquor License Act is used in a liberal sense and may or may not be associated with selling, and any transaction respecting the physical change of possession of whiskey is included under the term "disposal" and is prohibited by the Liquor License Act, if accomplished during forbidden hours, and particularly if resorted to for the purpose of defeating the purposes of the statute. The King v. Clarke, 20 Can. Cr. Cas. 486, 9 D.L.R. 517.

ELECTION DAY; QUEBEC LICENSE LAW.

It is not illegal under the Quebec License Law, sec. 974 for a person who is not a licensee and who is not required to obtain a license under that statute, to give away intoxicating liquor to his friends by treating them on the day of a municipal election being held in the municipality; the limitation of the section as to beer and wines used at meals indicates that the words "by any person" used in the second paragraph of sec. 974 refer only to licensees. Collector of Revenue v. Plourde, 24 Can. Cr. Cas. 48.

LICENSEE SELLING IN PROHIBITED HOURS; PROOF OF LICENSE.

On a charge under the Liquor License Act, C.S.N.B., 1903, ch. 22, sec. 48 (1), against an alleged licensee for selling in prohibited hours, the magistrate may infer that the accused was a licensee from uncontradicted oral testimony of witnesses, that he kept a hotel and habitually conducted it as if it were a licensed house, although the prosecution did not formally prove the license by a certificate of the license inspector under sec. 93 of the Act. Ex parte McCleary; R. v. Dugas, 25 Can. Cr. Cas. 148.

PROHIBITED HOURS; UNAUTHORIZED SALE BY SERVANT.

The provision of the B.C. Liquor License Act, sec. 81, sub-sec. 118, making the licensee liable to conviction for unlawful sales by his servants, does not apply to the offense of selling during prohibited hours in contravention of the Liquor License Act Amendment Act, 1916, ch. 37 (B.C.); the liability under sec. 3 of the latter Act is upon the "person violating" it, and the penalty applies only when the accused has personally committed the offense or has authorized or connived at it. R. v. Cienci, 28 Can. Cr. Cas. 107, 35 D.L.R. 164.

G. Place of Sale.

ALLOWING WHISKEY TO BE DRUNK IN A PUBLIC PLACE WITHOUT A LICENSE.

The defendant had been a licensed hotelkeeper, his hotel having a bar furnished with a counter and the usual appliances for the sale of liquor, his license having expired. On being asked by a couple of persons for whiskey, said he could not sell it, and gave them temperance drinks, and on being paid therefor treated to whiskey which he obtained from a bottle behind the counter. The defendant was convicted under sec. 50 for permitting spirituous liquors to be drunk in his house, being a house of public entertainment, the minute of conviction providing for distress in default of payment of the fine and costs imposed; but the conviction drawn up and returned under a writ of certiorari omitted the provisions for distress. Neither under secs. 50 nor 70 is distress authorized:—Held, that the conviction was valid as being in accordance with sec. 50; and that, under the circumstances, it need not follow the minute. (Regina v. Hartley, 20 O.R. 481, followed.) Held, also, that the conviction would have been good under sec. 70, as the giving and being paid for the temperance drinks was a mere subterfuge for disposing and selling spirituous liquors; and further, the conviction could be supported under sec. 105. Regina v. Richardson (1891), 20 O.R. 514.

EVIDENCE SUFFICIENT TO CONVICT; PLACE OF SALE.

Defendant was convicted under ch. 18, sec. 12, of the Acts of 1890, for having a door from his licensed shop "not opening on a public street in the city of Halifax." The evidence shewed that in addition to the door opening on the street there was a second door communicating between defendant's shop and the kitchen:—Held, that the offense was sufficiently stated in the conviction, and that the convicting magistrate had authority and jurisdiction to make the conviction. The Queen v. McDonald (1894), 26 N.S.R. 402.

PLACE OF SALE; DELIVERY.

A person licensed to sell liquors by retail at certain premises only, is not guilty of illegal selling because he obtains orders from customers elsewhere, if he puts up the liquors at, and forwards them from, the licensed premises. R. v. Hazell, 2 Can. Cr. Cas. 516.

KEEPING LIQUOR FOR SALE; BAR APPLIANCES; FINDING OF LIQUOR.

(1) The finding in a house, room or shop of glasses and bottles containing beer is prima facie evidence under sec. 114 of the

Territories Liquor License Ordinance (C.O. 1898, ch. 89) of liquor being there kept for sale, unless the occupant of the house proves the contrary. (2) The finding of a bar or other appliances enumerated in sec. 114 of the Territories Liquor License Ordinance in an unlicensed place, is proof that there exists in such place such appliances, and the word "exists" as used in said section means "is." (3) Where there was ample evidence to warrant the conviction made by a justice of the peace of keeping liquor for sale and no evidence was adduced by the defense in rebuttal of the charge, the Court will not on a stated case hold the conviction bad because of the admission of irrelevant testimony. The King v. Nugent, 9 Can. Cr. Cas. 1.

ILLEGAL SALE; ORDER OF LIQUOR IN BULK; PLACE OF ACCEPTANCE OF ORDER.

For the purpose of a prosecution for illegal sale of liquor under a license law, the place of sale is not necessarily the city in which an order for liquors was accepted by the liquor dealer, and a charge of illegal sale at another city in which the liquor was delivered to the buyer out of a stock there kept will be sustained if the appropriation to the buyer of the quantity purchased and its segregation from other articles took place in the latter city. The King v. Bigelow, 9 Can. Cr. Cas. 322.

[Referred to in R. v. Rogers, 11 Can. Cr. Cas. 261.]

RESOLUTIONS OF LICENSE COMMISSIONERS; ULTRA VIRES; TWO BARS IN ONE TAVERN; TEMPORARY BAR USED FOR ONE DAY ONLY.

(1) The erection and use of an additional temporary bar in a licensed hotel for one day only is not a "keeping" of more than one bar in violation of sec. 65 of the Liquor License Act, R.S.O. ch. 245. (2) A temporary bar so used in the hotel hall adjoining the regular bar-room does not constitute the hall a bar-room. (3) A resolution of License Commissioners providing a penalty of not less than $25 and not more than $50 and costs in default of distress imprisonment for not less than 20 days nor more than 40 days is ultra vires, the penalty being in excess of that provided by sec. 100 of the Liquor License Act. (4) A conviction under such invalid resolution is bad although the penalty actually imposed is less than what might have been authorized by a valid resolution. The King v. Lewis, 10 Can. Cr. Cas. 184.

SELLING WITHOUT LICENSE; WHEN PROVINCIAL LAW EXTENDS TO THE INTERNATIONAL BOUNDARY ON THE GREAT LAKES.

(1) A summary conviction is not necessarily bad because the particular part of the county in which the offense was committed is not specified, provided the offense is stated to have been committed in the county and the convicting magistrate had jurisdiction throughout the whole county. (2) A foreign vessel running an excursion from an Ontario port on Lake Huron out upon the lake and back without calling at any other port, is, while so engaged, subject to the provincial liquor license law until it passes the international boundary. The King v. Meikleham, 10 Can. Cr. Cas. 382.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 38.]

UNLICENSED PREMISES; OFFENSE OF OCCUPANT "PERMITTING" SAME; CONTROL OF PREMISES REQUIRED TO CONSTITUTE AN "OCCUPANT."

(1) Under a statutory provision which prohibits the occupant of unlicensed premises from permitting the illegal sale of liquor thereon, the occupancy must be such that the occupant is legally entitled to prevent the sale, otherwise he is not liable for the statutory penalty in respect of a sale to which he was not a party. (2) The owner of hotel premises which are leased by him to a tenant is not an "occupant" of the hotel within sec. 50 of the Ontario Liquor License Act as regards illegal sales of liquor made without his knowledge or consent, although he resides in the hotel as a boarder. The King v. Irish, 14 Can. Cr. Cas. 458.

FINDING LIQUOR IN BOARDING HOUSE; STATUTORY PRESUMPTION.

The conclusive presumption that liquor is kept for sale in violation of law, arising under sec. 27 of 9 Edw. VII. ch. 82 (Ont.) R.S.O. 1914, ch. 215, from the finding of a greater amount of liquor on the premises of an unlicensed boarding-house keeper than may reasonably be supposed to be intended for the use of himself or family does not arise from the finding on his premises of liquor which was brought there by boarders, and which was not in the possession or control of the keeper of the house. That the keeper of a boarding-house had liquors on his premises for sale in violation of law is not established by evidence of a sale of liquor for delivery at his address, where it does not appear that it was purchased by or for him, or that it was delivered at his house. R. v. Borin, 22 Can. Cr. Cas. 248, 15 D.L.R. 737.

[Distinguished in R. v. Berry, 28 Can. Cr. Cas. 129; discussed in R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289; distinguished in R. v. Kurtemi, 27 Can. Cr. Cas. 223.]

PLACE OF SALE; DEFECT IN INFORMATION; JURISDICTION.

A charge under the Canada Temperance Act that the accused on a specified date "unlawfully did sell intoxicating liquor contrary to Part II. of the Canada Temperance Act then in force in the said county of Sunbury" does not imply that the illegal sale

took place in that county as Part II. is in force in many different counties; nor will the facts that the summons stated an offense at a particular place in that county within the jurisdiction of the commissioner trying the charge and that the evidence adduced proved such offense, cure the defect and give the commissioner jurisdiction where the defendant did not appear to answer the charge, but his counsel appeared to object to the jurisdiction and withdrew on the objection being overruled by the commissioner. Ex parte Monahan; R. v. Hubbard, 24 Can. Cr. Cas. 127.

ACCEPTANCE OF ORDER FOR DELIVERY ELSEWHERE.

A brewer holding a brewer's provincial license may not sell even in wholesale quantities at the brewery to a person who is not a holder of a liquor license if a local option by-law is in force in the municipality in which the brewery is situated, and the transaction is none the less a "sale" in such municipality in contravention of the statute, [Liquor License Act, R.S.O. 1914, ch. 215, sec. 155], although the order was given and accepted at the brewery for delivery in another municipality in which also a local option was in force and although there was no appropriation of the goods at the time; the word "sell" in sec. 155 is not to be construed as limited to the strict technical sense so as to demand an allocation of the goods. [Lambert v. Rowe, [1914] 1 K.B. 38, applied; Pletts v. Campbell, [1895] 2 Q.B. 229, distinguished; see also R. v. Clarke, 20 Can. Cr. Cas. 486, 9 D.L.R. 517.] R. v. Wright, 24 Can. Cr. Cas. 321.

[Distinguished in R. v. People's Wine Brokers, 28 Can. Cr. Cas. 16, 35 D.L.R. 115.]

LOCAL OPTION; DRUNK IN "PUBLIC PLACE."

A "public place" within the meaning of the Liquor License Act, R.S.O. 1914, ch. 215, as amended 1915 Ont. Stat. ch. 39, sec. 33, includes a place to which the public habitually resort, although they may have no legal right to do so; and a conviction for being found drunk in a blacksmith shop in a village where a local option by-law was in force will not be quashed on the ground that the shop was not a "public place," if the evidence shews that people congregated there. [R. v. Cook (1912), 20 Can. Cr. Cas. 201, 8 D.L.R. 217, 27 O.L.R. 406, distinguished; R. v. Wellard, 14 Q.B.D. 63, referred to.]

R. v. Leitch, 26 Can. Cr. Cas. 149, 31 D.L.R. 93.

KEEPING FOR SALE; STATUTORY PRESUMPTION; STORE AND DWELLING.

It is a question of fact for the magistrate as to whether one or more parts of a building divided off into sections with locked doors between the sections is or are under the control of the accused found in possession of one section so as to raise against him the statutory presumption, under R.S.O. 1914, ch. 215, sec. 102, of keeping liquor for sale by reason of the police finding intoxicating liquor in quantity stored in another section. R. v. On Kee, 26 Can. Cr. Cas. 392.

ILLEGAL POSSESSION; PRIVATE DWELLING-HOUSE; BOARDER.

A dwelling where only one boarder is kept is still a "private dwelling-house" within the meaning of the Liquor Act, 1916, Alta., sec. 3, so as to permit lawful possession by the boarder of liquor kept by him there if the quantity is not excessive. R. v. Scott, 28 Can. Cr. Cas. 102.

UNLAWFUL KEEPING; FREIGHT CAR USED AS DWELLING BY EMPLOYEE; ONTARIO TEMPERANCE ACT.

A railway freight car transformed into free sleeping quarters for railway employees and remaining under the control of the railway company is not a "private dwelling house" so as to come within the exemption of the Ontario Temperance Act, 6 Geo. V. Ont. ch. 50, sec. 41, permitting the keeping of intoxicating liquor by a person in the private dwelling house in which he resides. R. v. Gulex, 28 Can. Cr. Cas. 261.

UNLAWFULLY "HAVING" LIQUOR; DWELLING-HOUSE; MANITOBA TEMPERANCE ACT.

A conviction under sec. 49 of the Manitoba Temperance Act, 6 Geo. V., Man., ch. 112, for "having" liquor in a place other than a dwelling house cannot be supported against the proprietor of a licensed poolroom because of the possession and use of liquor by another person, not being his servant or agent, who was lawfully on the premises for the purpose of playing pool and who had brought the liquor there in his pocket and used the same without the connivance or consent of the proprietor. [R. v. Borin, 22 Can. Cr. Cas. 248, 15 D.L.R. 737, 29 O.L.R. 584, applied.]

R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289.

ONTARIO TEMPERANCE ACT; HAVING LIQUOR IN PLACE OTHER THAN PRIVATE DWELLING-HOUSE; EVIDENCE; QUESTION FOR MAGISTRATE; MOTION TO QUASH CONVICTION.

R. v. Rosarri, 29 Can. Cr. Cas. 297.

UNLAWFUL POSSESSION; POSSESSION ELSEWHERE THAN AS CHARGED.

R. v. Laderoute, 29 Can. Cr. Cas. 299.

DUPLEX HOUSE; PRIVATE DWELLING; ONTARIO TEMPERANCE ACT.

R. v. Carswell, 30 Can. Cr. Cas. 282, 42 D.L.R. 715.

ILLEGAL KEEPING; "THE OCCUPANT" OF DWELLING.

Where a dwelling-house is owned by the husband alone and he is in actual use and

possession of same, he is "the occupant" under sec. 54 of the Ontario Temperance Act, 6 Geo. V., Ont., ch. 50, and the exemption under that Act of the dwelling-house as a place where liquor may be kept is not withdrawn under sec. 54 by the conviction of "the occupant's" wife for infraction of the Act. [R. v. Irish, 18 O.L.R. 351, applied.] R. v. Condola, 30 Can. Cr. Cas. 398.

ONTARIO TEMPERANCE ACT; CONVICTIONS FOR OFFENCES AGAINST SEC. 41; HAVING INTOXICATING LIQUOR IN PLACE OTHER THAN PRIVATE DWELLING HOUSE; EVIDENCE.

R. v. Pownell, 31 Can. Cr. Cas. 62.

LIABILITY OF OCCUPANT OF PREMISES; ILLEGAL SALE BY STRANGER THEREON FOR FUTURE DELIVERY; ONUS AS TO AUTHORIZATION; PERSON "SUFFERED" TO BE OR REMAIN ON THE PREMISES.

Where future delivery is to be made elsewhere there must be more than the casual presence in the defendant's store of the person said to have there contracted for the illegal sale of liquor and to have there received the price of same, to bring the storekeeper within the provisions of sec. 50 of the Liquor Act, 1916, Alta., declaring the "occupant" of the store personally liable to the penalty notwithstanding the sale cannot be proved to have been made by the directions of the occupant. The proprietor of a drug store is not liable under the Act for a sale so contracted for without his knowledge by a person not connected with the store, and the statutory presumption of sec. 50 does not apply to make a person whose acts otherwise would indicate that he was merely a customer or casual caller, and as to whom no appearance of employment was testified to, a person who is "suffered to be or remain in or upon the premises of such occupant," so as to place the onus upon the proprietor of disproving the charge. The prosecution has still to prove general employment or general agency so as to raise the statutory presumption of specific authority or specific agency in the particular case. R. v. Dominion Drug Stores, Ltd., 31 Can. Cr. Cas. 86, affirming 30 Can. Cr. Cas. 318, 44 D.L.R. 382.

H. Seizure and Destruction.

SEARCH WARRANT; DEFINITENESS AS TO PLACE AND PERSON.

A search warrant issued under sec. 131 of the Liquor License Act, R.S.O. ch. 194, after reciting an information laid by a police inspector, that there was reasonable ground for the belief that spirituous, etc., liquor was being unlawfully kept for sale or disposal contrary to the said Act, in a certain unlicensed house or place, namely, in the house and premises of the Toronto Industrial Exhibition Association, directed the city license inspectors, city constables or peace officers or any of them, to search the said house and premises, and every part thereof, or of the premises connected therewith. In attempting to search defendant's booth, which was described as being under the old grand stand on the Exhibition premises, a police sergeant who accompanied the inspector, was obstructed by defendant. The evidence did not shew there was any other booth on the premises:—Held, that the warrant was valid; that it was sufficiently definite as to the place to be searched and the persons directed to make it. Regina v. McGarry (1893), 24 O.R. 52.

SEIZURE OF MEDICINAL PREPARATION FOR WHICH LICENSE NOT REQUIRED.

(1) Where a magistrate makes an order for forfeiture and destruction of liquors without evidence that such liquors were illegally kept for sale, the order should be quashed upon certiorari. (2) The order for destruction is not necessarily a part of the conviction but may by statute be embodied in it; quære, whether there is a right of appeal to the Court of Appeal under sec. 121 of the Ontario Liquor License Act from an order of a Divisional Court dealing with an order for destruction whether the latter is included in the conviction or made separately. The King v. Ing Kon, 14 Can. Cr. Cas. 197.

[Referred to in Ing Kon v. Archibald, 14 Can. Cr. Cas. 203.]

MEDICINES EXCEPTED BY LIQUOR LICENSE ACT; MAGISTRATE'S CONVICTION FOR KEEPING FOR SALE.

(1) An order for destruction of liquors seized and adjudged to have been illegally kept for sale contrary to the Ontario Liquor License Act is valid as an authorization to the officer directed to superintend the destruction although not reduced to writing. (2) The formal order for destruction may be made either separately from the conviction or it may be embodied in the formal conviction. (3) The formal order or conviction, as the case may be, may be made up at any time before the return to a certiorari, and this notwithstanding that the order had already been executed. (4) On the conviction being brought up in certiorari proceedings and amended by striking out the direction for destruction of the liquors on the ground that the liquors were medicinal preparations excepted by the Liquor License Act and that the magistrate was not warranted in his finding to the contrary, the police officer is protected from civil liability for the value of the liquors destroyed in good faith in pursuance of the magistrate's direction and before the institution of certiorari proceedings, if the officer was not guilty of malice and had reasonable and probable cause for believing

both that the liquors were liable to forfeiture and that it was his official duty to carry out the magistrate's order. (5) Malice and want of reasonable and probable cause having been charged against the officer but not proved, the officer had a statutory right to his costs of defense under R.S.O. (1897) ch. 88, sec. 22, and the same were not in the discretion of the trial Judge. Ing Kon v. Archibald, 14 Can. Cr. Cas. 201.

SEARCH AND SEIZURE; LICENSE INSPECTOR; WARRANT; PLACE; DWELLING HOUSE.

A liquor license inspector may enter a house without a search warrant in order to search for liquor which he, with good reason, believes is being stored for sale in violation of law, when he can do so peaceably and without force. (Per Barry, J.) A dwelling-house may be a place wherein liquors are sold or reputed to be sold, within the meaning of the N.S. Liquor License Act, C.S.N.B. 1903, ch. 22, so as permit an inspector to enter and search for liquors which he has good reason to believe are being therein stored for sale in violation of law, where, to his personal knowledge, the owner of the house has been previously convicted both for illegally keeping and illegally selling liquors on the premises. (Per Barry, J.) R. v. Matheson; Ex parte Grimond, 21 Can. Cr. Cas. 312, 12 D.L.R. 480.

SEIZURE; GOVERNMENT ANALYSIS AS EVIDENCE; CERTIFICATE.

A municipal constable or policeman is not an "officer of the Crown" within the meaning of sec. 106 of the Liquor License Act, R.S.O. 1914, ch. 215, so as to make admissible in evidence for the prosecution under that section a certificate of analysis of alleged intoxicating liquors seized by him and forwarded at his instance to the provincial government analyst for analysis and report R. v. Hurley, 26 Can. Cr. Cas. 159, 31 D.L.R. 18.

ORDERS FOR DESTRUCTION; STATUS OF INFORMANT.

An inspector appointed for the enforcement of the Canada Temperance Act may legally be appointed to carry out an order for destruction of seized liquor following a conviction for illegally storing the same, although such liquor was originally seized by the inspector and the prosecution in respect thereof was taken at his instance. [Ex parte Dewar, 15 Can. Cr. Cas. 273, 39 N.B.R. 143, applied; Ex parte McCleave, 5 Can. Cr. Cas. 115, 35 N.B.R. 100, referred to; and see Annotation at end of this case on "Status of informant officer to execute judgment."] Ex parte Doyle; R. v. Lawlor, 27 Can. Cr. Cas. 60, 31 D.L.R. 90.

EXECUTION OF SEARCH WARRANT ON SUNDAY.

Cr. Code, sec. 661, as to the execution of warrants on Sunday, being in terms limited to warrants authorized by the Code, does not apply to search warrants issued under the Canada Temperance Act; nor does Part XV. of the Code, which by sec. 135 of the Canada Temperance Act is to be read into the latter Act, contain any enactment which would validate the execution on Sunday of a search warrant under the Canada Temperance Act. Ex parte Willis; R. v. Lawlor, 27 Can. Cr. Cas. 383.

SEARCH WARRANT; ILLEGAL SEARCH OF PERSON.

A search warrant for liquors issued under the Nova Scotia Temperance Act, 1910, sec. 42, does not authorize the officer or his assistant to search the person of the occupant of the premises wherein liquor is suspected of being unlawfully kept for sale; a compulsory search of the person at the time of searching the premises referred to in the search warrant is punishable as a common assault, if no liquor was found on the premises, and there was no authority to arrest the party searched. R. v. Ella Paint, 28 Can. Cr. Cas. 171, 36 D.L.R. 717.

SEIZURE UNDER WARRANT; DETENTION; REASONABLE TIME; REPLEVIN.

Where intoxicating liquor has been seized under warrant (s. 46 of c. 2, N.S. 1910) and brought into court, the magistrate may lawfully detain it for a reasonable time pending proceedings for its condemnation, and no other court has a right to interfere with such possession. Lavie v. Hill, 29 Can. Cr. Cas. 287, 40 D.L.R. 459.

SEIZURE AND CONDEMNATION; STATUTORY PRESUMPTION; SHIPMENT AS OTHER GOODS; DESTINATION OUTSIDE OF PROVINCE.

On the seizure of intoxicating liquor in transit in Ontario, and the hearing by a justice of condemnation proceedings under the Ontario Temperance Act, 1916, the fact that the liquor was consigned as other goods raises a statutory presumption that it was intended for use in contravention of the Act. The application of the Act is not displaced by the production of a way-bill showing places of shipment and destination both outside of Ontario; and because of the statutory presumption the claimant of the liquor seeking to prevent its confiscation has cast upon him the onus of proving not only that the transaction was one to which the Act does not apply, but that he is the owner. Re Renaud's Application, 30 Can. Cr. Cas. 426.

SEIZURE AND DESTRUCTION; NOVA SCOTIA TEMPERANCE ACT; LIQUOR IN TRANSIT ON FEDERAL GOVERNMENT RAILWAY.

A provincial liquor law cannot authorize a constable to seize, for the purpose of confiscation proceedings thereunder, intoxicating liquor under the control of the Crown

as represented by the Government of Canada operating a Canadian Government Railway although the liquor was merely received by the railway as freight consigned to a person in the province. Magistrate's order for destruction of the liquor set aside. [Compare Martinello v. McCormick, 31 Can. Cr. Cas. 51, 45 D.L.R. 364.]

Ex p. McGrath, 31 Can. Cr. Cas. 10.

SHIPPED INTO PROHIBITED AREA AND PAID FOR; PROPERTY OF PURCHASER; LIABILITY TO SEIZURE; NOVA SCOTIA TEMPERANCE ACT.

After intoxicating liquor has been shipped into a prohibited district, been paid for and become the property of the purchaser, it is liable to seizure under the Nova Scotia Temperance Act (10 Edw. VII. c. 2), although purchased in another province, consigned to the order of the shipper, and seized while in the custody of the railway agent. As the liquor became the property of the consignee when he paid the draft attached to bill of lading, there was no longer any transaction between him and a person outside of the province, to which the constitutional exception made by sec. 4 could apply. Martinello & Co. v. McCormick, 31 Can. Cr. Cas. 51, 45 D.L.R. 364.

I. Trial of Offenders.

SALE OF LIQUOR WITHOUT LICENSE; JURISDICTION OF POLICE MAGISTRATE; EVIDENCE IN WRITING; AMENDMENT OF CONVICTION.

The defendant had been convicted before D. M. Brodie (alleging himself in the conviction to be police magistrate in and for the town of Sudbury, but having his appointment for the district of Nipissing), for selling liquor without a license. R.S.O. ch. 246, sec. 97, requires that the offence of selling liquor without a license should be heard and determined by two justices, while sec. 99 provides for the evidence being taken down in writing. Sec. 18, R.S.O. ch. 87, authorizes the appointment of a police magistrate for a district, and sec. 30 declares that "a police magistrate, sitting as such, shall have power to do alone whatever is authorized by any statute in force in this province relating to matters within the legislative authority of the Legislature of the province, to be done by two or more justices of the peace, and every such police magistrate shall have such power while acting anywhere within the county for which he is ex officio a justice of the peace." The evidence in the case had been taken in shorthand, and the notes afterwards extended:—Held, (1) The first part of sec. 30 applies to every police magistrate, but under the last part only a police magistrate for a county might have sat elsewhere than at the place for which he was appointed. (2) The conviction should be amended by giving the magistrates proper style of office. (3) The provisions of sec. 90 are directory. [Reg. v. Scott, 29 O.R. 646, followed.] Rex v. Bidgood (1904), 40 C.L.J. 394.

INFORMATION BEFORE ONE JUSTICE; CONVICTION; PENALTY.

An information under the Scott Act can be laid before one justice, although two must try the case. Sec. 91 of the Liquor License Act, 1883, 46 Vict. ch. 30 (D.), amended by 47 Vict. ch. 32, sec. 16 (D.), applies only to localities in which the Canada Temperance Act is not in force. In this case the information was for "selling intoxicating liquor and having hotel appliances in the bar-room and premises":—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 sec. 118 of the Canada Temperance Act was not embraced in the words used. Held, also, that the conviction not having been made by a stipendiary magistrate, etc., under sec. 111 Canada Temperance Act, 1878, was appealable or removable by certiorari. Semble, that notwithstanding Fitzgerald v. McKinlay, 21 C.L.J. 299, the informer may be entitled to half of the fine. Regina v. Klemp (1885), 10 O.R. 143.

PROSECUTION FOR SELLING LIQUOR WITHOUT A LICENCE; NOT SUBJECT OF COMPROMISE.

A prosecution for selling whiskey without a license cannot be compromised without the leave of the Court, and therefore cannot form the subject of a reference to arbitration. Where although the offence was not submitted, it was tried for the purpose of determining the liability of the parties as to costs, so much of the award as related to it was set aside. R. v. Fraser, 1 C.L.J. 324.

PUNISHMENT NOT AUTHORIZED BY THE ACT.

A minute of a conviction for selling liquor without a license in contravention of sec. 70 of the Liquor License Act, R.S.O. ch. 194, stated that in default of payment of the fine and costs imposed, the same was to be levied by distress, and in default of distress imprisonment, and a formal conviction was drawn up following the minute:—Held, that under sec. 70 distress was not authorized; but that the fact of the minute containing such provision, did not prevent a conviction omitting such provision being drawn up and returned, in compliance with a certiorari granted:—Held, also, that the conviction was good under sec. 105 of the said Act. [Regina v. Brady, 12 O.R. 358, and Regina v. Higgins, 18 O.R. 148, considered.] Regina v. Hartley, 20 O.R. 481.

QUASHING CONVICTION FOR ARRESTING THE DEFENDANT INSTEAD OF ISSUING SUMMONS.

The defendant was convicted before two justices of the peace for selling liquor without a license, contrary to sec. 49 of the Liquor License Act, R.S.O. 1887, ch. 194. A conviction was drawn up and filed with the clerk of the peace in which it was adjudged that the defendant should pay a fine and costs, and if they were not paid forthwith, then, inasmuch as it had been made to appear on the admission of the defendant that he had no goods whereon to levy the sums imposed by distress, that he should be imprisoned for three months unless those sums and the costs and charges of conveying him to gaol should be sooner paid. An amended conviction was afterwards drawn up and filed, from which the parts relating to distress and the costs of conveying to gaol were omitted. A warrant of commitment directed the gaoler to receive the defendant and imprison him for three months unless the said several sums and the costs of conveying him to gaol should be sooner paid. Upon a motion to quash the convictions and warrant:—Held, that the mode adopted for bringing the defendant before the justices was not a ground for quashing the conviction; and semble, also, that it was not improper to arrest him instead of merely summoning him. Regina v. Menary (1890), 19 O.R. 691.

VALIDITY OF CONVICTION; FAILURE TO SHEW JURISDICTION; TIME OF OFFENCE; COSTS.

A conviction for unlawfully selling liquor in violation of the provisions of the Nova Scotia Liquor License Act, 1886, and amending acts, omitted to shew that the offence was committed within 90 days from the date of the laying of the information:—Held, that the conviction was bad. The appeal from the judgment allowing a writ of certiorari to bring up the conviction was dismissed and the conviction quashed with costs, to be paid by the informant, who was not an inspector. The Queen v. Adams (1892), 24 N.S.R. 559.

DISCRETION TO REFUSE WARRANT FOR WITNESS.

Semble, per Meagher, J., that the magistrate has a discretion to refuse to issue a warrant for a witness in proceedings under the N.S. Liquor License Act, although the witness has been duly summoned and has failed to appear. R. v. Clements, 4 Can. Cr. Cas. 553.

SUMMARY CONVICTION; VARIANCE; PROCEEDS OF FORFEITED LIQUOR.

(1) A summary conviction awarding one month's imprisonment in default of distress under a statute which authorized imprisonment for a period not exceeding one month, will not be quashed for variance from the minute of conviction by reason of the latter stating the term to be thirty days. (2) Under the Liquor License Act, 1896 (N.B.), the magistrate may direct that the proceeds of the sale of forfeited liquor shall be paid to "any public hospital" without specifying which hospital. Ex parte Rogers, 7 Can. Cr. Cas. 314.

SUMMARY CONVICTION; STATUTE LIMITING PERIOD FOR ADJOURNMENT.

(1) The "hearing" which under Code sec. 722 may not be adjourned for more than eight days in a summary conviction proceeding includes only the taking of pleas and the examination of witnesses and the section does not limit the time of adjournment by the magistrate for consideration and judgment. (2) Where a liquor law provides a penalty on summary conviction of either fine or imprisonment, the fact that the information concluded with a demand only for the imposition of a fine does not debar the magistrate from imposing imprisonment instead of a fine. (3) The pronouncement of judgment or sentence in a prosecution under the Liquor License Act of Quebec (R.S.Q. 1909, art. 903, et seq.) forms no part of the hearing or proceedings governed by art. 1117, R.S.Q., and the magistrate can adjourn for the purpose of giving judgment to a date more than thirty days after the conclusion of the evidence, although the statute limits adjournment of the hearing to thirty days. Plante v. Cliche, 17 Can. Cr. Cas. 43. [Affirmed in 20 Can. Cr. Cas. 186.]

MAGISTRATE; BIAS; DISQUALIFICATION; LIQUOR LICENSE PROSECUTIONS.

A police magistrate, who is also by statute a member of the Board of Police Commissioners, is not disqualified from trying a charge of selling liquor without license by reason of having, at a meeting of the commissioners previously held, moved a resolution instructing a particular member of the police force to take active steps for the prosecution of offences against the Liquor License Act in unlicensed places, but without naming any individual or class of person to be prosecuted, although the charge in question had been laid by that officer. The King v. Suck Sin, 18 Can. Cr. Cas. 266.

PLACING ORDER FOR LIQUOR; TIME FOR LAYING INFORMATION; AMENDMENT OF CONVICTION.

(1) An amendment may be made to a conviction under the Liquor License Act (Ont.) to state that the township was one in which there was, at the time, a by-law in force passed under sec. 141 of such Act prohibiting the sale of liquors by retail therein, and so cure the failure to mention that fact in the conviction as originally made, where the record returned to the Court by the convicting magistrates shewed

that counsel for the accused at the trial admitted that such by-law was in force in that township. (2) Where it was shewn upon the trial of a telegraph operator for selling liquor contrary to law, that upon being asked if he had any liquor, he told his questioner that he had not, but that he could telegraph for a bottle, which he did, but signed the telegram with the name of the other party, and the bottle was sent to the latter who paid the accused therefor, the purchaser not knowing to whom to apply for the liquor and the accused taking an active part in the matter, it was sufficient to warrant the trial justice to conclude that the accused did receive an order for the liquor and that he placed it with the dealer. (3) Sec. 95 of the Liquor License Act (Ont.) requiring all information or complaints for the prosecution of any offence under the Act to be laid within thirty days after the commission of the offence, and sec. 102 of the same Act permitting a trial magistrate to amend or alter an information under the Act and to substitute for the offence charged therein any other offence under the Act, must be read together and thus read do not permit a substitution in an information charging the accused with selling liquor without a license on a certain date, of a different charge on a different date at a time more than thirty days after the alleged commission of such different and substituted offence. [Rex v. Ayer, 14 Can. Cr. Cas. 210, 17 O.L.R. 509; Rex v. Guertin, 15 Can. Cr. Cas. 251, 19 Man. L.R. 33, specially referred to.] The King v. O'Connor, 20 Can. Cr. Cas. 75, 3 D.L.R. 23.

UNLAWFUL SALES; TRIAL OF OFFENDER; THREE INFORMATIONS; HEARING EVIDENCE AT ONE TIME.

A conviction for selling liquor without a license will be quashed, where a magistrate with whom three informations were lodged against the accused for separate sales to different persons, heard evidence at the same time tending to prove the three offences, and found the accused guilty in all three cases. The King v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210.

TRIAL OF OFFENDER IN HIS ABSENCE; SECOND OFFENCE.

(1) A magistrate may try a person in his absence for selling liquor without a license where he has been duly summoned and is represented by counsel at the trial. (2) Offering in evidence before an accused person was found guilty of the subsequent offence on a trial for a second offence of selling liquor without a license, of a certificate of his former conviction, is not such a violation of sub-sec. (a) of sec. 85 of the Liquor License Act of N.B., 1903, as will oust a magistrate of jurisdiction, where the latter, upon objection to the admission of such certificate, did not proceed further with such enquiry until the accused was found guilty of the subsequent offence, as such provision of the Liquor License Act relative to the order of time to be observed by the Court in proving the first and second offences is directory only except as to the question to be put to the accused. [Rex v. Graves (No. 2), 16 Can. Cr. Cas. 318, 21 O.L.R. 329, followed.] The King v. Matheson; Ex parte Martin, 20 Can. Cr. Cas. 153, 2 D.L.R. 835.

CONVICTION; UNLAWFUL SALE; MAGISTRATE REFUSING TO ALLOW ANALYSIS OF LIQUOR, EFFECT OF.

Upon a conviction for selling liquor without a license when the defence has been that only nonintoxicating liquor has been sold, it is a good ground for quashing the conviction that the magistrate refused to allow the liquor found on the premises to be analysed. Rex v. Stephenson, 20 Can. Cr. Cas. 297, 8 D.L.R. 104.

SUMMONS; JURISDICTION; INFORMATION; SEIZURE AND DESTRUCTION.

Where a summons calls upon the defendant to answer an information under the Canada Temperance Act recited therein to have been laid at a date more than three months after the offence charged, and the statute limits the time for laying the information to three months, the defendant is not bound to appear as the summons shews on its face that the justice has no jurisdiction to hear the charge; such a defect is not within the curative provisions of the Cr. Code 1906, secs. 723 and 724, or the Canada Temperance Act, R.S.C. 1906, ch. 152. There is nothing in the Canada Temperance Act, R.S.C. 1906, ch. 152 to prevent the appointment of the officer who laid the information for violation of the Act from carrying out an order to destroy liquors seized in the proceeding. [Ex parte Dewar, 15 Can. Cr. Cas. 273, 39 N.B.R. 143, distinguished; Ex parte McCleave, 5 Can. Cr. Cas. 115, 35 N.B.R. 100, specially referred to.] R. v. LeBlanc, 21 Can. Cr. Cas. 221.

[Distinguished in Ex p. Johnson, 27 Can. Cr. Cas. 421.]

ABSENT DEFENDANT; PLEA OF GUILTY.

As secs. 715 and 720 of the Criminal Code 1906, pertaining to the appearance of counsel at trial before a magistrate are made applicable by sec. 17 of the Prohibition Act, P.E.I., 1907, to prosecutions thereunder, counsel may appear and enter for an absent defendant a plea of guilty for a violation of the latter Act. [Rex v. Thompson, 100 L.T.R. 970, and Rex v. Montgomery, 102 L.T.R. 325, referred to.] R. v. McDonald, 21 Can. Cr. Cas. 229, 348, 11 D.L.R. 710.

INFORMATION; STATING TIME.

A conviction for selling intoxicating liquor in violation of law on one of the days mentioned, is good under an information charging illegal sale on the 24th or 25th days of December inclusively. Ex parte Teed, 21 Can. Cr. Cas. 255, 11 D.L.R. 743.

DRUNKENNESS ON INDIAN RESERVE; INDIAN ACT; SENTENCE.

An Indian Agent has jurisdiction under the Indian Act, R.S.C. 1906, ch. 81, to try a person who is not an Indian for the offence of being drunk upon an Indian reserve. The Indian Act, R.S.C. 1906, ch. 81, does not empower an Indian agent to include hard labour in a sentence of imprisonment imposed on summary conviction under sec. 139 of the Act for being drunk on an Indian reserve. R. v. Atkinson, 23 Can. Cr. Cas. 149, 18 D.L.R. 462.

JURISDICTION OF STIPENDIARY MAGISTRATE; NOVA SCOTIA TEMPERANCE ACT.

The provision of the Towns Incorporation Act, R.S.N.S. 1900, ch. 71, secs. 233 and 234, whereby a police office is established where "all the police business of the town shall be transacted," and whereby the police court is presided over by a stipendiary magistrate for the town exercising therein "all the jurisdiction of two justices of the peace or a stipendiary magistrate" has the effect of establishing a separate and exclusive jurisdiction and of taking away the jurisdiction of county justices to try an offence against the Nova Scotia Temperance Act 1900, where the commissions to county justices do not expressly include the town, and this although the Temperance Act provides that prosecutions thereunder may be brought before "any magistrate" having jurisdiction where the offence was committed and defines magistrate as a "stipendiary magistrate or two justices." The unlawful sale of intoxicating liquor in contravention of the Nova Scotia Temperance Act 1900, is a "criminal offence" against a provincial criminal law. [Re McNutt, 21 Can. Cr. Cas. 157, 10 D.L.R. 832, 47 Can. S.C.R. 259, applied.] R. v. Cody, 23 Can. Cr. Cas. 211, 18 D.L.R. 773.

ABSENT DEFENDANT; PLEA OF GUILTY BY COUNSEL.

As the provisions of the Criminal Code, Part XV. (Summary Convictions), are in terms applicable to prosecutions under the Nova Scotia Temperance Act, 1910, counsel may appear before the magistrate and plead guilty for the accused without the personal attendance of the latter in respect of an illegal sale of intoxicating liquor in contravention of the Act. [Rex v. Montgomery, 102 L.T.R. 325, and Rex v. Thompson, [1909] 2 K.B. 614, 100 L.T.R. 970, applied; and see to the same effect Rex v. McDonald (1913), 21 Can. Cr. Cas. 229 (P.E.I.).] R. v. Thompson, 23 Can. Cr. Cas. 463, 21 D.L.R. 743.

SEPARATE CONVICTIONS FOR SELLING AND KEEPING FOR SALE.

The offences of illegally selling intoxicating liquor and of keeping intoxicating liquor for sale are distinct offences, and separate proceedings for each are maintainable under the Liquor License Act, R.S.O. 1914, ch. 215, although charged as of the same day. R. v. Sinkolo, 24 Can. Cr. Cas. 293.

SALE BY LICENSEE IN PROHIBITED QUANTITY; INFORMATION.

An information under the Liquor License Act (Man.) charging a wholesale licensee with selling bottled whiskey in a quantity less than one reputed quart bottle discloses at least an offence under sec. 17 of that Act punishable under the general penalty imposed by sec. 178, if it is not within the penalty of sec. 159 for illegal sales without the required license; consequently, prohibition will not lie in respect of summary proceedings upon such information where the case has been remanded from time to time and the magistrate has not yet concluded the hearing. White v. T. D. Cavanagh, Ltd. 25 Can. Cr. Cas. 38.

SUFFICIENCY OF EVIDENCE; "LIQUOR."

Upon a motion to quash a summary conviction for keeping intoxicating liquor for sale contrary to the Liquor License Act (Ont.), upon the ground that there was no evidence of the offence, the court will not quash the conviction if there was evidence upon which it was open to the magistrate to find that the liquor found was intoxicating and that it was illegally kept for sale. In a prosecution under Ontario Liquor License Act for illegally keeping liquor for sale and proof in support thereof that lager beer was sold by the defendant and not merely purchased by him as the agent of those who consumed it, the magistrate is to take judicial notice that beer is both a spirituous and a malt liquor and consequently included in the definition of "liquor" given by the Liquor License Act; and it was unnecessary to take evidence as to whether or not it contained more than two and a half per cent of proof spirits. R. v. Scaynetti, 25 Can. Cr. Cas. 40.

UNLAWFUL KEEPING; LABELS AS EVIDENCE; CERTIORARI.

On a conviction for unlawful possession of intoxicating liquor being brought up for review on certiorari, the bottles put in as exhibits at the trial should be transmitted for the certiorari hearing, if the labels on the bottles are relied upon as a representation of their contents by the accused. R. v. Dicery (Dickey), 25 Can. Cr. Cas. 55.

CERTIORARI; POWER TO AMEND; PUNISHMENT; PREVIOUS OFFENCE.

Where evidence was irregularly given of a previous offence, and the penalty imposed by a summary conviction was in excess of that authorized for a first offence, the Court reviewed the conviction on certiorari for illegal importation of liquor into prohibited territory will decline to amend the conviction by reducing the penalty, if it is not satisfied by the depositions that the accused was guilty of the offence which was then being tried, although neither the information nor the conviction purported to be for other than a first offence. R. L. Hirondelle, 26 Can. Cr. Cas. 71.

STATUTORY PRESUMPTION; EVIDENCE; CERTIORARI.

On certiorari in respect of a summary conviction for keeping liquor on premises other than a private dwelling-house in contravention of sec. 24 of the Alberta Liquor Act, the Court is bound to examine the evidence on the part of the accused, not to weight any contradictions, but, assuming the truth of the evidence for the prosecution, to ascertain whether the accused has negatived the statutory presumption raised by sec. 54 of the Act on prima facie proof being given of his possession, charge or control of the liquor, whereby the onus of disproving the offence is, by said sec. 54, then thrown on the accused. R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

[Applied in R. v. Barb, 28 Can. Cr. Cas. 93, 35 D.L.R. 102; discussed in R. v. Hoffman, 28 Can. Cr. Cas. 355, 38 D.L.R. 289; R. v. Morin, 28 Can. Cr. Cas. 414.]

CONVICTION FOR KEEPING; SUBSEQUENT INQUIRY FOR FORFEITURE ORDER; N.S. TEMPERANCE ACT.

On an equal division of the Supreme Court of Nova Scotia, a motion for prohibition stood dismissed by which it was sought to prevent a magistrate who had made a summary conviction for keeping liquor for sale in contravention of the Nova Scotia Temperance Act following a plea of guilty of the charge laid in general terms without identification of the liquor, from proceeding with a further hearing and inquiry upon a proceeding in rem under that Act to determine whether the liquor seized or what part thereof should be ordered to be destroyed. [Townsend v. Cox, [1907] A.C. 514, 12 Can. Cr. Cas. 509, and McNeil v. McGillivray, 42 N.S.R. 133, referred to.] R. v. Fong Quing and Fong Toy, 29 Can. Cr. Cas. 61, 39 D.L.R. 60.

OFFENCE OF KEEPING FOR SALE; STATUTORY FORMS OF PROCEEDINGS.

Where a liquor law authorises the use of special forms thereby provided for certain offences and as to others declares that those forms shall form a guide for framing new forms in like manner, the use of the word "liquor" as meaning "intoxicating liquor" will be validated as regards an information, summons and conviction under the Act for an offense as to which a specific form is not provided, if such use of the word is generally, although not universally, made in the statutory forms. Ex parte Pirie, 29 Can. Cr. Cas. 164.

TIME LIMITATION FOR PROSECUTION; AMENDING INFORMATION.

By reason of the time limitation of the Nova Scotia Temperance Act, N.S. Acts 1910, c. 2, it is not permissible to amend an information so as to include in the period of illegally keeping liquor for sale to be covered thereby, any portion of time more than three months prior to the amendment. A charge cannot be brought in by amendment to an untried information as to which a new information would be too late. [R. v. Ayr, 14 Can. Cr. Cas. 210, and Ex parte Tompkins, 12 Can. Cr. Cas. 552, distinguished.]

Ex parte Stewart, 29 Can. Cr. Cas. 301.

PROVING PROCLAMATION BRINGING CANADA TEMPERANCE ACT INTO FORCE; PLEA OF GUILTY.

It is not open to a defendant against whom a summary conviction awarding imprisonment has been made on his plea of guilty to set up on habeas corpus that the conviction which expressly charged a violation of the Canada Temperance Act was invalid for lack of allegation or proof that the proclamation necessary to bring the Act into force in the district had in fact been issued; proof of the proclamation was dispensed with by the plea of guilty. [As to mode of proof of proclamations generally, see Canada Evidence Act, R.S.C. 1906, c. 145, s. 21.] O'Neil v. Carbonneau, 29 Can. Cr. Cas. 340.

ORIGINAL INFORMATION; AMENDMENT; CHANGING DATE AND INFORMANT; SECOND OFFENCE.

A conviction under the Liquor Act (Alta.) is not invalidated, by amending the original information before any evidence is taken, by changing the informant to another constable who swears to the information as amended, and by changing the inclusive dates within which the offence is charged but retaining within the new dates the original period. [Rex v. Chew Deb, 9 D.L.R. 266, distinguished.] The court may amend the conviction, so as to impose only the penalty for a first offense, where there is no evidence to support the finding of the magistrate that the accused had been previously convicted under the Liquor Act. R. v. Van Fleet, 30 Can. Cr. Cas. 147, 41 D.L.R. 65, affirming 38 D.L.R. 592.

REPEAL AND SUBSTITUTION OF STATUTES; REFERENCE TO FIRST CONVICTION "UNDER THIS SECTION;" LIQUOR ACT (ALTA.), SEC. 40.

Where a numbered section of a statute is repealed and another section with the same number is substituted which carries a more onerous penalty than the first, a reference therein to an offense committed subsequently to a "first conviction under this section" is properly restricted so as to impose the penalty for a second offense to cases where the first conviction had occurred since the substitution of the new section, especially if the words "under this section" introduced into the new section did not appear in the repealed section. R. v. Fox, 30 Can. Cr. Cas. 232, 42 D.L.R. 650.

MOTION TO QUASH CONVICTION; STATUTORY REQUIREMENTS OF NOTICE OF MOTION.

A notice of motion to quash a summary conviction under the Ontario Temperance Act, 6 Geo. V., Ont., ch. 50, must specify the objections intended to be raised (Ont. Judicature Act, sec. 63, sub-sec. (2)); this includes an objection that a conviction does not specify what offense under the Ontario Temperance Act has been committed, and although the notice of motion must be served within 30 days from the conviction (7 Geo. V., Ont., ch. 50, sec. 33) it is competent for the court after the 30 days to give leave to amend the notice served within the time, or to serve a supplementary notice, so as to specify the objection in compliance with the Judicature Act. R. v. Leduc, 30 Can. Cr. Cas. 246.

SUMMARY CONVICTION; DUPLICITY AND LACK OF PARTICULARS IN INFORMATION; AMENDMENT.

An information under the Nova Scotia Temperance Act, charging a physician with having, between certain dates, for other than strictly medicinal purposes "given prescriptions calling for liquor contrary to and in violation of" that Act, is, on its face, a charge for more than one offense and is a contravention of Code, sec. 710 (summary convictions) applicable thereto. On objection being taken before the magistrate, he should have amended so as to charge one offense only, and so as to give particulars of the specific prescription for which the accused was to be tried, and, not having done so, a summary conviction in general terms for having given "a prescription" for intoxicating liquor contrary to the Act is bad. [R. v. Alward, [1894] 25 Ont. R. 522; R. v. Hazen, 20 A.R. 633 (Ont.), and R. v. Austin (1905), 10 Can. Cr. Cas. 34, referred to; and see Smith v. Moody, [1903] 1 K.B. 56, 72 L.J.K.B. 43.] R. v. Keeper of Halifax Jail; Ex parte Simpson, 30 Can. Cr. Cas. 334, 44 D.L.R. 136.

J. Second and Subsequent Offences.

CERTIORARI TO REMOVE CONVICTION; FAILURE TO MENTION "HARD LABOUR;" SECOND OFFENCE.

Sec. 7 of ch. 17 of the Acts of 1889, requiring an affidavit before the issue of a writ of certiorari, to remove a conviction under the Liquor License Act 1886, applies even where the justice acts without jurisdiction. (Per Townshend and Graham, JJ.) That the section does not apply in such cases. (Per Ritchie, J.) It is a fatal objection to a conviction under that Act, that it imprisons without mentioning hard labour. (Per Ritchie, J.) Under sec. 8 as amended, both justices should be present when the information is laid and summons granted, but only one need sign the information, and the conviction should shew on its face the facts necessary to give jurisdiction to the one not signing. (Per Ritchie, J.) Where the conviction is for a second offense, it must appear from the evidence that the offences were committed on different days, and also where the first information covered the whole period of 90 days before the information, that the second offence was committed after the information laid for the first. (Per Ritchie, J.) The Queen v. McKenzie, 23 N.S.R. 6.

THIRD CONVICTION; POWER OF MAGISTRATE TO VARY FORM; AMENDMENT OF SUMMONS IN ABSENCE OF DEFENDANT AND WITHOUT NOTICE.

Defendant was convicted by a stipendiary magistrate of a third offence against the provisions of the Liquor License Act of 1895 and amending Acts, and was adjudged to pay a fine and costs, and, in default of payment, to be imprisoned for 90 days, and in addition to the term of imprisonment imposed in default of payment of the amount of the fine and costs, to be imprisoned for 50 days. A difficulty arose in connection with the carrying out of the punishment imposed, owing to the fact that neither of the forms of conviction prescribed for use contained words authorizing an absolute term of imprisonment in addition to that provided for in case of default of payment of the amount of fine and costs. The penalties were clearly defined, the jurisdiction complete, and the object of the Act certain:—Held, that the magistrate was justified in adopting a form of conviction made applicable to a different section of the Act. After hearing the evidence and the arguments of counsel the stipendiary magistrate adjourned the case to a future day for the sole purpose of deciding as to the sufficiency of the evidence and giving judgment in the case. On the day fixed, in the absence of the defendant or his solicitor, and without notice to them, he heard a motion to amend the summons by changing the date of the previous con-

viction, and after making the amendment asked for, convicted the defendant. Held (Meagher, J., dissenting), that the stipendiary magistrate could not make this amendment in the absence of defendant and without notice, and that the appeal should be allowed and the conviction quashed with costs on that ground. The Queen v. Grant (1898), 34 C.L.J. 171.

CONVICTION FOR A THIRD OFFENCE.

Sec. 51 of the Liquor License Act, R.S.O. (1877), ch. 181, which imposes the penalties, omits all reference to a third offence (which was provided for in the enactments of which it is a consolidation), though such an offence is referred to in sec. 73, which deals with the procedure, and in the forms of conviction given by the Act. A conviction for a third offence was therefore quashed, although the penalty imposed thereby might have been inflicted for a second offence. Regina v. Frawley, 45 U.C.Q.B. 227.

INFORMATION DEFECTIVE "IN SUBSTANCE OR IN FORM;" AMENDMENT; DUPLICITY.

An information stated that the defendant "within the space of thirty days last past, to wit, on the 30th and 31st days of July, 1892, . . . did unlawfully sell intoxicating liquor without the license therefor by law required":—Such an information does not charge two offences but only the single offence of selling unlawfully within thirty days. (Per Hagarty, C.J.O., and Boyd, C.) Such an information does charge two offences and is in contravention of sec. 845 (3) of the Criminal Code, 1892. (Per Osler and Maclennan, JJ.A.) But, per curiam, assuming that an information so worded does contravene the provisions of sec. 845 (3) of the Criminal Code, 1892, the defect is one "in substance or in form" within the meaning of the curative section (847) and does not invalidate an otherwise valid conviction for a single offence. The provision of sec. 857, that no adjournment shall be for more than eight days is matter of procedure and may be waived and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect. A conviction for a first offence under sec. 70 of the Liquor License Act, R.S.O. ch. 194, properly awards imprisonment in default of payment of the fine and not in default of sufficient distress. (Regina v. Smith, 46 U.C.Q.B. 442, and Regina v. Hartley, 20 O.R. 481, approved. Judgment of the Queen's Bench Division, 23 O.R. 387, reversed.) Regina v. Hazen (1893), 20 O.A.R. 633.

SALE OF LIQUOR WITHOUT LICENSE; PROOF OF DAY OF SALE; SECOND OFFENCE.

A conviction for selling liquor "without license" on a certain day between the 31st July and 1st September in same year, to wit, on the 1st day of August" is sufficient, and it is not necessary to have proved the exact day of sale. Where a party is sought to be convicted under the Act 36 Vict. ch. 10, sec. 11, of selling liquor without license, 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. [Reg. v. French, 2 Kerr. 121, and Reg. v. Smith, Hil. T. 1872, distinguished.] R. v. Justices of Queens, Ex parte Miller, 2 Pugs. 485.

THIRD OFFENCE; SENTENCE TO HARD LABOUR; AMENDMENT.

Defendant was convicted for a third time of having sold liquor without a license, and was sentenced to three months' imprisonment with hard labour:—Held, following Regina v. Frawley, 46 U.C.R. 153, that the magistrate had not power to impose hard labour, and the conviction was therefore invalid. Semble, that in such a case a Judge has no power to amend the conviction under R.S.O. ch. 181, sec. 77, as amended by 44 Vict. ch. 27, by striking out the part imposing hard labour. Regina v. Allbright, 9 Ont. P.R. 25.

SECOND OFFENCE.

Under the Liquor License Act (Manitoba), which provides that upon a prosecution for a second offence thereunder the accused shall, if found guilty and not before, be asked to admit or deny the previous conviction charged, and also provides that proof of the previous conviction may be made by a certificate of the convicting magistrate in case of denial or failure to answer, the accused must be given an opportunity of meeting the charge of prior conviction. R. v. Herrell, 1 Can. Cr. Cas. 510.

[Considered in R. v. Leach et al., 14 Can. Cr. Cas. 375.]

CROSS-EXAMINATION OF ACCUSED AS TO PREVIOUS OFFENCES.

(1) A conviction for a third offence under the Ontario Liquor License Act will be quashed if it appears that the only evidence of the previous convictions was the admission of the accused upon his cross-examination upon the principal charge. (2) It is not permissible to interrogate the accused as to the previous convictions until after the adjudication of the principal charge, and sec. 101 of the Liquor License Act is imperative in that respect. The King v. Dealtry, 7 Can. Cr. Cas. 443.

[Inapplicable in R. v. McNutt, 20 Can. Cr. Cas. 179, 7 D.L.R. 651; followed in R. v. Nurse, 8 Can. Cr. Cas. 176; referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 335; R. v. Coote, 17 Can. Cr. Cas. 232.]

THIRD OFFENCES; DATES OF PREVIOUS INFORMATIONS.

(1) A conviction as for a "third offence"

under the Nova Scotia Liquor License Act is invalid, if the third infraction of the statute preceded the information for the first offence. (2) The statutory forfeiture of license and disqualification of its holder is an increased penalty or punishment for a third offence, within the meaning of sec. 95 of the License Act of 1896 (now R.S.N.S., ch. 100, sec. 134), although it arises ipso facto upon the adjudication and is not part of the magistrate's award. The Queen v. Murrans, 7 Can. Cr. Cas. 459.

INFORMATION NOT SHEWING OFFENCE WITHIN STATUTORY LIMIT; EVIDENCE AT HEARING INSUFFICIENT TO PROVE OFFENCE; PROHIBITION PENDING MAGISTRATE'S DELIBERATION.

(1) Where an information under a licensing law does not shew that the alleged offence was committed within the statutory limit prior to the laying of the information, the magistrate has no jurisdiction. (2) The defect in the information is not cured by the appearance of the magistrate and the taking by the latter of evidence for the prosecution unless such evidence discloses a prima facie case of an offence under the statute. (3) Where neither the informant, nor the evidence before the magistrate at summary hearing, discloses any offence against the law, prohibition may be granted by a Superior Court pending an adjournment ordered by the magistrate for the purpose of deliberating on his finding. (4) Prohibition may be granted ex parte under Nova Scotia Crown Rule 72 in respect of an illegal prosecution under the Nova Scotia Liquor License Act. The King v. Breen, 8 Can. Cr. Cas. 146.

KEEPING FOR SALE AND ILLEGAL SELLING; TWO OFFENCES IMPROPERLY JOINED IN ONE INFORMATION.

Where charges of selling liquor and of keeping liquor for sale were improperly joined in one information, but the conviction was for keeping only and the charge of selling was not dealt with by the magistrate nor was the information amended, the defendant is entitled to a certificate under sec. 682 of the Code that the charge of selling was dismissed. The King v. Stevens, 8 Can. Cr. Cas. 76.

SECOND CONVICTION AS FOR THIRD OFFENCE; TIME OF FIRST AND SECOND OFFENCES TO SUPPORT SAME; STATUTORY INTERROGATION AS TO PRIOR OFFENCES.

(1) Where three separate charges for similar offences each committed within a few days of the other are consecutively tried by a magistrate on the one day and the magistrate announced a conviction or acquittal at the conclusion of each case, it is no objection to the validity of the trials that they were intermixed by the reservation of the question of punishment until after the conclusion of all three trials. (2) Under the Nova Scotia Liquor License Act prior convictions for first and second offences may be repeatedly used for proving subsequent offences, each as for a third offence; and it is not necessary that following a conviction for a third offence there should intervene other convictions as for first and second offences before a second conviction as for a third offence. (3) Under sec. 131 of the Liquor License Act (N.S.) it is unecessary upon a charge for a third offence that the accused should be compelled to attend personally that he may be interrogated as to the prior convictions, and he may be legally convicted for a third offence when duly summoned, but not personally in attendance at the trial, upon the statutory interrogation being put to his counsel representing him. The King v. Bigelow, 8 Can. Cr. Cas. 132.

[Referred to in R. v. Coote, 17 Can. Cr. Cas. 229; specially referred to in Dufresne, R. v., 19 Can. Cr. Cas. 414, 5 D.L.R. 501.]

SELLING LIQUOR WITHOUT LICENSE; MINIMUM PENALTY FIXED BY STATUTE; NO DISCRETION IN MAGISTRATE TO SUSPEND SENTENCE.

(1) Where a liquor license statute imposes a minimum and maximum penalty for the offence of selling liquor without a license, the magistrate is bound upon a plea of guilty to impose at least the minimum sentence and he has no power to suspend sentence upon payment of the costs of the prosecution. (2) The order of a magistrate illegally suspending sentence upon certain conditions after a plea of guilty, may be removed into a superior Court by certiorari for the purpose of being quashed at the instance of the prosecution. The King v. Verdon, 8 Can. Cr. Cas. 352.

THIRD OFFENCE; PROOF OF PREVIOUS CONVICTION; IMPROPER ADMISSION OF EVIDENCE REGARDING, DURING PRINCIPAL ENQUIRY.

(1) Under the Ontario License Act, sec. 101 (similar to sec. 115 Canada Temperance Act), the magistrate trying a charge of a second or subsequent offence is prohibited from taking evidence as to the prior conviction until after his adjudication of guilty in respect of the subsequent offence, and noncompliance with the statute deprives the magistrate of jurisdiction. (2) The defect in the proceedings consequent upon the admission of evidence of the prior conviction in contravention of the statute cannot be remedied by the magistrate striking out such evidence, nor is his jurisdiction thereby restored. The King v. Nurse, 8 Can. Cr. Cas. 173.

[Referred to in R. v. Matheson, 20 Can. Cr. Cas. 157, 2 D.L.R. 835; R. v. Coote, 17 Can. Cr. Cas. 217; R. v. Graves (No. 2), 16 Can. Cr. Cas. 334; distinguished in R. v.

Reid, 14 Can. Cr. Cas. 329, 17 O.L.R. 578; followed in R. v. VanZyl, 15 Can. Cr. Cas. 214; R. v. Koogo, 19 Can. Cr. Cas. 58.]

CLERICAL ERROR IN DATE OF COMMITMENT; SECOND OFFENCE; PROVING PRIOR CONVICTION.

(1) The Ontario Habeas Corpus Act, R.S.O. 1897, ch. 83, sec. 5, makes it necessary where a certiorari in aid has been granted, to consider the depositions and proceedings returned in order to ascertain whether there is any evidence to sustain the conviction, even where the conviction is regular in form. (2) A clerical error in dating the warrant of commitment as of the day preceding the date of the information is a matter for amendment and is not a ground for discharge where a conviction regular in form is returned. (3) Where the depositions and record of proceedings before the magistrate for a second offence under the Ontario Liquor License Act do not disclose any evidence or admission of a prior conviction, leave will not be given on habeas corpus to supplement the proof by affidavits shewing that such evidence was in fact given or admission made. (4) Where the accused was summoned for the day following the service of the summons and the charge was then amended as to the date of the offence, the accused was entitled to an adjournment without being put on terms of paying the costs of the day, and the refusal of same was a denial of his right to make full answer and defence (Revised Code, sec. 715.) The King v. Farrell, 12 Can. Cr. Cas. 524.

[Followed in R. v. Simmons, 14 Can. Cr. Cas. 6; R. v. Lorenzo, 16 Can. Cr. Cas. 21; referred to in R. v. Mecceklette, 15 Can. Cr. Cas. 18; Ex parte Monahan, 17 Can. Cr. Cas. 53.]

SECOND OFFENCE; FAILURE TO PROVE PRIOR CONVICTION.

(1) As there are other offences of selling liquor, ex. gr., to a minor or interdicted person, under the Ontario Liquor License Act, an admission by the accused of a previous conviction for selling without specifying the nature of such previous offence, will not suffice to sustain a conviction under that Act for a second offence for selling without a license. (2) Sec. 101 of the Liquor License Act (Ont.) which authorizes an amendment of the conviction "where no greater penalty or punishment is imposed than is authorized by the Act," applies only where no greater penalty or punishment than that imposed is authorized for the offence of which the accused might properly have been convicted by the magistrate. (3) A defendant charged and convicted of a second offence under the Liquor License Act (Ont.) without proper proof or admission of the prior conviction, is entitled to be discharged on habeas corpus, as the Court is not authorized to amend the conviction by reducing it to one for a first offence. The King v. Simmons, 14 Can. Cr. Cas. 5.

[Referred to R. v. Graf, 15 Can. Cr. Cas. 196, 19 O.L.R. 238; R. v. Lysted, 15 Can. Cr. Cas. 237; R. v. Pfister, 19 Can. Cr. Cas. 93; R. v. Crooks, 19 Can. Cr. Cas. 155; followed in R. v. Smith, 16 Can. Cr. Cas. 428; R. v. Broadfoot, 17 Can. Cr. Cas. 76.]

TRIAL FOR SECOND OFFENCE; EVIDENCE OF PRIOR CONVICTION ONLY AFTER CONVICTION FOR SUBSEQUENT OFFENCE; MAGISTRATE WHO MADE PRIOR CONVICTION NOT DISQUALIFIED FROM TRYING SECOND CHARGE.

(1) The provisions of the Liquor License Act (Ont.) permitting an appeal in certain cases by the prosecutor from an order discharging a prisoner convicted under that Act must prevail over the provisions as to appeals under the Ontario Habeas Corpus Act where the commitment is for an offence under the Liquor License Act. (2) On a charge of a second offence of selling liquor without a license, the magistrate is not disqualified from trying the case because of the previous conviction alleged having been made by him, although he is by statute prohibited from enquiring into the previous conviction or hearing evidence in proof thereof until he has heard and determined the charge for the alleged subsequent offence. [The King v. Nurse (1904) 8 Can. Cr. Cas. 173, distinguished; referred to in R. v. Wellman, 14 Can. Cr. Cas. 336.] The King v. Reid, 14 Can. Cr. Cas. 329.

SECOND OFFENCE; TRIAL BY SAME JUSTICES WHO MADE PRIOR CONVICTION.

(1) The return to a certiorari of a certificate of a previous conviction under the Liquor License Act (Ont.) made by the same justices who heard the charge of a second offence does not, by itself, prove that the prior conviction was enquired into before the adjudication upon the subsequent offence in contravention of R.S.O. 1897, ch. 245, sec. 101, where the accused on being asked after conviction for the subsequent offence admitted the fact of the prior conviction and the record of proceedings does not shew that the certificate was used as evidence. (2) The justices who tried the charge for the first offence were not thereby disqualified from hearing the charge of the second offence, nor was their preparation of a certificate of the prior conviction before themselves in anticipation of its being required as evidence in case the accused denied the prior conviction, a contravention of sec. 101 of the Liquor License Act by which they are required in the first instance to enquire concerning the subsequent offence only. The King v. Wellman, 14 Can. Cr. Cas. 335.

CERTIFICATE OF PREVIOUS CONVICTION; CHARGE OF SECOND OFFENCE; PROOF OF IDENTITY; PRESUMPTION FROM SIMILARITY OF NAME.

(1) Under the Ontario Liquor License Act, R.S.O. 1897, ch. 245, sec. 101, the question of the identity of the accused, charged with a second offence, with the person previously convicted is one for the magistrate to determine upon the evidence before him apart from his personal recollection, but a certificate of the previous conviction in the same locality of a person of the same name is some evidence of identity. (2) A certificate under the Liquor License Act of a prior conviction thereunder is not affected by Code, sec. 982, under which evidence of identity apart from and in addition to a certificate of the prior conviction is required on the trial for an indictable offence if a prior conviction of the accused is to be proved. (3) Quære, whether Code, sec. 982 has any application other than to the trial of indictable offences. (Per Britton, J.) (4) Statutory provisions that the witnesses should have the depositions read over to them and should sign the same are directory only, and are waived by the accused if he consents to the evidence being taken down in shorthand. (5) A "penalty" ordinarily means a suffering either in person or in property as a punishment annexed by law or judicial decision to a violation of law, and sentences of imprisonment are included. (6) Sec. 722 (2) of the Cr. Code applies to prosecutions under the Ontario Liquor License Act, and, therefore, a summary conviction awarding imprisonment for a second offence may be made on evidence taken in the absence of the accused at an adjourned hearing of which he was duly notified. (7) In Ontario the High Court disposing of a habeas corpus application in respect of a summary conviction under a provincial statute, e.g., the Liquor License Act, may award costs against the unsuccessful applicant. [R. v. Herrell, 1 Can. Cr. Cas. 510, considered]. The King v. Leach et al., 14 Can. Cr. Cas. 375.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 204; R. v. Graves (No. 2), 16 Can. Cr. Cas. 322.]

SECOND OFFENCE; QUESTION AS TO ANY PREVIOUS CONVICTIONS NOT TO INCLUDE PRIOR CONVICTION CHARGED.

(1) Under the Ontario Liquor License Act, sec. 101 (similar to sec. 143 of the Canada Temperance Act), the magistrate trying a charge of a second or subsequent offence is prohibited from taking evidence as to the prior conviction until after his adjudication of guilty in respect of the subsequent offence, and noncompliance with the statute deprives the magistrate of jurisdiction. (2) Where the defendant gives evidence on his own behalf, a question on cross-examination as to previous convictions of the accused for any offence and which would necessarily involve an answer as to the prior conviction charged, is within the prohibition of the statute although asked for the purpose of discrediting the testimony of the accused. The King v. VanZyl, 15 Can. Cr. Cas. 212.

SECOND OFFENCE; STATUTORY INCREASE OF PENALTY BETWEEN DATES OF FIRST AND SECOND OFFENCES; EFFECT OF.

(1) By an Ontario statute the repeal of an Ontario law does not affect the punishment incurred in respect thereof, and therefore a conviction for a first offence under the Ontario Liquor License Act made prior to an amendment of the statute increasing the penalty for a second offence may be relied upon as the prior conviction on a charge of a second offeace committed after such amendment was made. (2) Sec. 121 of the Liquor License Act (Ont.) which provides an appeal to the Court of Appeal only upon obtaining a certificate of the Attorney-General, from the judgment of a High Court Judge refusing to discharge a prisoner held in custody under a conviction for breach of the Liquor License Act, does not bar an appeal by the prisoner to a Divisional Court without any certificate from the Attorney-General. (3) After finding the accused guilty of the subsequent offence, it is not a sufficient compliance with sec. 101 of the Liquor License Act for the magistrate to put the fact of a previous conviction in the form of a charge and to accept a plea of guilty thereto, particularly where the place of conviction and the name of the convicting magistrate are not stated. The King v. Teasdale, 16 Can. Cr. Cas. 53.

[Not followed in R. v. Graves, 16 Can. Cr. Cas. 318, 21 O.L.R. 329; R. v. Graves, (No. 2), 16 Can. Cr. Cas. 321; referred to in R. v. Pfister, 19 Can. Cr. Cas. 93.]

SUMMARY CONVICTION FOR SECOND OFFENCE; RECITAL OF PREVIOUS CONVICTION.

(1) On a conviction for a second offence under the Ontario Liquor License Act, the recital of the previous conviction without stating that the person named as having made the conviction did so as a county police magistrate will not invalidate the conviction if the official capacity of the same person convicting for the subsequent offence is stated elsewhere therein and if the previous conviction was duly proved. (2) Under sec. 105 of the Liquor License Act the Court on habeas corpus may amend a summary conviction for an infraction thereof by striking out an unauthorized adjudication for further detention in respect of charges of conveying the prisoner to gaol. The King v. Graves (No. 1), 16 Can. Cr. Cas. 150.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 321.]

REVISION OF PENALTY FOR SECOND OFFENCE UNDER LIQUOR LAW AFTER QUASHING PRIOR CONVICTION.

Sec. 101, sub-sec. 5, of the Ontario Liquor License Act, applies to authorize the re-summoning of the offender and revision of the penalty in respect of a subsequent conviction in any case where the prior conviction has been set aside. [R. v. Gavin, 1 Can. Cr. Cas. 59, considered.] The King v. Rudolph, 17 Can. Cr. Cas. 206.

CHARGE OF SECOND OFFENCE; INTERROGATION AS TO PRIOR OFFENCE CHARGED.

On a charge for a second offence against the Ontario Liquor License Act, as amended by 9 Edw. VII. (Ont.), ch. 82, the magistrate may proceed, on default of the appearance of the accused, to take evidence of the prior conviction charged in the information, and it is not essential to the jurisdiction of the magistrate who has a general statutory authority to proceed in the absence of the accused if duly summoned, that the accused should be personally brought before him for the purpose of being asked, pursuant to sec. 101 of the Act, whether he was previously convicted as alleged. [R. v. Warilow (1908), 14 Can. Cr. Cas. 117, and R. v. Graves (1910), 16 Can. Cr. Cas. 318, considered.] The King v. Coote, 17 Can. Cr. Cas. 211.

[Referred to in R. v. Wishart, 18 Can. Cr. Cas. 167.]

SECOND OFFENCE; SUMMARY CONVICTION.

The production of a certificate of a summary conviction before the same magistrate giving the name and address of the person convicted similar to the name and address of the defendant now charged with a second offence is some evidence of identity on proving that the accused had been previously convicted, without oral evidence to shew that the same individual was the defendant in both cases. The King v. Atkinson, 18 Can. Cr. Cas. 279.

SECOND AND SUBSEQUENT OFFENCES; INCREASED PUNISHMENT.

Where there is no proof, either by admission, or certificate, of the prior offences upon a charge of a third offence of selling intoxicating liquor without a license under the Liquor License Act (Sask.), the conviction imposing a larger penalty than is authorized for a first offence must be quashed. [R. v. Brook, 7 Can. Cr. Cas. 216, and R. v. Nurse, 8 Can. Cr. Cas. 173, followed.] The King v. Koogo, 19 Can. Cr. Cas. 56.

SECOND AND SUBSEQUENT OFFENCES.

(1) Where on the trial for an offence against the provisions of the Nova Scotia Temperance Act, the prosecutor in answer to a question as to whether the accused had been convicted of keeping intoxicating liquor for sale during the last year, replied in the affirmative, this question and answer before adjudication of the principal charge does not constitute an enquiry by the magistrate "concerning such subsequent offence," in contravention of the Nova Scotia Temperance Act, 1910, ch. 2, sec. 44, and a motion for the discharge of the prisoner on habeas corpus will be refused. (2) The provisions of the Nova Scotia Temperance Act, 1910, ch. 2, sec. 44, respecting proceedings for offences against Part I. of the Act in case of previous conviction or convictions are applicable to the procedure only and as such are directory and not imperative. The King v. McNutt, 20 Can. Cr. Cas. 174, 7 D.L.R. 651. Appeal quashed in 21 Can. Cr. Cas. 159, 10 D.L.R. 834.

THIRD OFFENCE; DISCRETION AS TO PENALTY.

Under sec. 1009, R.S.Q. 1909, the power to inflict imprisonment without option of a fine for a third offence under the Quebec license law is in the discretion of the Court and the complaint is sufficient if it simply asks for the imposition of a fine and not for imprisonment. Plante v. Cliche (No. 2), 20 Can. Cr. Cas. 186, affirming 17 Can. Cr. Cas. 43.

SECOND AND SUBSEQUENT OFFENCES; FIRST CONVICTION UNDER ALIAS NAME.

(1) The previous conviction necessary to support a summary conviction for a second offence and the more onerous punishment provided for second offences under the Liquor License Act, C.S.N.B. 1903, ch. 22, need not have described the accused by the same name as that under which he was summoned for the second offence; the second conviction will be regular in that respect if the evidence upon the trial for the second offence proves the identity of the person previously convicted with the person summoned for the second offence, although not present to defend the case. (2) A defendant who has been duly summoned may be convicted in his absence upon a charge of a second offence under the Liquor License Act, C.S.N.B. 1903, ch. 22, notwithstanding that sec. 85 directs that on the accused being found guilty of the subsequent offence he shall "then and not before be asked whether he was so previously convicted" and further specially provides the course of procedure: (a) if the accused answers admitting the fact; (b) if he denies or stands mute of malice, or (c) does not answer directly to such question. [R. v. Coote, 17 Can. Cr. Cas. 211, 22 O.L.R. 269, approved; Ex parte Groves, 24 N.B.R. 57, applied.] The King v. Matheson; Ex parte Haid Shilala, 20 Can. Cr. Cas. 496.

SECOND OFFENCES; NOVA SCOTIA TEMPERANCE ACT; SUMMONS; PARTICULARS OF PREVIOUS CONVICTION.

In a criminal prosecution for an alleged second offence under the Nova Scotia Tem-

perance Act, 1910, as amended, incorporating by reference for procedure certain sections of the Criminal Code (Can.) 1906, and the forms of the Canada Temperance Act, a summons is defective which does not specify with any detail the previous conviction either as to (a) its date; (b) the nature of the offence; (c) whether for selling or keeping or which of the other possible offences; (d) the place of the offence, or (e) otherwise earmark it; although it is alleged therein that the present offence "was and is a second offence against the Nova Scotia Temperance Act, 1910;" such summons is an insufficient basis for a conviction in the absence of the accused for a second offence with the increased penalty. [The Queen v. Willis, L.R. 1 C.C. 363; The Queens v. Thomas, L.R. 2 C.C. 141, referred to.] In a criminal prosecution for an alleged second offence under the Nova Scotia Temperance Act, 1910, as amended, where the summons is defective in not sufficiently earmarking the previous offence and conviction, the defect of such summons cannot be got rid of by merely omitting to carry such defect into the present conviction, and, where the hearing has proceeded in the defendant's absence, a conviction as for a second offence cannot be based upon such defective summons, even though the present conviction and information may in themselves be sufficient in form. [Nellacott v. Thompson (1890), W.N. 158; The Queen v. Grant, 30 N.S.R. 368, specially referred to.] In a proceeding for an alleged second offence under the Nova Scotia Temperance Act, 1910, as amended by the Nova Scotia Temperance Act, 1 Geo. V. (N.S.) ch. 33, sec. 8, the latter alone providing the punishment by imprisonment without option of fine for a second offence; where the information and conviction set out that the alleged second offence is contrary to the provisions of part I. of the Nova Scotia Temperance Act, 1910, and contain no reference to or recital of the amendment of 1911, ch. 33, sec. 8, the omission constitutes, at common law, a misdescription of the statutory provisions and is not cured by the general Interpretation Act for the statutes of Canada, 6 Edw. VII. ch. 21, sec. 6 (now R.S.C. 1906, ch. 1, sec. 39), lacking all amendments, since the latter provision is not incorporated by reference in the Nova Scotia Temperance Act. [Patridge v. Strange, 1 Plowden 79; Birt v. Rothwell, 1 Raym. 210; Craie's Statute Law, 55, referred to.] Re Crouse (No. 2), 21 Can. Cr. Cas. 243, 11 D.L.R. 759. See also 21 Can. Cr. Cas. 231, 11 D.L.R. 749.

[Referred to in R. v. Kaulbach, 22 Can. Cr. Cas. 219, 15 D.L.R. 524.]

SEVERAL OFFENCES ON SAME DAY.

Each separate sale of intoxicating liquor in contravention of the Canada Temperance Act, R.S.C. 1906, ch. 152, constitutes a distinct offence even if committed on the same day. Ex parte Richard; R. v. Steeves, 24 Can. Cr. Cas. 183.

SECOND AND SUBSEQUENT OFFENCES; TEMPERANCE ACT.

Where the magistrate had jurisdiction over the subject-matter and over the person, and certiorari is taken away by statute in respect of the particular offence, the court, upon a certiorari necessarily limited to the question of jurisdiction, cannot interfere with a summary conviction as for a third offence under the Canada Temperance Act R.S.C. 1906, ch. 152, which recites two prior convictions proved before the magistrate, although such third conviction does not specify that the second conviction was made as for a second offence (Per McLeod, C.J.). There must be a conviction as for a second offence before there can be a conviction as for a third offence under the Canada Temperance Act, R.S.C. 1906, ch. 143; and the magistrate who has entered a conviction made as for a third offence, and which recites two previous convictions, must be taken to have found that there was in fact a second conviction as for a second offence. Ex parte Gogan; R. v. Steeves, 24 Can. Cr. Cas. 371.

SECOND AND SUBSEQUENT OFFENCES; ADDITIONAL PENALTIES.

The additional punishment provided by sec. 24 of the Nova Scotia Temperance Act, 1910, as amended by N.S. Laws, 1911, ch. 33, for "each subsequent conviction" after conviction for the first offence, applies only to an offence of the same kind; selling liquor in contravention of the Act is a distinct offence from that of keeping for sale, and a prior conviction for selling will not support a conviction with a penalty as for a second or subsequent offence of keepng for sale. [R. v. Lyons, 10 Can. Cr. Cas. 133, Ex parte Doherty, 1 Can. Cr. Cas. 84, 33 N.B.R. 15, referred to.] R. v. Moore, 28 Can. Cr. Cas. 91, 35 D.L.R. 394.

SECOND OFFENCE; PROOF OF PREVIOUS CONVICTION.

A summary conviction under the Alberta Liquor Act, 1916, with the additional penalty for a second offence will be quashed where there was no evidence by certificate or otherwise of a prior conviction and no reference thereto at the trial; the Court hearing a certiorari application will refuse to receive the magistrate's affidavit tendered in opposition to the motion for the purpose of shewing that the magistrate acted upon his recollection of the former conviction he himself had made. R. v. Brown, 28 Can. Cr. Cas. 208, 37 D.L.R. 505.

SECOND AND SUBSEQUENT OFFENCES; PROCEDURE; READING WHOLE INFORMATION.

On a charge of a second offence under the N.S. Temperance Act, it is proper for the

magistrate at the commencement of trial to read over the whole information to the accused although by sec. 44 he is required to enquire in the first instance concerning the subsequent offence and on a finding of guilt thereof "and not before" enquire concerning the previous conviction. This requirement relates to the trial and examination of witnesses and not to the arraignment. [Faulkner v. The King, [1905] 2 K.B. 76, and R. v. Fox, 10 Cox C.C. 502, distinguished.] R. v. Shatford, 28 Can. Cr. Cas. 284, 38 D.L.R. 366.

SECOND AND SUBSEQUENT OFFENCES; HEARING SUBSEQUENT OFFENCE FIRST.

The fact that the magistrate trying a charge of a second offence under the Ontario Temperance Act, 6 Geo. V. Ont., ch. 50, permitted evidence to be given of the prior conviction which he himself had made, before concluding the inquiry upon the subsequent offence which the statute (sec. 96) requires to be done in the first instance, will not invalidate a commitment on a conviction as for a second offence if the accused was not prejudiced by the departure from the statutory direction and if the statute does not disclose any legislative intention to render the proceedings abortive for noncompliance with such direction. [R. v. Coote, 17 Can. Cr. Cas. 211, 22 O.L.R. 269, referred to; and see R. v. Matheson, 20 Can. Cr. Cas. 154, 2 D.L.R. 835; R. v. Nurse, 8 Can. Cr. Cas. 173; R. v. Reid, 14 Can. Cr. Cas. 329, 17 O.L.R. 578; R. v. VanZyl, 15 Can. Cr. Cas. 214; R. v. Koogo, 19 Can. Cr. Cas. 57; R. v. Graves (No. 2), 16 Can. Cr. Cas. 318, 21 O.L.R. 329.] R. v. McDevitt, 28 Can. Cr. Cas. 352.

[Referred to in R. v. Hanley, 30 Can. Cr. Cas. 63.]

SECOND OFFENCES.

Under sec. 62 of the Liquor Act, Alta, similar powers of amendment are conferred as under Cr. Code, sec. 1124 in respect of summary convictions with an excessive penalty: so where a summary conviction under the Liquor Act imposed the added penalty for a second offence but no plea or evidence appeared on the record of proceedings before the magistrate to shew that there had been a previous conviction, the court on certiorari may by amendment reduce the conviction to one for a first offence with the appropriate penalty. To sustain an adjudication by the magistrate that the accused had been previously convicted as charged in an information for a second offence, it is necesary on certiorari that the record of the proceedings before the magistrate should include proof of the previous conviction and where there is nothing in the record to shew that the accused had admitted the previous conviction the court will not permit the record to be supplemented on certiorari by the certificate of the magistrate. R. v. Van Fleet, 29 Can. Cr. Cas. 218, 38 D.L.R. 592.

EVIDENCE OF PRIOR SUMMARY CONVICTION; LIQUOR ACT, 1916 (ALTA.).

A memorandum signed by the magistrate in his docket at the time of a summary conviction for an offence under the Liquor Act, 1916 (Alta.), will be admissible to prove same before the same magistrate as a prior conviction upon a charge for a second offence, if no formal conviction for such prior offence had been drawn up. It is the fact of the first offence, not the first conviction, under ss. 40 and 60 of the Liquor Act, 1916, Alta., that attaches the increased penalty to the second, and, on proof of the offence charged as a second offence and on proof of the previous conviction under the Act for an offence of a prior date to that being tried, a conviction with the increased penalty for a second offence is justified. In proving the prior offence by a prior conviction which had not been attacked, regard need be had only to the adjudication of guilt, and the fact that the punishment awarded on the prior conviction was in excess of the statutory limit will not affect the validity of the adjudication of guilt when proof of same is adduced on the second charge as evidence of the prior offence. R. v. Tansley (No. 2), 29 Can. Cr. Cas. 225, affirming 28 Can. Cr. Cas. 280, 38 D.L.R. 339.

SECOND OFFENCE; ADJUDICATION ON LATER CHARGE; PLEA.

The stenographic notes of evidence in a summary conviction matter are not necessarily a record of all the proceedings apart from the depositions, and where a conviction for a second offence is in due form it is not to be presumed that there was no adjudication on the later offence before recording the plea to the charge of having been previously convicted, although no note of the adjudication on the offence then being tried appeared in the stenographic notes other than a reference to the sentence as for a second offence. Even if there were an irregularity in that respect in proceedings under the Ontario Temperance Act, the conviction would not be invalidated thereby as the provisions of the Act in that regard are merely directory and do not go to the jurisdiction. [R. v. McDevitt, 28 Can. Cr. Cas. 352, 39 O.L.R. 138, and R. v. Coote, 17 Can. Cr. Cas. 211, 22 O.L.R. 269, referred to.] R. v. Hanley, 30 Can. Cr. Cas. 63.

JAIL.

See also Prison; Imprisonment.

INTERVIEWS WITH PRISONER; DETECTIVES.

Unless a prisoner asks for an interview

with the detective, or there are exceptional circumstances, the jailor should not permit interviews between a government detective and the prisoner, at which others are not present. (Per Judge Wallace.) United States v. Wrenn, 21 Can. Cr. Cas. 119, 10 D.L.R. 452.

JUDICIAL NOTICE.

See Evidence.

JURISDICTION.

See also Police magistrate; Summary conviction; Summary trial; Speedy trial; County Judge; Appeal.

Extraterritorial acts, see Abduction; Bigamy; Gaming.

Federal or provincial control, see Constitutional law.

Of associate justices, see that title.

Adjournment of hearing, see Adjournment.

On preliminary enquiry, see that title.

Jurisdiction of appellate court, see Appeal.

Jurisdiction of magistrate; Appearance of accused compelled by irregular process; Subsequent detention and commitment; Note on validity of. 3 Can. Cr. Cas. 150.

Of magistrate where offence committed on the boundary. 3 Can. Cr. Cas. 578.

Want of, over subject matter. 5 Can. Cr. Cas. 365.

Note on legislative power to confer jurisdiction in criminal matters. 5 Can. Cr. Cas. 85.

Of Parish Court Commissioners (N.B.); Canada Temperance Act. 5 Can. Cr. Cas. 82.

Proceedings certified on habeas corpus; application to quash without certiorari. 5 Can. Cr. Cas. 279, 300.

Quebec statute (2 Edw. VII. ch. 19) respecting the Judges of the Sessions of the Peace for the City of Montreal. 5 Can. Cr. Cas. 564.

Acquiescence in jurisdiction; Effect of. 6 Can. Cr. Cas. 92.

Of district magistrate in Quebec; Summary and speedy trials. 7 Can. Cr. Cas. 116.

Resisting peace officer; Jurisdiction of police magistrate to try offence. 7 Can. Cr. Cas. 167.

Want of; Justice proceeding with trial instead of preliminary enquiry. 7 Can. Cr. Cas. 278.

Review of, notwithstanding statute taking away certiorari. 7 Can. Cr. Cas. 184.

OF MAGISTRATE TO RECEIVE PROOF OF PRIOR CONVICTION.

The omission of the magistrate to ask the accused whether he had been previously convicted did not deprive him of jurisdiction to receive proof of the prior conviction. (Per Armour, J.) Regina v. Wallace (1883), 4 O.R. 127.

OF LEGISLATION IN CRIMINAL MATTERS.

The legislative assembly of Ontario has no criminal jurisdiction, and therefore has no jurisdiction in case of a conspiracy to bribe members to vote against the government considered as a criminal offence. Regina v. Bunting, 7 O.R. 524.

POWER OF DIVISIONAL COURT TO REVIEW EXTRADITION CASES.

The Divisional Court cannot review the decision of the judicial officer having jurisdiction to hear extradition cases upon the weight of evidence. (Per Cameron, C.J.) Re Weir, 14 O.R. 389.

COURTS OF OYER AND TERMINER; CONVICTION FOR MURDER; DEFECTIVE RECORD; SUFFICIENCY OF COMMISSION AND AUTHORITY.

The record of a conviction for murder set out, in the caption, that the indictment was found at a General Session of Oyer and Terminer, and General Gaol Delivery, before the Chief Justice of the Common Pleas, duly assigned, and under and by virtue of the statute in that behalf duly authorized and empowered, to enquire, etc., setting out the authority to hear and determine as formerly given in commissions, but not to deliver the gaol. It was then stated, that at the said Session of Oyer and Terminer, and General Gaol Delivery, the prisoner appeared and pleaded and the award of venire was "therefore let a jury thereupon immediately come," etc. This record was returned to a writ of error directed "To our Justices of Oyer and Terminer for our County of C., assigned to deliver the gaol of the said county of the prisoners therein being, and also to hear and determine all felonies," etc. On error brought (judgment affirmed on error, 2 Q.B. 108):—Held, that the authority of the justice sufficiently appeared without any statement whether a commission had issued or been dispensed with by order of the Governor; for such Courts are now held, not under commission, but by virtue of the statute, Consol. Stat. U.C. ch. 11, as amended by 29 and 30 Vict. ch. 40; and as the record sufficiently shewed the absence of any commission, it must be presumed that it seemed best to the Governor not to issue one. Semble, that if the Court had been held by Queen's Counsel or County Judge, it might have been necessary to shew whether a commission had issued or not, as he would derive his authority from a different source in each of the two cases. Semble, also, that if the caption had been defective, it might have been rejected altogether, under Consol. Stat. C. ch. 99, sec. 52. It was objected that the only authority

shewn being that of Oyer and Terminer, the award, "therefore let a jury thereupon immediately come," was unauthorized, and a special award of venire facias was requisite; but held, assuming, but not admitting, that in England there is a difference in this respect between the power of justices of Oyer and Terminer and of Gaol Delivery, and that the record shewed no authority to deliver the gaol, that in this country, by the Jury Act Consol. Stat. U.C. ch. 31, both have the same powers, the general precept to summon a jury being issued by both before the Assizes. Whelan v. The Queen (1868), 28 U.C.Q.B. 2.

JURISDICTION OF JUSTICE OF THE PEACE; CRIMINAL CHARGES AGAINST CORPORATIONS.

The word "person" in R.S.C. ch. 1, sec. 7, sub-sec. 22, includes any corporation "to whom the context can apply according to the law of that part of Canada to which such context extends," but as justices of the peace have not now and never had jurisdiction by the criminal procedure to hear charges of a criminal nature preferred against corporations, such word does not include corporations in cases where a justice of the peace is attempting to exercise such a jurisdiction. A justice of the peace cannot compel a corporation to appear before him, nor can he bind them over to appear and answer to an indictment; and he has no jurisdiction to bind over the prosecutor or a person who intends to present an indictment against them. Re Chapman and the Corporation of the City of London and Re Chapman and the Water Commissioners of the City of London, and the Corporation of the City of London (1890), 19 O.R. 33.

ADMIRALTY JURISDICTION OF MAGISTRATE.

Held, that 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 of this province has authority to enquire into offences committed on said lakes although in American waters. The Queen v. Albert Sharp, 5 P.R. (Ont.) 135.

APPELLATE JURISDICTION OF THE COURT OF QUEEN'S BENCH (QUE.).

Since the passing of 32 and 33 Vict. ch. 29, sec. 80 (D.), repealing so much of ch. 77 of C.S.L.C. as would authorize any Court of the Province of Quebec to grant a new trial in any criminal case: and of 32 and 33 Vict. ch. 36 (D.) repealing sec. 63, of ch. 77 C.S.L.C., the Court of Queen's Bench of the Province of Quebec has no power to grant a new trial, and the Supreme Court of Canada, exercising the ordinary appellate powers of the Court under secs. 38 and 49 of 38 Vict. ch. 11 (D.), should give the judgment which the Court whose judgment is appealed from ought to have given, viz., to reverse the judgment which has been given, and order the prisoner's discharge. Laliberté v. The Queen (1877), 1 Can. S.C.R. 117.

ASSAULT; JUSTICE OF THE PEACE SUMMARILY TRYING ASSAULT.

A justice of the peace has no jurisdiction to try an assault summarily unless it is given him by statute, and he must strictly pursue the authority given; and in order to give him jurisdiction under the Statute of Canada 32 and 33 Vict. ch. 20, sec. 43, it is necessary that the complainant should request him to proceed summarily; and this request should be made at the time of the complaint. Where the proceedings did not shew 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. Reg. v. O'Leary, 16 N.B.R. 264.

[See Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 42.]

JUDGE OF THE SUPREME COURT.

A Judge of the Supreme Court has power to try crminal cases, apart from the authority of a commission of oyer and terminer under sec. 14, Judicature Act, 1879, and the Assize Court Act, 1885. Regina v. Malott (1885), 1 B.C.R., Pt. II., 207.

JURISDICTION OF QUARTER SESSIONS TO TRY INDICTMENT FOR FORGERY.

Defendant was convicted at the Quarter Sessions on an indictment charging that he feloniously did offer, dispose of, and put off a certain promissory note, purporting to be made by one F. for the sum of £4 10s. with intent to defraud, he, the said defendant, at the time he so uttered and published the said note as aforesaid, then and there well knowing the same to be forged. It appeared that some boys had been amusing themselves with writing promissory notes and imitating persons' signatures, and among them was one with F.'s name. The papers were put into the fire, but this note was carried up the chimney by the draft, and fell in the street, where it was picked up by defendant. A person who was with him at the time said that he thought it was not genuine, and advised him to destroy it; but defendant kept it, and afterwards passed it off, telling the person who took it that it was good:—Held, that upon these facts the defendant was guilty of a felonious uttering: but the conviction was quashed, for the indictment was defective in not stating expressly that the note was forged, or that defendant uttered it as true; and the case should not have been tried at the Quarter Sessions. Regina v. Dunlop (1857), 15 U.C.Q.B. 118.

MAGISTRATE PRONOUNCING SENTENCE NOT ON THE ADJOURNED DAY.

A magistrate exceeds his jurisdiction who hears one of the parties and then pronounces sentence on a day to which the hearing was not adjourned as provided by sec. 857. Therrien v. McEachern (1897), 4 Rev. de Jur. 87, 4 Que. S.C. 87.

OF THE COURT OF QUARTER SESSIONS.

The Court of Quarter Sessions has no jurisdiction to try the offence of forgery. Regina v. McDonald (1871), 31 U.C.Q.B. 337.

ORDERING DEFENDANT TO PAY COSTS FOR THE USE OF A HALL.

The magistrate ordered the defendant to pay $1 for the use of the hall for trying the case, and condemned the defendant, in default of distress, to imprisonment:—Held, that in ordering payment of this sum there was a clear excess of jurisdiction, and that ordering distress, etc., was a further excess and that the matter was one of principle and not of form, and the conviction was quashed. [Regina v. Walsh, 2 O.R. 206, commented on.] Regina v. Elliott, 12 O.R. 524.

PREROGATIVE COMMISSIONS; PROVISIONAL COURTS; COURTS OF OYER AND TERMINER; COURTS OF ASSIZE.

The Crown, by prerogative right, could issue a commission to the Judge of the provisional judicial district of Algoma to hold a Court of Oyer and Terminer, and General Gaol Delivery, for the trial of felonies, etc. Semble, per Wilson, J., that such Judge having by sec. 94 of C.S.U.C. ch. 128, the same powers and duties as a County Judge of Upper Canada, he might have been appointed under S.C.U.C. ch. 11, sec. 2, to act as commissioner. The Governor-General of the Dominion of Canada, exercising the prerogative right of the Crown, can issue commissions to hold a Court of Oyer and Terminer, and General Gaol Delivery, already established in a province. The Lieutenant-Governor of a province, as well as the Governor-General, has the power to issue commissions to hold Courts of Assize. Regina v. Amer (1878), 42 U.C.Q.B. 391.

QUARTER SESSIONS; COSTS OF APPEAL PAID BY SUCCESSFUL PARTY.

The Court of Quarter Sessions have no authority to order a person to pay any part of the costs of an appeal to them from a conviction, after he has been acquitted on such appeal, or to convict him of an offence for disobeying such order. Regina v. Orr (1854), 12 U.C.Q.B. 57.

STIPENDIARY MAGISTRATE; TERRITORIAL JURISDICTION; CONVICTION OUTSIDE THE LIMITS OF COUNTY.

The defendant was brought before the stipendiary magistrate for the county of Halifax, and tried and committed for an assault on the high seas. The trial and conviction took place at the office of the stipendiary magistrate in the city of Halifax, which was outside the limits of the county:—Held, that the conviction, having been made outside the territorial limits of the magistrate's jurisdiction, was bad. Quære, whether if made at the dwelling house of the magistrate, though outside the limits of his jurisdiction, the conviction might have been covered by the Imperial Act, 9 Geo. I. ch. 7. The Queen v. Hughes (1884), 17 N.S.R. 194.

TREASON; STIPENDIARY MAGISTRATE AND JUSTICE OF THE PEACE.

(1) In the North-West Territories a stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, have power to try a prisoner charged with treason. The Dominion Act, 43 Vict. ch. 25, is not ultra vires. (2) The information in such case (if any information be necessary) may be taken before the stipendiary magistrate alone. An objection to the information would not be waived by pleading to the charge after objection taken. (3) At the trial in such case the evidence may be taken by a shorthand reporter. (4) A finding of "guilty" will not be set aside upon appeal if there be any evidence to support the verdict. (5) To the extent of the powers conferred upon it, the Dominion Parliament exercises not delegated, but plenary powers of legislation. Insanity as a defence in criminal cases discussed. The Queen v. Riel (No. 2), 1 Terr. L.R. 23.

COUNTY COURT; JURISDICTION OF RAISED ON APPEAL.

An action for malicious prosecution was tried in the County Court without objection by either party and judgment given in favor of the plaintiff:—Held, by the Full Court, that the question of the jurisdiction of the County Court could not be raised on appeal. Robitaille v. Mason and Young, 9 B.C.R. 499.

WHERE MAGISTRATES HAVE JURISDICTION.

Police magistrates have jurisdiction both in cities and counties. Reg. v. Mosier (1867), 4 P.R. (Ont.) 64.

COUNTY JUDGE'S CRIMINAL COURT.

The Judge of the County Judge's Criminal Court is invested as to proceedings within the jurisdiction of that Court with the like powers as belong to a Superior Court Judge. R. v. Burke, 1 Can. Cr. Cas. 539.

DE FACTO JUDGE; OBJECTION.

The failure of a judicial officer to take the oath of allegiance and the oath of office where he has acted as the holder of the office, and has been acknowledged and accepted as the duly qualified incumbent

thereof by the public, does not invalidate his judgments in criminal cases where his qualification has not been contested at the time of the trial, and such judgments are valid and binding as having been rendered by a Judge de facto. Ex parte Curry, 1 Can. Cr. Cas. 532.

[Referred to in Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 252; discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 501.]

FAILURE OF MAGISTRATE TO QUALIFY.

If the accused takes objection at the trial to the qualification of the magistrate to act in the case because of his failure to take the oaths of office and of allegiance, public acquiescence in his exercise of judicial functions will not avail to make his adjudication binding, and the accused convicted under Cr. Code, sec. 783 under such circumstances is entitled to be released from custody upon habeas corpus. Ex parte Mainville, 1 Can. Cr. Cas. 528.

[Referred to in Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 252; R. v. Mackay, 1 D.L.R. 481; distinguished in Ex parte Thos. Curry, 1 Can. Cr. Cas. 532.]

NOT CONFERRED BY CONSENT.

Consent does not confer jurisdiction, and the accused may, upon an appeal by way of case reserved, object to the jurisdiction of the tribunal he has himself selected. R. v. Smith, 3 Can. Cr. Cas. 467.

ILLEGALITY OF ARREST AS AFFECTING JURISDICTION.

If the accused is in fact present before the magistrate, and the magistrate has jurisdiction over the person and the offence, he may lawfully proceed with the hearing of the charge, notwithstanding that the warrant on which the accused was arrested was executed by a person not legally qualified for that purpose. Ex parte Giberson, 4 Can. Cr. Cas. 537.

JURISDICTION; WILFUL INJURY TO PROPERTY.

(1) Under Cr. Code, sec. 511, the magistrate's jurisdiction in respect of a charge of wilful injury to property is not ousted unless the act was done under a fair and reasonable supposition of right, and the magistrate has jurisdiction to summarily try the charge notwithstanding the mere belief of the accused that he had a right to do the act complained of. (2) The same rule applies to a charge of trespass made under R.S.O. 1897, ch. 120, sec. 1, under which the magistrate's jurisdiction is ousted if the accused "acted under a fair and reasonable supposition that he had the right to do the act complained of." R. v. Davy, 4 Can. Cr. Cas. 28.

[Referred to in R. v. Wateir, 17 Can. Cr. Cas. 14; R. v. Low Bow, 7 Can. Cr. Cas. 469; followed in R. v. Doigle, 15 Can. Cr. Cas. 58.]

JURISDICTION IN CASE OF SUBSTITUTIONAL SERVICE.

The proof of service of a magistrate's summons served substitutionally must shew that the defendant could not be conveniently served in person, and that the adult person substitutionally served for him at the defendant's place of abode is an inmate thereof. Where proof of the substitutional service becomes necessary in order to enable the magistrate to proceed with the trial, and is defective in both of such particulars, the conviction will be quashed on certiorari. Re Barron, 4 Can. Cr. Cas. 465.

REFUSAL OF WARRANT AGAINST DEFAULTING WITNESS.

The erroneous refusal of a magistrate to grant a warrant for the arrest of a defaulting witness will not deprive him of jurisdiction to convict, and the defendant's remedy is by way of appeal only. R. v. Clements, 4 Can. Cr. Cas. 553.

STIPENDIARY MAGISTRATE; TERRITORIAL JURISDICTION; "WHOLE OF THE COUNTY;" WHEN INCORPORATED TOWN INCLUDED.

Where a statute declares that the jurisdiction of a county stipendiary magistrate shall extend throughout the "whole of the county," it is to be construed as including jurisdiction in any incorporated town within the county limits notwithstanding the fact that there is a stipendiary magistrate for such town alone unless the latter jurisdiction is made exclusive. The King v. Giovanetti, 5 Can. Cr. Cas. 157.

STIPENDIARY MAGISTRATES; APPOINTMENT FOR TOWNS AND COUNTIES.

The appointment of a stipendiary magistrate for a county is not annulled by the Towns Incorporation Act of N.B., sec. 131, which provides that on the appointment of a magistrate for a town the commission of the previous magistrate shall ipso facto be cancelled. Ex parte Tait, 10 Can. Cr. Cas. 513.

STIPENDIARY MAGISTRATES; APPOINTMENT FOR COUNTIES; TOWNS SEPARATE FROM COUNTY MUNICIPALITY.

(1) Stipendiary magistrates appointed under R.S.N.S. ch. 33, prior to the Amending Act of 1905 for colonies which include towns separate from the county municipality still have jurisdiction throughout the whole county, but appointments since the Amending Act are to be separately made for each municipality. (2) The substitution of the word "municipality" for the word "county" by the amending statute is not retroactive so as to cancel county appointments already made, nor does it restrict the territorial jurisdiction under such appointments to the county municipality

included in the county. The King v. Townsend (No. 1), 11 Can. Cr. Cas. 94.

[Considered in Johnston v. MacDougall (No. 1), 17 Can. Cr. Cas. 58.]

The extended jurisdiction given to magistrates of cities and towns under the Revised Code, sec. 777 (former sec. 785), is not controlled by Code, secs. 782 and 783 as regards the offences of theft, false pretences and receiving, where the value exceeds $10; and a magistrate having jurisdiction under sec. 777 may proceed to try such offences without the preliminary investigation required in the case of other magistrates whose jurisdiction depends upon sec. 773. The King v. McLeod, 12 Can. Cr. Cas. 73.

[Specially referred to in Dufresne v. The King, 19 Can. Cr. Cas. 414, 5 D.L.R. 501.]

COUNTY POLICE MAGISTRATE; SUBSEQUENT APPOINTMENT OF ANOTHER WITH SAME TERRITORIAL JURISDICTION; FIRST APPOINTMENT NOT SUPERSEDED UNLESS SO EXPRESSED.

The appointment of a county police magistrate does not necessarily supersede a like previous appointment of another person, but both will have jurisdiction unless the latter appointment is expressed to be in the place and stead of the former. The King v. Spellman, 12 Can. Cr. Cas. 99.

[Discussed in The King v. Holmes, 12 Can. Cr. Cas. 235.]

POLICE MAGISTRATE IN ONTARIO; OFFENCES AGAINST PROVINCIAL STATUTES; TOWN MAGISTRATE ACTING ELSEWHERE IN THE COUNTY.

(1) A police magistrate for one town in a county has no jurisdiction to try a charge for an offence against a provincial statute committed in another town having its own police magistrate in the same county, except at the request of the latter or in his illness or absence, notwithstanding the provisions of the statute R.S.O. 1897, ch. 87, sec. 30. (2) When sitting elsewhere than in the town for which he is police magistrate, a magistrate is ex officio a justice of the peace for the whole county, and under sec. 30 of the Police Magistrates Act, R.S.O. ch. 87, he has jurisdiction in offences against provincial laws to exercise the powers of two justices but not the powers of another police magistrate. [The King v. Spellman (1906), 12 Can. Cr. Cas. 99, discussed.] The King v. Holmes, 12 Can. Cr. Cas. 235.

JURISDICTION OF SUPERIOR COURT TO ADMIT TO BAIL.

(1) A Superior Court has jurisdiction to admit the accused to bail while the preliminary enquiry is pending before the magistrate. (2) In making an order for bail pending the preliminary enquiry a Judge of a Superior Court may impose the condition that the proposed bail shall not only make affidavits of justification but attend before a magistrate for examination as to their qualification. The King v. Hall, 12 Can. Cr. Cas. 492.

JURISDICTION OF MAGISTRATE OUSTED; COUNTY COURT WITHOUT JURISDICTION TO HEAR APPEAL.

(1) Where a justice of the peace proceeded with a charge of destroying a line fence, although it appeared that the defendant pulled down the fence where it crossed a road long used by the public and that the title to the land was therefore in question, and the magistrate's jurisdiction ousted, the right to certiorari is not taken away by an appeal to the County Court being entered under Rev. Cr. Code, sec. 749 for the County Court had no jurisdiction to rehear a case in which there was no jurisdiction below. (2) The magistrate should have stopped the trial as soon as he found that the title to land was in question, whether the dispute was as to the right or estate in the soil or merely as to a right of way or easement thereon. Ex parte Roy, 12 Can. Cr. Cas. 533.

[Referred to in Pahkala v. Hannuksela, 20 Can. Cr. Cas. 255.]

STIPENDIARY MAGISTRATE; "ACTING WITHIN LOCAL LIMITS;" OFFENCE COMMITTED OUTSIDE TERRITORIAL LIMITS.

A stipendiary magistrate in Nova Scotia acting within the local limits of his jurisdiction may summarily try a prisoner with his consent by virtue of Code, secs. 771a(ii) and 777 for an offence committed outside of his territorial jurisdiction but in the same province. Ex parte Seeley, 13 Can. Cr. Cas. 259.

OMISSION TO READ OVER WITNESSES' DEPOSITIONS; MAGISTRATE'S JURISDICTION NOT AFFECTED.

On a trial under the Summary Convictions clauses, the omission to read over to the witnesses their respective depositions does not go to the jurisdiction of the magistrate. Ex parte Gallagher et al., 14 Can. Cr. Cas. 38.

[Referred to in Ex parte McCleave, 14 Can. Cr. Cas. 19; R. v. Lorimer, 14 Can. Cr. Cas. 434; followed in R. v. Wells, 15 Can. Cr. Cas. 224; R. v. Dubuc, 15 Can. Cr. Cas. 358; Ex parte Budd, 17 Can. Cr. Cas. 236.]

SUMMARY CONVICTION; TOWN POLICE MAGISTRATE; JURISDICTION THROUGHOUT SAME COUNTY OR DISTRICT; EX-OFFICIO JUSTICE OF THE PEACE.

A town magistrate exercising jurisdiction outside of the town, but within the same county or district under the jurisdiction conferred by sec. 30 of the Ontario Police Magistrates Act, need only describe himself in such proceedings as police magistrate of the town without adding that he is ex-officio a justice of the peace for the county or dis-

trict. The King v. Reedy, 14 Can. Cr. Cas. 256.

JURISDICTION OF MAGISTRATE; "ACTING WITHIN LOCAL LIMITS;" OFFENCE COMMITTED OUTSIDE TERRITORIAL LIMITS.

(1) A police magistrate or stipendiary magistrate may summarily try a prisoner with his consent by virtue of Code, secs. 771a (ii) and 777 for an offence committed outside of his territorial jurisdiction but in the same province. (2) The presence of the accused, whether transitory or not, in any part of the province in which the offence was committed will justify the exercise of jurisdiction by the magistrate of the place where the accused is found, to the same extent as if the offence had been there committed; but the magistrate has a discretion to send the prisoner for further preliminary enquiry before the magistrate of the place where the offence was committed. Re Seeley, 14 Can. Cr. Cas. 270.

[Referred to in R. v. O'Gorman, 15 Can. Cr. Cas. 183; distinguished in R. v. Wells, 15 Can. Cr. Cas. 222.]

ESTREAT; ARREST OF SURETY; APPLICATION FOR DISCHARGE.

An application in Nova Scotia under Code, sec. 1110 to discharge from custody a surety arrested in estreat proceedings, should be made to the Judge presiding at the criminal sittings and not to the Court en banc. Re Pippy, 14 Can. Cr. Cas. 305.

NONCOMPLIANCE TO BE PROVED ON HABEAS CORPUS.

Noncompliance with the provisions of Code, sec. 655 (1) goes to the jurisdiction of the magistrate. The King v. Lorrimer, 14 Can. Cr. Cas. 430.

JURISDICTION OF CITY AND TOWN MAGISTRATES; TRIAL OF INDICTABLE OFFENCE BY CONSENT.

(1) A county stipendiary magistrate has no jurisdiction to hold a summary trial of an indictable offence where the jurisdiction depends on Code, sec. 777 (2) conferring special powers on stipendiary magistrates of cities and incorporated towns, although he presided at the request of the city magistrate. (2) Although the county stipendiary magistrate may have jurisdiction as such within a city inside of his county, he is not a stipendiary magistrate of the city. (Code, sec. 777 (2).) The King v. Nar Singh, 14 Can. Cr. Cas. 454.

[Referred to in R. v. Iman Din, 18 Can. Cr. Cas. 96.]

WARRANT OF COMMITMENT; JURISDICTION TO BE SHEWN ON FACE; INITIALS "S. M." FOLLOWING SIGNATURE.

(1) A warrant of commitment must shew on its face that the committing magistrate is one having jurisdiction to impose the sentence which it recites. (2) Where the committing magistrate could have jurisdiction only as a stipendiary magistrate for the district and he is designated in the commitment only as a justice of the peace, the defect is not cured by the addition of the letters "S.M." to his signature upon the warrant, for it cannot be inferred therefrom that he was a stipendiary magistrate for the same district. The King v. Hong Lee, 15 Can. Cr. Cas. 39.

HABEAS CORPUS; JURISDICTION OF DIVISIONAL COURT.

The Divisional Court of the High Court of Justice has no jurisdiction in habeas corpus except as provided by statute or statutory rules. The King v. Miller (No. 2), 15 Can. Cr. Cas. 156.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 497; referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

PRELIMINARY ENQUIRY; VALIDITY OF PRELIMINARY ENQUIRY AND COMMITMENT FOR TRIAL; OBJECTION TAKEN AT HEARING.

The committing justices had jurisdiction over the accused on his attending in answer to the summons although objection was taken to the want of an information. The King v. Thompson, 15 Can. Cr. Cas. 162.

CONSPIRACY; NO JURISDICTION TO CONVICT FOR OFFENCE PROVED IN COUNTY OF ARREST; JURISDICTION NOT AIDED BY PRESENCE OF ACCUSED IN CUSTODY.

(1) Where persons are brought by process from one county to another upon a conspiracy charge and committed for trial therein but the Crown fails to prove against them any overt act committed within the county in which the proceedings are taken, although charged as committed in both counties, the Court of that county has no jurisdiction to convict for a conspiracy committed wholly within the county from which the accused were brought. (2) The defendants brought by process into the county of trial are to be considered as in custody solely in respect of the charge laid and jurisdiction is not conferred on the Courts of the county to which they are taken to try them, because of their presence in custody, on any other charge preferred by the Crown as to which such Court would otherwise have no jurisdiction. (3) An allegation of the place of the offence is a material one and necessary to be proved to confer jurisdiction where the accused were not found or apprehended in the same county in which the trial is to take place. (4) An election of speedy trial without a jury in the County Court Judge's Criminal Court does not confer jurisdiction in a case in which there would be no jurisdiction over the accused if the trial were upon indict-

ment before a jury. The King v. O'Gorman, 15 Can. Cr. Cas. 173.

[Referred to in Fournier v. Attorney-General, 19 Que. K.B. 436, 17 Can. Cr. Cas. 113.]

DOMINION COMMISSIONER OF POLICE FOR PROVINCE; JURISDICTION AS A MAGISTRATE; OMISSION TO READ OVER DEPOSITIONS TO WITNESS.

(1) The Dominion Police Act, R.S.C. (1906) ch. 92, whereby commissioners of police appointed by the Governor-in-Council are given magisterial jurisdiction is within the legislative power of the Dominion Parliament. (2) A Dominion commissioner of police for a province may exercise his judicial functions at any place within the province in respect of offences within the locality in respect of which he is specially designated by a separate commission. (3) The reading over of depositions to the witness under Cr. Code, secs. 682 and 721 (3) is a matter of procedure only and its omission does not deprive the magistrate of jurisdiction to proceed with the case. The King v. Wells, 15 Can. Cr. Cas. 218.

JURISDICTION OF MAGISTRATE; MAGISTRATE AUTHORIZED BY STATUTE TO TAKE PLACE OF ANOTHER WHEN LATTER DISQUALIFIED; ONUS OF DISPROVING JURISDICTION SHEWN ON FACE OF CONVICTION.

(1) A summary conviction made by a magistrate acting in place of another magistrate under a statute authorizing him to do so when the other magistrate is disqualified, need only recite that he is acting because the other is disqualified and need not state the ground of disqualification. (2) The onus of shewing that such recital of disqualification is erroneous is upon the person attacking the conviction. Ex parte Gallagher, 15 Can. Cr. Cas. 239.

ARREST; HABEAS CORPUS AT PLACE OF ARREST; ENQUIRY INTO FACTS TO ASCERTAIN IF PROSECUTION A FRIVOLOUS ONE.

Where an information is laid in an adjoining province and a warrant of arrest there issued is brought into the province in which the accused resides and the accused is arrested on a warrant being endorsed by a magistrate, a Superior Court of criminal jurisdiction at the place of arrest may on habeas corpus enquire into the facts so far as may be necessary to decide whether or not the criminal proceedings instituted against the accused are an abuse of the process of the magistrate's Court as being frivolous or vexatious, and to discharge the accused if it finds that they are. The King v. Galloway, 15 Can. Cr. Cas. 317.

SPEEDY TRIAL; ABSENCE OF JUDGE ON DAY FIXED FOR TRIAL; NO ADJOURNMENT; SUBSEQUENT APPOINTMENT FOR TRIAL.

(1) On the accused electing trial without a jury under the Speedy Trials clauses (Code, sec. 827), the County Court Judge's Criminal Court acquires jurisdiction over the person and the offence, and this jurisdiction continues notwithstanding the failure to proceed with or adjourn the trial at the date first appointed. (2) If the County Court Judge, through illness or other cause, fails to attend to hold the trial at the time appointed when the accused made his election, the Judge may appoint another date for the trial without a re-election by the accused. The King v. Stewart, 15 Can. Cr. Cas. 331.

SUMMARY CONVICTION; JURISDICTION OF DEPUTY STIPENDIARY MAGISTRATE; LIMITED JURISDICTION IN NOVA SCOTIA UNDER R.S.N.S. CH. 71.

(1) A deputy stipendiary in Nova Scotia appointed by a town council under R.S.N.S. ch. 71, sec. 115, has jurisdiction only in the event of the stipendiary's absence from town or of incapacity, through illness, interest or otherwise, of the stipendiary. (2) A prisoner held under a summary conviction purporting to be made by the deputy stipendiary acting at the request of the stipendiary, but when, in fact, there was no incapacity to prevent the stipendiary from acting, must be discharged on habeas corpus. The King v. Morris, 16 Can. Cr. Cas. 1.

SUMMARY CONVICTION; JURISDICTION OF MAGISTRATE; OFFENCE PARTLY COMMITTED IN TERRITORIAL LIMITS; PROCEEDINGS AT THAT PLACE AGAINST SHIPPER OUTSIDE COUNTY.

(1) The offence of unlawfully causing intoxicating liquor to be shipped into a place where the Canada Temperance Act has been proclaimed is at least partly committed in the latter place, and the magistrate there has jurisdiction to summarily convict for the offence a person resident in another county who appears before him charged with the offence. (2) Such jurisdiction may be supported under Code, secs. 584 (b) and 707, as well as under sec. 127 of the Canada Temperance Act (amendment of 1908). Ex parte McIntyre, 16 Can. Cr. Cas. 38.

SPEEDY TRIAL; FORMAL CHARGE; AMENDMENT BY ADDING SECOND COUNT FOR DISTINCT OFFENCE; CONSENT OF JUDGE TO NEW CHARGE.

(1) On a charge of theft preferred under the Speedy Trials clauses of the Code following a committal for that offence, the Judge may permit an amendment by adding a count for false pretences in respect of which a preliminary enquiry had been begun, but abandoned, and if the accused elects a speedy trial on the amended charge, a conviction on the added count will not be quashed because of failure of the prosecution to establish the first count on which

alone the commitment for trial was made. (2) An amendment to include an additional charge for a wholly distinct offence from that disclosed in the depositions before the magistrate is permissible under Code, sec. 834 (as amended, 1909) upon a written charge in a County Court Judge's Criminal Court, but the accused cannot be tried in that Court upon the added charge unless he consents to trial without a jury in respect thereof. (3) A second count for the additional offence will not be quashed because of a finding that the evidence does not support the first count, the jurisdiction to add a new offence under Code, sec. 834 (amendment of 1909) not being dependent upon proof of the offence originally charged. The King v. Stickler, 16 Can. Cr. Cas. 45.

INFORMATION BEFORE JUSTICE; UNSUCCESSFUL APPLICATION FOR PROHIBITION; FRESH INFORMATION BEFORE ANOTHER JUSTICE ON SAME CHARGE.

(1) Where a charge of assault laid before a magistrate was not proceeded with because of prohibition proceedings taken against the magistrate by the accused, but afterwards dismissed, the magistrate may, with the consent of the prosecutor drop the proceedings taken before him and consent to a fresh information being laid before another magistrate, for the same offence. (2) The accused having himself taken action, although unsuccessfully, to prevent the first magistrate from hearing the charge, could not afterwards insist upon the case being proceeded with before that magistrate, if there was no ground for imputing want of good faith to the prosecutor in taking fresh proceedings. Ex parte Peck (No. 2), 16 Can. Cr. Cas. 49.

SUMMARY CONVICTION; CASE STATED BY MAGISTRATE; JURISDICTION OF HIGH COURT IN ONTARIO.

A case stated by a magistrate in a summary conviction matter is to be heard by the High Court and not by the Court of Appeal in Ontario, whether the summary conviction is under Part XV. of the Criminal Code for an offence under a Dominion law or under the Ontario Summary Convictions Act for an offence under a provincial law. The King v. Henry, 16 Can. Cr. Cas. 73.

SUMMARY TRIAL; CITY OR TOWN POLICE MAGISTRATE WHERE CENSUS POPULATION OF 2,500.

Judicial notice will be taken of census returns taken under a Dominion statute for the purpose of ascertaining the jurisdiction of a magistrate holding a summary trial under Code, sec. 777 (amendment of 1909) as the police magistrate of a city of not less than 2,500 inhabitants according to the last parliamentary census. The King v. Rahamat Ali (No. 1), 16 Can. Cr. Cas. 193.

COURT OF APPEAL; NO ORIGINAL JURISDICTION IN HABEAS CORPUS.

The Court of Appeal of British Columbia has no jurisdiction to grant a writ of habeas corpus in the first instance. The King v. Rahamat Ali (No. 2), 16 Can. Cr. Cas. 195.

SUMMARY PROCEEDINGS; JURISDICTION OF JUSTICES ONLY AT POLICE MAGISTRATE'S REQUEST OR IN CASE OF HIS ILLNESS OR ABSENCE.

Where a summary conviction is made by justices whose jurisdiction would depend upon a request having been made by a police magistrate to act in his stead and the conviction does not expressly recite such request, a writ of habeas corpus and a certiorari in aid thereof should be granted to afford the prisoner an opportunity of testing the magistrate's jurisdiction on a subsequent motion for discharge from custody. The King v. Ackers (No. 2), 16 Can. Cr. Cas. 221.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 346.]

SUMMARY CONVICTION; PROCEEDING EX PARTE IN DEFAULT OF APPEARANCE.

The jurisdiction of the magistrate to proceed ex parte on the return of a summons attaches only on proof of service and where service was made substitutionally upon a brother of the accused at the defendant's hotel upon failure to find the defendant himself, proof that the brother served "stayed at the hotel most of the time" is insufficient to shew that he was an "inmate" of the defendant's last or most usual place of abode within Code, sec. 658, and the conviction made in defendant's absence was set aside. The King v. Franey, 16 Can. Cr. Cas. 441.

REFUSAL OF ADJOURNMENT; DISCRETION; JURISDICTION OF MAGISTRATE.

(1) Where the accused was summoned to answer a charge of selling liquor without a license and at the hearing there being evidence of possession of liquor but no evidence of sale the charge was amended to one for "keeping for sale" and the defendant was refused an adjournment and was convicted, the Court on certiorari will quash the conviction for want of evidence of keeping for sale, but not, under the circumstances of the case, on the ground of the refusal of the adjournment. (2) In order to displace the magistrate's jurisdiction on the ground of the refusal of an adjournment asked by the defence, more must be shewn than an amendment of the information and a refusal to adjourn the hearing, as to which the magistrate has a wide discretion. The King v. Milkins, 17 Can. Cr. Cas. 20.

SUMMARY CONVICTION; TWO CONCURRENT CHARGES; SEPARATE OFFENCES OF A SIMILAR CLASS; MIXING THE TRIALS; REFUSAL OF MAGISTRATE TO ADJOURN; RESERVING JUDGMENT UNTIL EVIDENCE HEARD IN BOTH; PRESUMPTION; SELLING LIQUOR BETWEEN DATES MENTIONED; TIME OF SECOND OFFENCE OVERLAPPING PERIOD OF FIRST CHARGE; PARISH COURT COMMISSIONER IN NEW BRUNSWICK; JURISDICTION OF TWO JUSTICES; CANADA TEMPERANCE ACT, 51 VICT. CH. 34 AND R.S.C. 1906, CH. 152, SEC. 131; C.S.N.B. 1903, CH. 120; CR. CODE (1906) SEC. 710.

(1) A Parish Court Commissioner appointed under the laws of New Brunswick with the power of two justices of the peace is authorized to try prosecutions under the Canada Temperance Act and is a "magistrate" under sec. 131 thereof, which confers jurisdiction on magistrates having the power of two justices. (2) The omission of the words "Parish Court Commissioner" from the Canada Temperance Act on its re-enactment as consolidated does not shew an intention to deprive that official of jurisdiction, for the special mention of officials of that designation was no longer necessary because they had since been qualified with the authority of a magistrate under provincial law. (3) The granting or refusing of an adjournment by the magistrate, is in his discretion and unless improper conduct on his part is shewn, the refusal to adjourn will not be reviewed on certiorari. Ex parte Monahan, 17 Can. Cr. Cas. 53.

STIPENDIARY MAGISTRATES IN NOVA SCOTIA.

(1) The Nova Scotia statute, N.S. 1905, ch. 11, substituting the word "municipality" for the word "county" does not limit the jurisdiction of county magistrates already appointed so as to deprive them of jurisdiction in a part of the county which is not within the "municipality" of the same name. (2) A search warrant is not an "order" under the statute, R.S.N.S. 1900, ch. 40, sec. 6, under which convictions and orders must be quashed before action brought in respect of their enforcement. [R. v. Townshend (No. 1), 11 Can. Cr. Cas. 94, considered.] Johnston v. MacDougall (No. 1), 17 Can. Cr. Cas. 58.

JURISDICTION OF MAGISTRATE ON FORMATION OF NEW DISTRICT OUT OF THAT FOR WHICH HE WAS APPOINTED.

(1) The creation by statute of a new judicial district gives to the officers of the new district exclusive jurisdiction and there is not concurrent jurisdiction remaining in judicial officers of the former territory from part of which the new district was formed. (2) A magistrate for Algoma has no jurisdiction to entertain a charge for an offence under the Liquor License Act (Ont.) committed at a place formerly in Algoma but now in Sudbury judicial district. The King v. Harrington, 17 Can. Cr. Cas. 62.

CONTEMPT OF COURT; SUPERIOR COURT.

A Superior Court of original jurisdiction has inherent power to punish for scandalous contempt, whether the publication is pending the litigation to which it refers or after the termination of same. Fournier v. Attorney-General, 17 Can. Cr. Cas. 108.

MAGISTRATE; ANOTHER MAGISTRATE SITTING FOR A POLICE MAGISTRATE AT HIS REQUEST.

A statute authorizing another magistrate to act in the place of a police magistrate in the latter's "absence" is to be construed as conferring jurisdiction in a case in which the police magistrate was unable to preside because his attendance was required before another tribunal and asked the other magistrate to sit for him and this notwithstanding the presence of the police magistrate in the Court room during a part of the proceedings. Ex parte Cormier, 17 Can. Cr. Cas. 179.

JURISDICTION ON CERTIORARI AND HABEAS CORPUS.

The Supreme Court of Saskatchewan has a general jurisdiction to deal with decisions of inferior criminal Courts in that province upon certiorari. [R. v. St. Clair, 3 Can. Cr. Cas. 551, followed; specially referred to in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; referred to in R. v. Johnson, 20 Can. Cr. Cas. 10, 5 D.L.R. 523.] The King v. Leschinski, 17 Can. Cr. Cas. 199.

TAKING PROOF OF PRIOR CONVICTION IN THE ABSENCE OF ACCUSED; EX PARTE HEARING ON DEFAULT.

On a charge for a second offence against the Ontario Liquor License Act, as amended by 9 Edw. VII. (Ont.) ch. 82, the magistrate may proceed, on default of the appearance of the accused, to take evidence of the prior conviction charged in the information, and it is not essential to the jurisdiction of the magistrate who has a general statutory authority to proceed in the absence of the accused if duly summoned, that the accused should be personally brought before him for the purpose of being asked, pursuant to sec. 101 of the Act, whether he was previously convicted as alleged. [R. v. Warilow (1908), 14 Can. Cr. Cas. 117, and R. v. Graves (1910), 16 Can. Cr. Cas. 318, considered.] The King v. Coote, 17 Can. Cr. Cas. 211.

[Referred to in R. v. Wishart, 18 Can. Cr. Cas. 167.]

NO JURISDICTION OVER EMPLOYER AT POINT OF ENTRY UNLESS ACT OF SOLICITATION IN THAT COUNTY OR EMPLOYMENT GIVEN THERE.

Where neither the employment of the alien in Canada nor the solicitation to immigrate to Canada took place in the judi-

cial district in which the prosecution of the employer was instituted for an infraction of the Alien Labour Act, the County Judge of that district has no jurisdiction, although the alien immigrant entered Canada in that district in pursuance of defendant's solicitation in the foreign country. The King v. Chestnut, 17 Can. Cr. Cas. 305.

REVIEW OF A SUMMARY CONVICTION MADE UNDER PROVINCIAL LAW; JURISDICTION OF COUNTY COURT JUDGE NOT LIMITED TO CASES ARISING IN HIS COUNTY.

The general rule is that where jurisdiction is conferred by statute upon inferior tribunals they are to exercise it within the territorial limits of their jurisdiction, but where a statute confers a power of review of summary convictions upon application "to a Judge of the Supreme or County Court," any County Court Judge to whom application is made and with whom the certified copy of the proceedings below are deposited in conformity with the statute (C. S.N.B. 1903, ch. 123, sec. 44) has jurisdiction, whether the trial was before justices of his county or elsewhere in the same province. [Ex parte Graves, 35 N.B.R. 587, followed.] Re Braithwaite, 17 Can. Cr. Cas. 309.

CRIMINAL COURT WITH PROVINCIAL JURISDICTION.

The jurisdiction of a Superior Court of criminal jurisdiction under Code, secs. 557 and 580 to try any indictable offence in the province for which it is created, is to be exercised subject to the right of the accused at common law and under Code, sec. 884 to be tried in the locality of the offence unless an order has been made to change the venue. The King v. Lynn (No. 1), 17 Can. Cr. Cas. 354.

SUMMARY CONVICTION; JUDGMENT TO BE HANDED OUT WITHIN ONE WEEK.

If on the hearing of a summary conviction matter, counsel for the complainant and for the accused agree that judgment may be reserved without fixing a date for same, other than that the decision shall be given within one week, and shall be notified to the respective solicitors, and the magistrate acquiesces in and conforms to such arrangement, he does not thereby lose jurisdiction and a conviction made within the week should not be set aside. The King v. McKenzie, 17 Can. Cr. Cas. 372.

MAGISTRATE; STATUTORY POWER TO HOLD COURT AT PLACE OUTSIDE TERRITORIAL JURISDICTION; AUTHORITY TO "SIT AND TRY;" ISSUE OF COMMITMENT INCLUDED.

When the magistrate is given statutory power to "sit and try" cases arising in his territorial jurisdiction at a city outside of such jurisdiction, he may also issue a warrant of commitment at such city. Re McMurrer (No. 1), 18 Can. Cr. Cas. 41.

JURISDICTION OF POLICE MAGISTRATE NOT HAVING EXTENDED POWERS OF CITY MAGISTRATE.

(1) Unless a police magistrate has the extended jurisdiction conferred on city magistrates and certain others by Code, sec. 777, he has no jurisdiction to summarily try a charge of assault occasioning actual bodily harm, which is indictable under Code, sec. 295, although he has jurisdiction under Code, sec. 773 to summarily try a charge of unlawful wounding or of inflicting grievous bodily harm. (2) Where the jurisdiction of the magistrate depends upon Code, sec. 773, the charge as laid before him must be for one of the specific offences which that section enumerates, and it is not sufficient that the offence charged is closely allied to and possibly included in one of the offences so enumerated. (3) Code, sec. 951, which permits of a conviction being made for a lesser offence the commission of which is included in the offence charged, does not apply to validate a conviction upon a charge laid in the first instance for the lesser offence, if the magistrate had no jurisdiction to enter upon the trial thereof. (4) The Court, on hearing a motion to quash a conviction, will not refuse to consider an objection of want of jurisdiction in the magistrate although it was not expressly set out in the notice of motion for the rule, but will adjourn the motion to permit an amendment, if the opposing party is prejudiced by the omission. The King v. Sharpe, 18 Can. Cr. Cas. 132.

JUSTICE OF THE PEACE; INFORMATION; OMISSION IN TO STATE PLACE OF OFFENCE.

A justice has no jurisdiction to issue a warrant under Code, sec. 653, upon an information which does not state either the place where the offence was committed, or that the offence is indictable and triable in the province. Campbell v. Walsh, 18 Can. Cr. Cas. 304.

RESUMING TRIAL MORE THAN EIGHT DAYS AFTERWARDS; STATUTORY APPOINTMENT OF RESIDENT IN DISTRICT AS MAGISTRATE; JURISDICTION NOTWITHSTANDING ENFORCED REMOVAL.

(1) Where summary proceedings before a magistrate were adjourned by consent to be taken up on the adjournment of the County Court then in session, at which counsel for both the prosecution and the defence were then engaged in other cases, and the case afterwards proceeded with without objection, a conviction will not be quashed upon certiorari on the ground that such adjournment lasted for more than eight days contrary to Code, sec. 722. (2) If with knowledge of a defect of jurisdiction, the party entitled to object attends and takes no objection, he is not entitled to a writ of certiorari to raise it. (3) The re-

fusal of the magistrate to adjourn the case to enable the defendant to secure the attendance of a witness he desires to call is a matter of discretion which does not go to the jurisdiction of the magistrate. (4) Where a magistrate was appointed by the Lieutenant-Governor-in-Council under a statute which authorized the appointment of a fit and proper person "resident in the district" and the magistrate was so resident at the time of the appointment, he will not ipso facto lose jurisdiction by ceasing to be actually resident, particularly where he continued to perform his official duties there and had for good cause removed to the adjoining district only temporarily. Ex parte Giberson (No. 3), 18 Can. Cr. Cas. 355.

STATED CASE BY JUSTICES; JURISDICTION TO HEAR.

(1) Neither a hotel keeper nor a restaurant keeper is, as such, a "merchant or tradesman" within the Ontario Lord's Day Act, C.S.U.C. ch. 104. (2) While a restaurant keeper may sell a cigar as an incident of a meal, it is of the essence of his business that what he sells in that capacity is sold to be consumed upon the premises; if the restaurant keeper also keeps a cigar stand or a candy stand for the purpose of selling to the public he becomes, as to such ancillary business a "merchant or tradesman" within the Ontario Lord's Day Act, C.S.U.S. ch. 104. (3) The sale to the public of bottled temperance beverages, on Sunday to be taken away from the place of sale, is an offence against the Ontario Lord's Day Act notwithstanding that the seller is a restaurant keeper. (4) It is an offence under the Ontario Lord's Day Act, C.S.U.C. ch. 140 for a druggist to sell cigars on Sunday to all parties asking for them; such sales are not protected by the exemption of "drugs and medicines" in the statute. (5) A Judge of the High Court has jurisdiction to hear a stated case under sec. 761 of the Criminal Code in respect of a summary conviction under a statute passed by the Parliament of Canada, before Confederation and remaining in force in Ontario. The King v. Wells, 18 Can. Cr. Cas. 377.

HABEAS CORPUS; MINISTER OF THE CROWN.

The Superior Court of the Province of Quebec has no jurisdiction to revise, annul or modify an order made by the Minister of Agriculture or by a public officer pursuant to the provisions of the Immigration Act (Canada) respecting the deportation of an immigrant; and a writ of habeas corpus asked for that purpose will be refused. Robinson v. Regimbal, 18 Can. Cr. Cas. 478.

CERTIORARI; CIRCUIT COURT (QUE.).

A Circuit Court in the Province of Quebec has no jurisdiction to issue a writ of certiorari in respect of a charge of assault heard before justices of the peace. Dion v. Champagne, 18 Can. Cr. Cas. 489.

MAGISTRATE; OFFENCE PRIOR TO APPOINTMENT.

A stipendiary magistrate has power to try and to convict for an offence committed before the date of his appointment. [Regina v. Bachelor, 15 O.R. 641, distinguished.] The King v. Sweeney, 19 Can. Cr. Cas. 222, 1 D.L.R. 476.

JURISDICTION OF COURT SITTING UNDER HABEAS CORPUS ACT; COGNIZANCE OF PROCEEDINGS.

A Court sitting under the Habeas Corpus Act may, without inquiring into the justice of a sentence imposed on a person, take notice of the minutes of proceedings against him in order to satisfy itself that the provisions of the law relating to the warrant of commitment have been observed. Lafleur v. Vallee, 19 Can. Cr. Cas. 362, 5 D.L.R. 57.

JURISDICTION OF B. C. COURT OF APPEAL; CANCELLATION OF ORDER OF DEPORTATION; STARE DECISIS.

Under sec. 6 of the Court of Appeal Act, R.S.B.C. 1911, ch. 51, providing that an appeal shall lie to the Court of Appeal from all judgments, orders, or decrees made by the Supreme Court or a Judge thereof, no appeal lies to the Court of Appeal of British Columbia from the judgment of a Judge of the Supreme Court of British Columbia cancelling an order of deportation made by the chairman of a Board of Enquiry constituted under sec. 13 of the Immigration Act of Canada, 9 and 10 Edw. VII. ch. 27. (2) The Court of Appeal of British Columbia will not follow decisions as to practice in habeas corpus appeals of the former Full Supreme Court of British Columbia to whose appellate jurisdiction such Court of Appeal succeeded, if to do so would establish in the Province of British Columbia a practice in conflict with the practice in England and would prejudicially affect the liberty of the subject. [Cox v. Hakes, 15 A.C. 506, followed; Ikezoya v. Canadian Pacific R. Co., 12 B.C.R. 454, overruled.] Re Hoessan Rahim, 19 Can. Cr. Cas. 394, 4 D.L.R. 701.

RIGHT OF APPEAL; JURISDICTION OF COURT OF KING'S BENCH, QUEBEC.

(1) Since sec. 3982 (j) of ch. 35 of 1 Geo. V. of Quebec, regulating the sale of cocaine, morphine and their compounds, expressly provides that sec. 15 of the Criminal Code regulating appeals should apply to prosecutions thereunder, the Court of King's Bench has, by virtue of such Act, as well as under judicial authority, jurisdiction to entertain an appeal from a conviction under such Act. (2) The Court of King's Bench, Quebec, may, on its own motion or on behalf of any person interested, in a matter properly before it, determine

whether a Provincial Act conflicts with an Act of the Dominion Parliament. Dufresne et al. v. The King, 19 Can. Cr. Cas. 414, 5 D.L.R. 501. [The King v. Bigelow, 8 Can. Cr. Cas. 132; The King v. McLeod, 12 Can. Cr. Cas. 73; Scottstown Corporation v. Beauchesne, 5 Que. K.B. 554; Superior v. City of Montreal, 3 Can. Cr. Cas. 379; sub-sec. 27 of sec. 91 of British North America Act, 1867; sub-sec. 14 of sec. 92 of the same Act, and sec. 749 of the Criminal Code, specially referred to.]

ILLEGAL METHOD OF COMPELLING ATTENDANCE TO ANSWER CHARGE; ARREST WITHOUT WARRANT.

(1) Whether the defendant was illegally arrested or not is not material to the jurisdiction of a magistrate under the Summary Convictions clauses of the Criminal Code when the accused is brought before him to answer a charge as to which an information had been properly laid before such magistrate. (2) The fact that a person charged before a magistrate with an offence punishable on summary conviction had been brought before the magistrate under arrest without warrant, although a warrant was required by law, does not go to the jurisdiction of the magistrate, nor affect the validity of a conviction and commitment made at the hearing. [Reg. v. Hughes, 4 Q.B.D. 614, 48 L.J.M.C. 151, applied; McGuiness v. Dafoe, 3 Can. Cr. Cas. 139, 23 A.R. (Ont.) 704, referred to; but see contra, Re Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25.] Re Baptiste Paul (No. 1), 20 Can. Cr. Cas. 159, 7 D.L.R. 24.

JURISDICTION OF COUNTY COURT JUDGE ON AN APPEAL FROM CONVICTION UNDER THE LIQUOR LICENSE ACT.

A County Court Judge hearing an appeal from a summary conviction under the Liquor License Act, R.S.N.S. 1900, ch. 100, sec. 149, is a statutory officer and, as such, is strictly limited to the authority which the statute confers. Rex v. Ackerson, 20 Can. Cr. Cas. 245, 7 D.L.R. 95.

COURTS; CONTROL OVER MUNICIPAL ORDINANCES.

The Court cannot, under the provisions of R.S.N.S. 1900, ch. 71, secs. 121-124, interfere where a resolution was passed by the town council reducing the salary of its stipendiary magistrate not in the exercise of the bona fide discretion of the council, but for the purpose of forcing him to resign, with the intention of securing the appointment of a successor in the hope that the latter's decisions in connection with liquor license prosecutions would be more in accordance with the wishes of certain members of the council. Re Pelton, 20 Can. Cr. Cas. 299, 7 D.L.R. 465.

CRIME IN NAVY YARD UNDER ADMIRALTY CONTROL.

The offence of receiving property stolen from a navy yard in Canada under the control of the British Admiralty is cognizable by a Canadian Court of criminal jurisdiction, particularly where the accused is not subject to court-martial by the Admiralty authorities. The King v. Day, 20 Can. Cr. Cas. 325.

SUPREME COURT (CAN.); HABEAS CORPUS JURISDICTION.

A Judge of the Supreme Court of Canada has concurrent jurisdiction with provincial Courts to grant a writ of habeas corpus under the Supreme Court Act, R.S.C. (1906) ch. 139, sec. 62, in respect of a commitment in a criminal case where the commitment is in respect of some act which is made a criminal offence solely by virtue of a statute of the Dominion Parliament, and not where it was already a crime at common law or under the statute law in force in the province on its admission into the Canadian Confederation and which had not been repealed by the Federal Parliament. [Re Sproule, 12 Can. S.C.R. 140, applied.] Re Dean, 20 Can. Cr. Cas. 374, 9 D.L.R. 364.

STARE DECISIS; PREVIOUS OPINION ON THE MERITS BY SAME COURT.

The rule of stare decisis does not apply to bind a Court of criminal appeal, hearing a stated case sent up by its direction, under Cr. Code (1906), secs. 1015 and 1016, from the trial Court after a conviction for murder, by the opinions on the merits expressed by the majority of the Court as constituted when the stated case was ordered on a motion for leave to appeal, although full argument had been then heard on the merits and a majority opinion expressed in expectation that the case might be dealt with pro forma in accordance with such opinion and without reargument on the filing of the formal stated case; particularly where the Court on such motion for leave entertained doubt of its jurisdiction to determine the case on the merits without a formal case stated, and its formal order then made was accordingly limited to the granting of leave to appeal and a direction to the trial Judge to send up a stated case and did not purport to order a new trial or to quash the conviction, or otherwise to dispose of the case on the merits. (Per Townshend, C.J., Meagher, and Drysdale, JJ., on an equal division of the Court.) [Rex v. Graves (No. 2), 20 Can. Cr. Cas. 384, 9 D.L.R. 30, not followed; Rex v. Blyth, 15 Can. Cr. Cas. 224, referred to.] The King v. Graves (No. 3), 20 Can. Cr. Cas. 438, 9 D.L.R. 175, reversed in 21 Can. Cr. Cas. 44, 9 D.L.R. 589.

JUSTICE OF THE PEACE; JURISDICTION; COLLATERAL ATTACK.

Where the jurisdiction of magistrates is purely statutory, it is open to collateral attack by evidence dehors the proceedings, whether or not such proceedings purport to shew jurisdiction. (Per Beck, J.) The maxim omnia præsumuntur rite esse acta does not apply to give jurisdiction to an inferior court; on the contrary, nothing is to be intended to be within the jurisdiction of an inferior court but that which is so expressly alleged. [Falkingham v. Victorian Ry. Com., [1900] A.C. 452, applied.] R. v. Taylor, 22 Can. Cr. Cas. 234, 15 D.L.R. 679.

YUKON TERRITORY; MOUNTED POLICE.

The extended jurisdiction given by sec. 777 of the Cr. Code (amendment of 1909), to city and town magistrates does not apply to give jurisdiction in the Yukon Territory to an officer of the R.N.W. Mounted Police, although possessing all the powers of two justices by virtue of the Yukon Act, R.S.C. 1906, ch. 63. [R. v. Alexander, 13 D.L.R. 385, 21 Can. Cr. Cas. 473, followed.] R. v. Kolember, 22 Can. Cr. Cas. 341, 16 D.L.R. 146.

"SESSIONS" COURTS AT MONTREAL.

The court of general sessions of the peace at Montreal, sometimes called the court of quarter sessions, has power to hear and determine all matters relating to the preservation of the peace, and its jurisdiction may be exercised by the other court known as the "Court of the Sessions of the Peace" established by article 3259 R.S.Q.; there is in strictness no "police magistrate's court," the acts of the magistrate are not acts of "a court" although the place of hearing is by Code, sec. 714 to be deemed an open court. R. v. Walker, 23 Can. Cr. Cas. 179, 18 D.L.R. 541.

COURT OF APPEAL, B.C.

The jurisdiction of the former full Court of British Columbia is by sec. 6 of the Court of Appeal Act, B.C. conferred on the Court of Appeal as of April 25, 1907, not 1897 as erroneously printed in the B.C. statutes, the correct date appearing in the original roll and being the date of the passing of the Court of Appeal Act. R. v. Kwong Yick Tai, 24 Can. Cr. Cas. 28, 22 D.L.R. 323.

CONSTITUTIONAL LAW; POLICE POWER; VAGRANCY OFFENCE; PROVINCIAL LAW.

The Superior Court of the Province of Quebec has jurisdiction to entertain a certiorari application in respect of a summary conviction under a Quebec statute, and will grant the preliminary writ of certiorari to bring up the proceedings where the magistrate's jurisdiction is attacked, if the conviction appears to be one under a provincial statute made in the exercise of police powers although for a like offence as is designated vagrancy by Cr. Code, sec. 238 (f)—causing public disturbance by being drunk; the provincial jurisdiction in such matters is concurrent with that of the Dominion Parliament unless there is a conflict between the two enactments. [Ex parte Ashley, 8 Can. Cr. Cas. 328; Leonard v. Pelletier, 9 Can. Cr. Cas. 19, 24 Que. S.C. 331, and R. v. Mercier (Mercier v. Plamondon) 6 Can. Cr. Cas. 44, 20 Que. S.C. 288, referred to.] Ex parte Pelchat, 26 Can. Cr. Cas. 75.

REVIEW OF JUDGMENT; HABEAS CORPUS; TERRITORIAL JURISDICTION OF MAGISTRATE.

A Court of superior criminal jurisdiction has inherent power of review over an order in habeas corpus proceedings made by a single Judge sitting for the Court and as its delegate; and a general order providing, as does Alberta Crown practice rule No. 20, for such review by way of appeal to the Appellate Division of the same Court either by the accused or the prosecutor in a criminal matter is not ultra vires, although statutory authority would be necessary were the appeal to a separate Court. [R. v. Marceau, 23 Can. Cr. Cas. 456, 22 D.L.R. 336; R. v. Stubbs, 24 Can. Cr. Cas. 303, 25 D.L.R. 424; Re Sproule, 12 Can. S.C.R. 140, applied; Cox v. Hakes, 15 A.C. 506; United States v. Gaynor, 9 Can. Cr. Cas. 205, [1905] A.C. 128, and Atty.-General v. Fedorenko (1911) 18 Can. Cr. Cas. 256, considered.] Cr. Code, sec. 577, applies to give jurisdiction to a city police magistrate to try with the consent of the accused, under sec. 777 (2) an offence committed outside of his territorial jurisdiction but within the same province, as to which the accused is found or apprehended within such territorial jurisdiction. [Re Seeley, 14 Can. Cr. Cas. 270, 41 Can. S.C.R. 5, referred to.] R. v. Thornton, 26 Can. Cr. Cas. 120, 30 D.L.R. 441.

[Cited in R. v. Sinclair, 28 Can. Cr. Cas. 350, 32 D.L.R. 796; referred in R. v. Nevison, 31 Can. Cr. Cas. 116.]

SUMMARY CONVICTION; TITLE TO LAND.

The defendant raising the objection to the justice's jurisdiction in a summary conviction matter on the ground that the title to land comes into question must satisfy the justice that there is some reasonable ground for his assertion of title; and there must be some show of reason in the claim of title in order to oust the justice of jurisdiction under Cr. Code sec. 709. Ex parte Kane, 26 Can. Cr. Cas. 156, 27 D.L.R. 494.

SUMMARY CONVICTION; MALICIOUS DAMAGE; CLAIM OF RIGHT.

The magistrate's jurisdiction to try a charge under sec. 539 (for malicious damage generally) is ousted under sec. 540 only if the accused proves that he did the act

complained of under a fair and reasonable supposition of right, which is a question for the magistrate to determine even if it involves some investigation of title to lands. [R. v. Davy, 4 Can. Cr. Cas. 28, applied.] Ex parte Murphy; R. v. Mullins, 29 Can. Cr. Cas. 1, 38 D.L.R. 625.

SUBSTITUTE JUDGE; LIMITED TO CASES OF REGULAR JUDGE'S "ABSENCE OR INABILITY TO ACT."

A statute which enables a certain magistrate to hold the court of sessions only in case of the "absence or inability to act" of the sessions judge (R.S. Que., art. 3262(a)) implies that "absence" may mean something different from "inability to act;" "absence" connotes physical non-presence from whatever cause, and it is to be presumed that the absence was due to some good and sufficient reason. The jurisdiction of the magistrate acting in substitution for the sessions judge is sufficiently established if it appears that when the trial began the sessions judge was not in the court room; such jurisdiction would not be displaced by the sessions judge casually entering the court room with no intention of intervening in a trial which had already been commenced by the magistrate in his capacity as a substitute judge, particularly where the substitution had been arranged by and took place with the concurrence of the judge himself. [Bingham v. Chabot, 3 Dal. (U.S.) 19; Byrne v. Arnold, 24 N.B.R. 161; R. v. Parkin, 7 Q.B. 165, and Ex parte Cormier, 17 Can. Cr. Cas. 179; referred to.] Bunet v. The King, 30 Can. Cr. Cas. 16, 42 D.L.R. 405. See 30 Can. Cr. Cas. 9.

DISTRICT JUDGE'S CRIMINAL COURT; COURT OF RECORD; JURISDICTION IN CERTAIN CASES; DUTY TO KEEP RECORD OF CASE.

R. v. Porhorlink, 30 Can. Cr. Cas. 281, 42 D.L.R. 767.

JURY.

See also Verdict; Trial; New trial.

Election for or against jury trial, see Speedy trial; Summary trial.

Note on challenge of juror for cause; Objection "for favour." 2 Can. Cr. Cas. 81.

Note on calling the jury. 3 Can. Cr. Cas. 272.

Note on challenge of jurors. 3 Can. Cr. Cas. 273.

New trial after jury trial; No right to re-elect for "speedy trial." 7 Can. Cr. Cas. 92.

Right to jury must be stated on taking consent to summary trial. 7 Can. Cr. Cas. 129.

Challenge of juror; Duty of triers. 8 Can. Cr. Cas. 7.

CAUSING THE JURY TO STAND ASIDE; RIGHT OF CROWN; INDICTMENT FOR LIBEL.

The 37 Vict. ch. 38, sec. 11 (D.), enacts that the right of the Crown to cause jurors to stand aside shall not be exercised "on the trial of any indictment or information by a private prosecutor for the publication of a defamatory libel: "—Held, to include all cases of defamatory libels upon individuals, as distinguished from seditious or blasphemous libels; and that the fact of the prosecution being conducted by a counsel appointed by and representing the Attorney-General would make no difference. The Judge, at the trial, allowed the Crown counsel in such a case to direct jurors to stand aside, but, after the verdict and sentence, entertaining doubts, he reserved a case for the opinion of this Court as to the propriety of his having permitted it:—Held, that he was clearly not precluded from such reservation by having allowed the right when claimed, and that such question of law which arose on the trial, within the meaning of the statute, Consol. Stat. U. C., ch. 112. Regina v. Patterson (1875), 36 U.C.Q.B. 129.

CHALLENGE WITHOUT CAUSE; EXERCISE OF CHALLENGES BY CROWN.

On a trial for a felony, the Crown may, without shewing cause, direct a juror, on his name being called by the clerk of the Court to "stand aside," and, on the panel being read over a second time, may, without shewing cause for challenge, direct the same juror to stand aside the second time, and so on, until the panel is exhausted, i.e., till it appears that a jury cannot be got without such juror. R. v. Lacombe, 13 L.C. Jur. 259.

PEREMPTORY CHALLENGES; CHALLENGES FOR CAUSE.

After some jurors had been peremptorily challenged by the prisoner, and others directed by the Crown to stand aside, and when only one had been sworn, one M. was called and challenged by the prisoner for cause. At the suggestion of the Court, and with the consent of counsel, M. was directed to stand aside by the Crown "till it was ascertained whether a jury could be empanelled without him, on the understanding that if it appeared necessary or expedient the challenge for cause should be tried in the usual way." After the prisoner had made nineteen peremptory challenges, a juryman was called whom the prisoner desired to challenge peremptorily. The counsel for the Crown then asked that the question if M.'s competency should be tried in the usual way. The prisoner's counsel objected, but the Judge ruled with the Crown, and he certified that he so ruled because it was in accordance with the arrangement under which the juror was directed to stand aside; that no exception was taken to this

ruling; that he was not asked to note any objection to the mode of empanelling the jury; and that he was first asked to reserve the question after the Assize had finished, when upon the consent of counsel for the Crown, it was added to the other questions reserved:—Held, that the jury were properly empanelled. Regina v. Smith (1876), 38 U.C.Q.B. 218.

CHALLENGE FOR CAUSE; EXHAUSTING PEREMPTORY CHALLENGES; NUMBER OF CHALLENGES.

The prisoner desired to challenge one S., one of the jurors called, for favor, alleging sufficient cause. The Judge ruled that he must first exhaust his peremptory challenges, and this point was raised by plea and demurrer, and formally decided. The entry on the record then was, that in deference to the judgment the challenge was taken and treated by the prisoner, and by the Attorney-General, as a peremptory challenge for and on behalf of the prisoner. Afterwards, having exhausted his twenty challenges, including S., he claimed to challenge peremptorily one H., contending that by the erroneous ruling he had been compelled to challenge S. peremptorily, and should not be obliged to count him as one of the twenty. This was also entered of record and decided against him:—Held, 1. That the prisoner was entitled to challenge for cause before exhausting his peremptory challenges; that error would lie for the refusal of this right, and that had S. been sworn there must have been a venire de novo; but, 2 (Morrison, JJ., dissenting), That by the peremptory challenge of S., which excluded him from the jury, the first ground of error was removed, and that error on the second challenge could not be supported, for the prisoner had in fact had twenty peremptory challenges, and the peremptory challenge of S., being in deference to the ruling of the Judge, did not make it the less a peremptory challenge. Whelan v. The Queen (1868), 28 U.C.Q.B. 2.

CHALLENGES BY CROWN; WRITTEN CHALLENGES; OPINION OF JUROR AS CAUSE; EXAMINATION ON VOIR DIRE.

On a criminal trial the Crown has a right to direct jurors called to stand aside and is not bound to challenge for cause until the whole panel is perused. It is a matter in the direction of the presiding Judge, whether to require a challenge to the polls to be in writing. Expressions used by a juryman are not a cause of challenge unless they are to be referred to something of personal ill-will toward the party challenging; and the juryman, himself, is not to be sworn when the cause of challenge tends to his dishonor, as whether he has been convicted of felony, etc., or whether he has expressed a hostile opinion as to the guilt of the defendant, though he may be examined on the voir dire as to his qualification or the leaning of his affection. The Queen v. Chasson, 16 N.B.R. 546.

RIGHT TO JURY TRIAL ON APPEAL TO SESSIONS; DESERTION OF SEAMEN.

On an appeal to the Sessions from a conviction by a magistrate for breach of a municipal by-law, it is in the discretion of the chairman to grant or refuse a request for a jury under 36 Vict. ch. 58, sec. 2, which is declaratory of the meaning of sec. 66 of 32 and 33 Vict. ch. 31, and is not confined to cases under the Acts mentioned in the preamble and title, which relates only to the desertion of seamen. Regina v. Washington (1881), 46 U.C.Q.B. 221.

LANGUAGE OF JURORS; REJECTION OF JURORS BY CROWN; CHALLENGE WITHOUT CAUSE.

Where a defendant has asked for a jury composed one-half of the language of the defence, six jurors speaking the language may be first put into the box, before calling any juror of the other language. The right of the Crown to tell jurors to "stand aside" exists for misdemeanors as well as for felonies. When to obtain six jurors speaking the language of the defence, all speaking that language have been called, the Crown is still at liberty to challenge to stand aside, and is not held to shew cause until the whole panel is exhausted. R. v. Dougall, 18 L.C. Jur. 85.

QUALIFICATION; RESIDENCE OUTSIDE OF COUNTY; JURYMAN A WITNESS IN THE CASE; SWORN WITHOUT CHALLENGE.

A person being upon his trial for murder, after the usual notice of right of challenge allowed two jurymen to enter the box and be sworn without challenge. The name of John Hill was then called, and a person answering to that name came forward and was sworn; some others also were called and challenged; and after another was called and sworn without challenge, the prisoner's counsel objected to John Hill, as he was a witness in the case; upon enquiry, he was found not to be the person intended to be called to act on the jury, being not only a witness, but also not a resident within the counties, and therefore not qualified to act as a juryman. Upon consent of both counsel for the Crown and prisoner, he was allowed to retire and other jurymen were called and sworn till the panel was full, the prisoner exercising the right of challenge till the jury was chosen. The prisoner was tried and convicted. Upon motion for a new trial:—Held, 1st, that John Hill improperly sworn was legally discharged from the jury. 2nd, That by his discharge the right of challenge as to those previously sworn was not re-opened, their re-swearing not being thereby rendered necessary. 3rd, That he was properly tried by the twelve who constituted the jury, although thirteen

were sworn to try him. Reg. v. Coulter (1863), 13 U.C.C.P. 299.

CROWN DIRECTING THE JURYMEN TO STAND ASIDE.

When a panel had been gone through and a full jury had not been obtained the Crown on the second calling over the panel was permitted, against the objection of the prisoner, to direct eleven of the jurymen on the panel to stand aside a second time, and the Judge presiding at the trial was not asked to reserve and neither reserved nor refused to reserve the objection. After conviction and judgment a writ of error was issued:—Held (per Taschereau, Gwynne and Patterson, JJ.), affirming the judgment of the Court below, that the question was one of law arising on the trial which could have been reserved under sec. 259 of ch. 174, R.S.C. and the writ of error should, therefore, be quashed. Sec. 266, ch. 174, R.S.C. (Per Ritchie, C.J., and Strong, Fournier and Patterson, JJ.), that the Crown could not without shewing cause for challenge direct a juror to stand aside a second time. Sec. 164, ch. 174, R.S.C. (Per Gwynne, J.) that all the prisoner could complain of was a mere irregularity in procedure which could not constitute a mistrial. [The Queen v. Lacombe, 13 L.C. Jur. 259, overruled.] Morin v. The Queen (1890), 18 Can. S.C.R. 407.

CROWN'S RIGHT TO MAKE JURORS STAND ASIDE.

Upon the trial of a party indicted for misdemeanor, the Crown has the right to cause jurors to stand aside, until the whole panel of jurors is gone through. An indictment charging a misdemeanor against a registrar and his deputy jointly is good, if the facts established a joint offence. A deputy is liable to be indicted while the principal legally holds the office, and even after the deputy himself has been dismissed from the office. R. v. Benjamin, 4 U.C.C.P. 179.

DISCRETION OF TRIAL JUDGE TO DISCHARGE JURY BEFORE VERDICT.

The record shewed that on the trial of the indictment the Judge discharged the jury after they were sworn, in consequence of the disappearance of a witness for the Crown, and the prisoner was remanded. On a writ of error:—Held, that the Judge had a discretion to discharge the jury which a Court of Error could not review; the discharge of the jury without a verdict was not equivalent to an acquittal, and that the prisoner might be put on trial again. R. v. Jones, 3 Mont. L.N. 309.

FOREIGN JUROR; CHALLENGE FOR IGNORANCE OF ENGLISH.

The fact that one of the jury sworn to try the prisoner did not thoroughly understand the English language is no ground after trial and conviction, for holding that there has been a mistrial, or for granting a new trial. It is too late to challenge a juror after he has sworn, even if the ground for challenge was not known at the time. Ignorance of the English language would not in this province be a ground of challenge of a juror. Regina v. Earl (1894), 10 Man. L.R. 303.

GRAND JURY; RIGHT OF TO PERUSE DEPOSITION OF ABSENT WITNESS.

Upon a bill of indictment being presented, the grand jury reported that without the evidence of an absent witness they had no materials to find a bill:—Held, that they were entitled to peruse the depositions without proof that the witness was to ill to travel or absent from Canada. (Per Crease, J.). Regina v. Howes (1886), 1 B.C.R. Pt. II. 307.

INFLUENCING OF BY A CLERGYMAN.

In the course of a trial for murder by shooting, the jury attended church, in charge of a constable, and the clergyman directly addressed them, referring to the case of a man hung for murder in P.E.I., and urging them, if they had the slightest doubt of the guilt of the prisoner they were trying, to temper justice with equity. The prisoner was convicted:—Held, affirming the judgment of the Court of Crown cases reserved in Nova Scotia, that although the remarks of the clergyman were highly improper, it could not be said that the jury were so influenced by them as to affect their verdict. Regina v. Preeper (1888), 15 Can. S.C.R. 401.

OBSTRUCTING JUSTICE; CORRUPTING JURYMEN; EMBRACERY.

It is essential that there should be a judicial proceeding pending at the time of the commission of the alleged offence; and the existence of such proceeding must be alleged in the indictment. R. v. Leblanc, 16 Mont. L.N. 187.

ONE JUROR SWORN INSTEAD OF ANOTHER; NEW TRIAL.

On a trial for forgery, the panel of petit jurors, returned by the sheriff, contained the names of Robert Grant and Robert Crane. The name of Robert Grant was called from the panel as one of the jury, and Robert Grant, as was supposed, went into the box, and was duly sworn as Robert Grant without challenge. The prisoner was convicted. Before the jury left the box, it was discovered that Robert Crane had by mistake answered to the name of Robert Grant, and that Robert Crane was really the person who served on the jury. On a reserved case:—Held (by Monk, J., Ramsay, J., and Tessier, J.), that there had been a mistrial, and that the defendant be tried again; and (by Dorion, Ch. J., and Sanborn, J.), that there was no mis-

trial. Regina v. Feore (1877), 3 Q.L.R. 219.

[Considered in R. v. Battista, 21 Can. Cr. Cas. 1, 9 D.L.R. 1387.

PEREMPTORY CHALLENGE BY CROWN.

Upon an indictment for conspiracy to procure by fraud the return of one F. as a member for the Legislative Assembly:—Held, that the Crown was entitled to challenge any of the jurors peremptorily without assigning a cause, until the panel had been exhausted. R. v. Fellows (1859), 19 U.C.Q.B. 48.

TEMPORARY ABSENCE OF TWO JURORS DURING TRIAL; NEW TRIAL.

Held, in a prosecution for felony, that it was discretionary with the trial Judge to permit or refuse to allow the jury to be polled. Held, the prisoner being convicted of felony, that the circumstances that two of the jurors had, during the trial, but before the Judge's charge, been allowed to separate for a short time from the other jurors in the custody of one of the constables who had been placed in charge of the jury, and during such separation to hold a short conversation, not referring to the cause with a stranger to the proceedings, and to partake, at their own expense, of intoxicating liquor, insufficient in quantity to cause intoxication—did not constitute sufficient ground for discharging the prisoner, or for a new trial. Regina v. McClung (1891), 1 Terr. L.R. 379.

TRIAL FOR A FELONY; JURY ALLOWED TO DISPERSE BY CONSENT BEFORE VERDICT; MISTRIAL.

R. v. Derrick, 2 Mont. Leg. News, 214.

MIXED JURY.

A prisoner arraigned for trial in Quebec has the right to claim a jury composed of one-half at least of persons speaking his language if French or English. R. v. Sheehan, 1 Can. Cr. Cas. 402.

[Distinguished in R. v. Yancey, 2 Can. Cr. Cas. 324.]

OMISSION TO CHALLENGE FOR CAUSE.

If a defendant omit to challenge a juror on the ground that such juror entertains a hostile feeling against him, he cannot after a verdict of guilty, ask on that ground to have the verdict quashed and for a new trial. R. v. Harris, 2 Can. Cr. Cas. 75.

COMMUNICATION BETWEEN PROSECUTOR AND JUROR.

Where a defendant and one of the impanelled jurors have had an unpremeditated and innocent conversation, which could not bias the juror's opinion nor affect his mind and judgment, although such conversation is improper, it cannot have the effect of avoiding the verdict and constituting ground for a new trial. R. v. Harris, 2 Can. Cr. Cas. 75.

WITHDRAWAL OF PEREMPTORY CHALLENGE.

A peremptory challenge of a juror when once taken must be counted against the party making it, and cannot be withdrawn when the panel is being called over a second time. R. v. Lalonde, 2 Can. Cr. Cas. 188.

JOINT INDICTMENT; NUMBER OF PEREMPTORY CHALLENGES.

Where several persons are jointly indicted and tried, the Crown is restricted to the number of peremptory challenges allowed on the trial of one person. R. v. Lalonde, 2 Can. Cr. Cas. 188.

EVIDENCE ADMITTED AND AFTERWARDS STRUCK OUT; DISCHARGE OF JURY; IMPANELLING NEW JURY.

Where an alleged confession is received in evidence after objection by the accused, and the trial Judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury impanelled. If the trial Judge refuses to impanel a new jury in such a case, a new trial will be ordered by a Court of Appeal. R. v. Sonyer, 2 Can. Cr. Cas. 501.

[Referred to in R. v. Lew, 1 D.L.R. 104.]

RIGHT TO MIXED JURY IN QUEBEC; "LANGUAGE OF THE DEFENCE."

(1) The right to a mixed jury in the Province of Quebec, conferred by 27-28 Vict. ch. 41, Statutes of the Province of Canada, still exists in criminal cases, notwithstanding the statute 46 Vict. ch. 16 (Q.) purporting to repeal the former Act. (2) The prosecuted party may, upon arraignment, demand a jury composed for the one-half at least of persons skilled in "the language of his defence," whether French or English; but this does not give the accused an option to choose either language as the language of the defence, nor to have at least one-half of the jurors drawn from those skilled in the language in which counsel for the accused proposes to conduct the defence. (3) The "language of the defence" in that connection means the language habitually spoken by the accused. R. v. Yancey, 2 Can. Cr. Cas. 320.

SWEARING THE JURORS; IRREGULARITY.

The fact that the jurors were set aside, rejected or sworn as they were drawn, without first calling the full number required for a jury, does not invalidate the trial, nor constitute a deprivation of the full right of challenge. R. v. Weir (No. 3), 3 Can. Cr. Cas. 262.

[Referred in R. v. Brindamour, 2 Can. Cr. Cas. 328.]

DIRECTION TO "STAND BY."

A direction to a juror to "stand by" at the instance of the Crown is in substance a deferred challenge for cause, and cannot be made after the juror has, by direction of the Clerk of Assize, taken the book to be sworn. R. v. Barsalou (No. 1), 4 Can. Cr. Cas. 343.

DIRECTION TO STAND BY; PANEL ONCE EXHAUSTED.

The Crown has not the right to direct jurors to stand by when they are called a second time, after the panel has been exhausted by challenges and directions to stand by. R. v. Boyd, 4 Can. Cr. Cas. 219.

NO RIGHT TO, ON APPEAL TO GENERAL SESSIONS.

An appeal from a summary conviction under the Criminal Code is, in Ontario, to be taken to the Court of General Sessions of the Peace sitting without a jury. A statutory provision that the Appellate Court shall try the appeal without a jury is one relating to the procedure and not to the constitution of the Court. R. v. Malloy, 4 Can. Cr. Cas. 116.

[Referred Ex parte Gaynor & Greene (No. 4), 9 Can. Cr. Cas. 253.]

INSTRUCTION TO JURY AS TO RECOMMENDING TO MERCY; DISCRETION.

It is not irregular for the Judge at a trial by jury to inform the jury that if they find the prisoner guilty they may also, if they see fit, recommend the prisoner to the mercy of the Court. The King v. Johnston, 6 Can. Cr. Cas. 232.

EVIDENCE OF JUROR INADMISSIBLE TO CONTRADICT FORMAL ASSENT.

On an application for a reserved case the evidence of a juror is not admissible to shew that he and another juror had refused to agree with the opinion of the other ten jurors, and had failed to object on the recording of the verdict favoured by the ten because some of the latter had told them that the agreement of ten was sufficient to carry the verdict. The King v. Mullen, 6 Can. Cr. Cas. 363.

JUDGE'S COMMENT ON PRISONER'S CHALLENGE OF JURORS; INSTRUCTION TO JURY; AFFIDAVIT OF JUROR TO IMPEACH VERDICT.

(1) Where the trial Judge, after five jurors had been sworn, said to prisoner's counsel in the hearing of the jurors composing the panel: "If you continue to challenge every man who reads the newspapers, we will have the most ignorant jurors selected for the trial of this cause"—this is not a question of law which can be reserved but is a matter of an irregularity which might entail the annulling of the verdict if it were of a nature to unduly prejudice the jury against the accused. The remark complained of could not do so as it indicated no opinion for or against the prisoner. (2) Where the trial Judge in charging the jury said: "About forty or fifty witnesses have been examined for the purpose of establishing his (the prisoner's) good character; it is very strange that it should take forty or fifty witnesses to establish it"—this was not a matter of law upon which a case could be reserved for the Court of Appeal, nor is it a ground for impeaching the verdict. (3) The fact that a juror has made remarks indicating a leaning for or against an accused will not of itself furnish ground for a new trial where the verdict does justice and there is no reason to suppose that the juror's opinion was not derived from the evidence. (4) Where a juror has been challenged for favour the finding of the triers as to his competency is conclusive, although the accused and his counsel were not then aware of remarks alleged to have been made by the juror which would tend to shew a bias against the prisoner. (5) Upon grounds of public policy the testimony or the affidavit or other sworn statement of a juror will not be received to impeach a verdict, nor to shew that the jurors agreed on their verdict by a majority. The King v. Carlin (No. 1), 6 Can. Cr. Cas. 365.

[Affirmed in R. v. Carter (No 2), 6 Can. Cr. Cas. 507, 12 Que. K.B. 483.]

TRIERS.

Since the Criminal Code came into force it is no longer necessary that the first juror sworn should be added to the triers appointed to decide on the challenge of the second juror. The King v. Mathurin, 8 Can. Cr. Cas. 1.

CHALLENGE OF JURORS; JOINDER OF COUNTS IN INDICTMENT; WOUNDING AND ASSAULT; LIMIT OF TWELVE PEREMPTORY CHALLENGES.

(1) On an indictment for unlawful wounding, in which is included a separate count for assault, the accused is not entitled to claim the total number of peremptory challenges of jurors as he would have if the charges were contained in separate indictments, but is limited to the largest number allowed in respect of any single count. (2) The omission to send to a grand jury the depositions taken on the preliminary enquiry as required in Nova Scotia under Code, sec. 760 will not invalidate an indictment found without such depositions. The King v. Turpin, 8 Can. Cr. Cas. 59.

TRIAL OF INDICTMENT; DISAGREEMENT AND DISCHARGE OF JURY; SWEARING SECOND JURY TO RETRY CASE AT SAME SITTINGS.

(1) Upon the discharge of a jury for disagreement, the Court may either traverse the case to the next sittings for the second trial or may have a new jury sworn from the same panel as the first jury and proceed with the second trial at the same sittings. (2) The reference in the Cr. Code, sec. 728

to the "impanelling" of a new jury is to the selection of the twelve who are to try the charge and not to the impanelling of jurors under the venire to the sheriff. (3) A second venire is unnecessary to constitute a second jury qualified to retry the case at the same sittings. (4) Upon such second trial at the same sittings it is not necessary to ask the accused to plead again to the indictment or to again read the indictment to him. The King v. Gaffin, 8 Can. Cr. Cas. 194.

JURY PANEL; NAMES OF JURORS DRAFTED FOR ENSUING SITTINGS; INSPECTION BY ACCUSED; LIMIT OF TIME BY PROVINCIAL LAW.

(1) The provincial law regarding the qualification of jurors made applicable by Code, sec. 662 to criminal cases includes a provincial enactment which provides that jurors' lists shall not be open for inspection until six days before the trial sittings. (2) An accused committed for trial upon a charge of receiving stolen goods is not entitled in Ontario to inspect the petit jury panel for the Sessions at which he is to be tried until within six days before the sittings. Chantler v. Attorney-General, 9 Can. Cr. Cas. 465.

Conspiracy; Trade Combinations Act; Trial without a jury. 9 Can. Cr. Cas. 505, 521.

POLLING THE JURY; DISSENT OF ONE JUROR; RECONSIDERATION.

When the jury is polled and one or more jurors dissent from the verdict as announced by the foreman, it is not necessary that a disagreement should be recorded and the jury discharged; they may be sent back for further deliberation and an unanimous verdict then brought in is regular. The King v. Burdell, 10 Can. Cr. Cas. 365.

TRIAL; JUROR'S TEMPORARY ABSENCE WITHOUT PERMISSION; ACCUSED NOT PREJUDICED.

(1) The temporary absence of a juror for a few minutes without the permission or knowledge of the Court is not such a defect as necessitates a new trial regardless of the question whether any substantial prejudice of the accused has resulted therefrom. (2) Where the only evidence given during such temporary absence was unfavourable to the accused and no possible prejudice has resulted, a reserved case should not be granted nor leave given to appeal. (3) Notwithstanding sec. 4 (2) of the Canada Evidence Act prohibiting comment upon the prisoner's failure to testify, the Court may instruct the jury that the prisoner is entitled under the law to remain silent at the trial. The King v. MacLean, 11 Can. Cr. Cas. 283.

COMMENT ON FAILURE TO CALL WITNESS; EMPANELLING OF JURY.

(1) If the trial Judge has no doubt that there was evidence of the offence to go to the jury, he should not reserve a case upon that point. (2) Where defendant's counsel during the trial states that he intends to call a witness to prove certain facts but does not call any witness on that point, the Crown counsel may properly comment on such failure in his address to the jury. (3) As to the Yukon Territory, the provisions of the Yukon Juries' Ordinance passed under the authority of 3 Edw. VII. (Can.) ch. 73, superseded sub-secs. 2 and 3 of sec. 667, Cr. Code, as to the procedure on impanelling a jury. The King v. Brindamour, 11 Can. Cr. Cas. 315.

MOTION TO DISCHARGE JURY.

If a witness at a trial before a jury volunteers evidence which the trial Judge has already ruled to be inadmissible and which might have weight with the jury in arriving at a verdict, the trial judge is not bound, by reason thereof, to discharge the jury and impanel a new jury to try the issue. The King v. Grobb, 13 Can. Cr. Cas. 92.

RIGHT OF SHERIFF TO SUBSTITUTE NAME OF JUROR QUALIFIED FOR ONE NOT QUALIFIED.

A sheriff may in drawing a grand jury, without having before him the affidavit required by sec. 43 of ch. 162, R.S.N.S. (1900), strike from the panel the name of a juror, who, to the former's knowledge, by statute, was exempt from jury duty by reason of being a city official, or who, for some other reason, was exempt, and substitutes therefor the name of another duly qualified juror. The King v. Brown and Diggs, 19 Can. Cr. Cas. 237.

RIGHT OF ACCUSED TO EXAMINE REGISTER OF JURORS; PEREMPTORY SUMMONS IRRESPECTIVE OF QUALIFICATION.

(1) A person charged with a capital offence is not entitled to examine the register of jurors in the possession of the sheriff, since such list is to be kept secret and not disclosed to any one except under an order of a Judge, granted on cause justifying it. (2) Upon the exhaustion of the jury panel with the swearing of the eleventh juror in a murder case, the Judge may, under art. 939 of the Crim. Code, direct the summoning of a number of persons by the sheriff, irrespective of their qualifications, from whom to select a twelfth juror. Trepanier v. The King, 19 Can. Cr. Cas. 290.

JUROR HAVING PREJUDICED OPINION; DECLARATION OF SAME AFTER HAVING BEEN SWORN.

A juror in a criminal case who, after he has been sworn, without objection or challenge, states that he is prejudiced against

the accused will not be discharged, as objection to his qualification comes too late. [Reg. v. Stewart (1845), 1 Cox C.C. 174; Rex v. Edmonds (1821), 4 B. & Ald. 471; Rex v. Sutton (1828), 8 B. & C. 417; Reg. v. Wardle (1842), Car. & M. 647, followed.] The King v. Mah Hung, 20 Can. Cr. Cas. 40, 2 D.L.R. 568.

BIAS; INTEREST; INTERROGATING JURY; PREMATURE APPLICATION TO CHALLENGE JURY.

(1) A request by defendant's counsel, in a criminal trial for arson, made at the opening of the trial, that before the jury was called he would like to ask each of the men who are called whether he is interested in a certain insurance company, which interest on his part would have made him ineligible to serve, is prematurely made. (2) After a jury is empanelled and sworn it is too late to challenge for cause. (3) Where defendant's counsel, in a criminal action, makes a premature application that he be allowed to interrogate the jury on a question involving their eligibility to sit, a ruling by the Judge in these words: "We will see when the question arises," while it might give rise to a wrong impression on the part of counsel that the Court would later do the questioning, does not, however, amount to a refusal of the defendant's right to challenge for cause, where the defendant's counsel allowed the jury to be sworn before renewing his application. The King v. Pilgar, 20 Can. Cr. Cas. 507, 8 D.L.R. 830.

CHALLENGE OF JUROR; EXAMINATION ON VOIR DIRE.

A juror challenged by the defence for favour may be examined on the voir dire at the instance of the challenging party to shew his partiality. R. v. Cook, 22 Can. Cr. Cas. 241, 23 Can. Cr. Cas. 50, 18 D.L.R. 706. See also 23 Can. Cr. Cas. 86, 19 D.L.R. 318.

STATUTES; AMENDMENT; EFFECT ON EXISTING PROCEEDINGS.

A statute amending the law as the selection of names to be summoned for the jury panel for criminal trials will be presumed not to affect a trial at an assize for which the panel of jurors had already been summoned under the former law then in force. R. v. McNamara, 22 Can. Cr. Cas. 351, 16 D.L.R. 356.

CHALLENGE TO THE ARRAY; JURY LIST.

Where the jury lists had not been revised annually according to law by a revising board exercising ministerial duties (R.S. Que., art. 3423), but the provincial law stipulated that the old lists should remain in force until the new ones were completed or revised (R.S.Que., art. 3432), the use of a list revised by the deputy sheriff who was clerk to the revising board will not constitute a ground of challenge to the array (Cr. Code, sec. 925), although the sheriff as a member of the revising board was himself involved in the neglect to revise, unless the complainant further shows that someone not competent as a juror had been summoned or that someone competent as a juror had been left off the jury list by reason of the unauthorized revision. [O'Connell v. The Queen, 11 Cl. & F. 155; R. v. Burke, 10 Cox. C.C. 519, referred to; and see Cr. Code, sec. 1011.] It is not the insertion of a name in the list of jurors or jury register which establishes the qualification of a juror in the Province of Quebec (R.S. Que., art. 3405 et seq., and Cr. Code, sec. 921), but the entry of the name in the municipal valuation roll (R.S.Q., art. 3406) with mention of the requisite property or rental valuation. The opposite party may demur to a challenge of the array of petit jurors on the ground that the matter relied upon is not in law a ground of challenge. R. v. Morrow, 24 Can. Cr. Cas. 310.

PEREMPTORY CHALLENGES BY CROWN.

The provisions of the Criminal Code (secs. 927, 933), relating to the right of the Crown to have jurors stand aside, are not inconsistent with the provisions of the North West Territories Act (Can.), as it stood immediately before September 1, 1905, and are consequently not excluded from being operative in Alberta (and Saskatchewan) under sec. 9 of the Criminal Code. The number of peremptory challenges by the Crown is limited to four in Alberta, both by the N.W.T. Act as of August 31, 1905 (sec. Cr. Code, sec. 9), and by Cr. Code, sec. 933. R. v. Murray, 25 Can. Cr. Cas. 214, 28 D.L.R. 372. See also 27 Can. Cr. Cas. 247, 33 D.L.R. 702, 28 Can. Cr. Cas. 247, 38 D.L.R. 395.

SUPPLYING JURY WITH REFRESHMENTS.

Leave to appeal in a criminal case will not be granted on the ground that the jurors were kept eight hours without food in contravention of Code, sec. 946 which directs that they be allowed "reasonable refreshment," unless prejudice to the accused is shown; nor can prejudice to the accused be assumed from that delay where the jury continued their deliberations for an hour after refreshments were provided. R. v. Murray and Mahoney (No. 2), 27 Can. Cr. Cas. 247, 33 D.L.R. 702. See also 25 Can. Cr. Cas. 214, 28 D.L.R. 372, 28 Can. Cr. Cas. 247, 38 D.L.R. 395.

JUS TERTII.

See Defence.

JUSTICE OF THE PEACE.

See also Police Magistrate; Jurisdiction; Disqualification of magistrate.

FEES OF.

Held, that there is no provision for fees to a magistrate or a constable under the tariffs in R. S. O. 1897, ch. 95, or sec. 81 of Criminal Code, for any proceedings which do not come within the summary jurisdiction of justices. Tuttle v. McDonald, 36 C.L.J. 642.

DISQUALIFICATION; ABSENCE OF PECUNIARY INTEREST IN THE RESULT OF PROCEEDINGS; MEMBER OF SAME FIRM OF PROSECUTOR'S COUNSEL.

To disqualify a justice from acting in a prosecution before him he should have either a pecuniary, or such other substantial interest in the result, as to make it likely that he would be biased 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 they have no joint interest in the fees earned by the counsel on the prosecution, or, in any fees payable to the justice on the trial of the information. 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. (Per Allen, C.J., Palmer, Fraser and Tuck, JJ.; Wetmore and King, JJ., dissenting.) Regina v. Grimmer; In re Macdonald (1886), 25 N.B.R. 424.

DESCRIPTION OF CAPACITY IN WARRANTS, ETC.

(1) A justice of the peace acting in the illness or absence or at the request of a police magistrate should be designated as so acting, in warrants or other process, otherwise the latter will be invalid. (2) A warrant signed by a justice of the peace so acting, in which he is described as "police magistrate," is void. (3) The initials "J. P." following the signature of the person presuming to issue a warrant are not a sufficient description of such person as a justice of the peace for the city or county in which the warrant purports to have been issued. R. v. Lyons, 2 Can. Cr. Cas. 218. [Considered R. v. Ackers, 16 Can. Cr. Cas. 226, 21 O.L.R. 187.]

"ABSENCE" OF WITHIN MEANING OF THE CANADA TEMPERANCE ACT.

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 sec. 105 of the Act, heard the case and convicted the defendant:—Held, per Allen, C.J., Weldon, Palmer and Fraser, JJ. (King, J., contra), that the word "absence" in sec. 105 did not necessarily mean actual absence from the place of 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 et al., 24 N.B.R. 161.

JUSTICE OF THE PEACE.

(1) Notwithstanding a statute that no justice of the peace shall act as such for a city except in the case of illness or absence or at the request of the police magistrate, a justice of the peace may act as regards a charge against such police magistrate without the latter's request or his illness or absence. (2) For the purposes of a case against a police magistrate the statute was held not to apply. The Queen v. Chipman, 1 Can. Cr. Cas. 81.

JURISDICTION OVER OFFENCE AND PERSON; IRREGULARITY IN COMPELLING APPEARANCE.

A distinction is to be made between the jurisdiction to take cognizance of an offence and the jurisdiction to issue particular process to compel the accused to answer it (ex. gr. a warrant of arrest); and unless a statute specifically requires it, a provision for an information under oath is to be read as merely giving cumulative powers in order to compel the attendance of the accused by the process which it enables the magistrate to issue upon it, and not as a condition precedent to his exercise of his trial jurisdiction upon the accused being brought before him without a warrant in a summary conviction matter. [Gray v. Commissioners, 48 J.P. 343; R. v. Governor of Brixton Prison, Ex parte Thompson, [1911] 2 K.B. 82, 27 Times L.R. 350, and Re Maltby, 7 Q.B.D. 18, referred to; see also Cr. Code (1906), secs. 654, 711; Dixon v. Wells, 25 Q.B.D. 249; R. v. McNutt, 3 Can. Cr. Cas. 184.] Papillo v. The King, 20 Can. Cr. Cas. 329.

JUSTIFICATION.

See Libel; Manslaughter.

Self-defence; Reasonable apprehension of necessity to repel assailant. 8 Can. Cr. Cas. 31.

AFFIDAVIT OF.

R. v. Ah Gin (1892), 2 B.C.R. 207.

JUVENILE.

JUVENILE.

See Child.

KEEPING THE PEACE.

Costs on finding sureties to keep the peace; Cr. Code, sec. 959; Note. 6 Can. Cr. Cas. 380.

GIVING SECURITY; COMMITMENT IN DEFAULT.

A warrant of commitment by a justice under Cr. Code, sec. 959 (4), for default in finding sureties to keep the peace must shew on its face that the complainant feared bodily injury because of the defendant's threat, and that the complaint was not made nor sureties required by the complainant from any malice or ill-will, but merely for the preservation of his person from injury. R. v. John McDonald, 2 Can. Cr. Cas. 64.

FINDING SURETIES TO KEEP THE PEACE; COMMITMENT.

When a justice of the peace makes an order under Cr. Code, sec. 959, requiring a person to give security to keep the peace, he must fix the amount of the recognizance to be given. A justice's order that the accused give security to keep the peace for one year, but not fixing any amount nor a term of imprisonment, in default, will not support a commitment thereunder. A warrant of commitment under Cr. Code, sec. 959 and form YYY, can only be issued after the defendant's refusal or neglect to furnish the required security, proved and recorded subsequently to the order requiring the security, and it must recite such refusal or neglect. Re John Doe, 3 Can. Cr. Cas. 370.

FINDING SURETIES TO KEEP THE PEACE; COSTS ORDERED AGAINST DEFENDANT; IMPRISONMENT FOR NONPAYMENT ONLY AUTHORIZED IN DEFAULT OF DISTRESS.

Upon a proceeding under sec. 959 of the Criminal Code to compel the giving of a recognizance to keep the peace, the recovery of costs ordered against the defendant is governed by Code, sec. 870 and imprisonment for nonpayment is only authorized in default of distress. The King v. Power, 6 Can. Cr. Cas. 378.

RECOGNIZANCE TO KEEP THE PEACE; WHEN AND BY WHOM TWO YEARS' TERM MAY BE REQUIRED; JURISDICTION ON FACE OF RECOGNIZANCE.

(1) A recognizance to keep the peace for two years, being beyond the powers conferred upon justices by Code, sec. 959 and only authorized to be taken by a stipendiary magistrate under certain circumstances and when exercising a power of "summary trial," must shew on its face that the magistrate had jurisdiction to require it to be given, or its estreat will be refused. (2) When a stipendiary magistrate taking a recognizance to keep the peace follows form XXX of the Code without reference therein to any pending prosecution or to any obligation to appear in Court, it is to be assumed that he was proceeding in his capacity of a justice of the peace under Code, sec. 959, to which alone that form is applicable, and if the term exceeds twelve months the recognizance is void. Re Sarah Smith's Bail, 6 Can. Cr. Cas. 416.

FINDING SURETIES TO KEEP THE PEACE; APPLICATION FOR RELEASE AFTER COMMITMENT.

(1) An appeal does not lie from a justice's order made under Code, sec. 748 (2) requiring a person to find sureties to keep the peace. (2) After two weeks' imprisonment in default of finding sureties, the defendant may apply to a Judge of a Superior Court under Code, sec. 1059 for a release. The King v. Mitchell, 13 Can. Cr. Cas. 344.

BINDING OVER TO KEEP THE PEACE; THREATS AND PROVOCATION.

Binding over a person to keep the peace because of threats made against the complainant, and without any assault upon or injury to the latter having occurred, is a procedure which is not in the nature of a punishment, but is dependent only upon proof of the complainant's fear of bodily harm based upon some reasonable ground: and it is not an answer to shew that there was provocation for the threats. [See R. v. McDonald, 2 Can. Cr. Cas. 64; Re John Doe, 3 Can. Cr. Cas. 370; R. v. Power, 6 Can. Cr. Cas. 378; Re Sarah Smith's Bail, 6 Can. Cr. Cas. 416; R. v. Mitchell, 13 Can. Cr. Cas. 344.] Pouliot v. Descroiselles, 22 Can. Cr. Cas. 243.

INCREASED PUNISHMENT; ENFORCEMENT OF RECOGNIZANCE.

The fact that a court trying a charge of assault doubled the fine which it was about to impose on getting information that the defendant was at the time under recognizance to keep the peace given on complaint of threats to another party unconnected with the subsequent assault, will not bar the estreating of the recognizance; binding to good behaviour is not by way of punishment and the increase in the fine and the subsequent estreat of the recognizance are not two punishments for the same thing. [R. v. Rogers, 7 Mod. 29 applied.] R. v. Walker, 23 Can. Cr. Cas. 179, 18 D.L.R. 541.

RECOGNIZANCE TO KEEP THE PEACE; BREACH OF CONDITION; ESTREAT; PARTIES.

The certificate of the magistrate before whom a recognizance to keep the peace had been taken that the condition of such recognizance had been broken is conclusive evidence of breach and forfeiture in the Province of Quebec under Code, secs. 1113 and 1114. Where a person under recognizance to keep the peace ordered by a justice under

Code, sec. 748 (2) on complaint of threats made, is afterwards guilty of a breach of the peace, though towards a person other than the complainant, the recognizance may be forfeited, and the same justice may give the certificate of default after written notice to the defendant and his sureties to shew cause, although the second conviction was before the court of sessions not presided over by the justice who ordered the recognizance. Proceedings for the forfeiture and estreat of a recognizance to keep the peace which had been required on proof of threats under sub-section (2) of Code, sec. 748 may in the province of Quebec, be taken at the instance of another individual than the first complaining party or the party threatened, as the case may be; and this without the intervention of any public authority or Crown officer. [R. v. Young, 4 Can. Cr. Cas. 580, distinguished.] R. v. Walker, 23 Can. Cr. Cas. 179, 18 D.L.R. 541.

KIDNAPPING.

Child stealing; Whether a parent can in any case be liable; Cr. Code, sec. 284. 9 Can. Cr. Cas. 158, 164.

FAILURE TO ALLEGE INTENT; POSTPONEMENT OF TRIAL; OMISSION FROM RECORD CAUSE OF ADJOURNMENT; AMENDMENT OF CONVICTION.

The plaintiff in error having been committed to gaol for trial on a charge of unlawfully and forcibly kidnapping and taking one Bratton without authority, with intent to transport him out of Canada against his will, was, on the 24th of June, 1872, brought before the County Judge, by whom he consented to be tried under the 32-33 Vict. ch. 35. In the record drawn up under that statute, it was charged that he did feloniously and without authority, forcibly seize and confine one B. within Canada, etc. (without alleging any intent), and that he did afterwards feloniously kidnap one B. with intent to cause the said B. to be unlawfully transported out of Canada against his will, etc. The Judge fixed the 3rd of July for the trial, and on that day the prisoner said he was ready, but upon the request of counsel for the Crown, the trial was postponed till the 15th of July, when the prisoner was found guilty on both counts. An amendment of the indictment was allowed by the Judge, changing the name of Rufus Bratton to James Rufus Bratton. In the notice required from the sheriff to the Judge, by 32-33 Vict. ch. 35, sec. 2, only the charge contained in the second count of the indictment was referred to. On errors being assigned:—Held, that the Sessions had jurisdiction over the offence, and so the County Judge had power to try it. Held, that the record was properly framed, in stating the offence charged in such form as the depositions or evidence shewed it should have been; and that the Judge's jurisdiction was not confined to the trial only of the charge as stated in the commitment. Held, also, that the Judge had power to postpone the trial, and the record was not defective in not stating the cause of the adjournment. By 32-33 Vict. ch. 20, sec. 69, under which the charge was made, "Whosever, without lawful authority, forcibly seizes and confines or imprisons any other person within Canada, or kidnaps any other person with intent" to cause such person to be secretly confined or imprisoned in Canada or to be unlawfully sent or transported out of Canada, against his will, or to be sold or captured as a slave, is guilty of felony. Held (Wilson, J., dissenting), that the intent required applied to the seizure and confinement in Canada, as well as to kidnapping; and that the first count therefore was defective in not stating any intent. Upon this ground the judgment was reversed, and under C.S.U.C. ch. 113, sec. 17, the record was remitted to the Judge to pronounce the proper judgment, which would be upon the second count only. Held, also, that the amendment was authorized, under 32-33 Vict. ch. 29, secs. 1 and 71 Dom. Held, also, that the court would not presume that the two counts refer to the same offence, and if it were so, duplicity would not be a ground of error. Held, also, no objection that the jurisdiction conferred by 32-33 Vict. ch. 35, was not shewn, for the record and the judgment were in the form prescribed by that Act. Held, also, that the sheriff's notice was sufficient, as 32-33 Vict. ch. 35, sec. 2, requires it only to state the "nature of the charge," preferred against the prisoner. The prisoner, having been sent to the penitentiary, a habeas corpus was ordered to bring him up to receive the proper judgment. Cornwall v. The Queen, 33 U.C.Q.B. 106.

SUMMARY TRIAL; KIDNAPPING; QUASHING CONVICTION.

Where it appears that a plea of guilty to a charge of kidnapping was entered by the the accused without the advice of counsel and without due appreciation of the character of the charge as distinct from the offence of abduction, on conviction for kidnapping made on summary trial by a magistrate without taking any testimony, may be quashed on certiorari by a Court of superior criminal jurisdiction on an admission by the Crown that the offence, if any, was not kidnapping but abduction, but with leave to institute fresh proceedings for the latter charge. R. v. Steckley, 23 Can. Cr. Cas. 263.

LEAVE TO APPEAL.

See Appeal.

LIBEL.

Note on plea of justification. 1 Can. Cr. Cas. 58.

Note on indictments for defamatory libel. 2 Can. Cr. Cas. 176.

Note on publication in the public interest as a justification. 3 Can. Cr. Cas. 92, 93.

Contempt of Court; newspaper comment. 5 Can. Cr. Cas. 103, 110.

PLEA OF JUSTIFICATION.

(1) A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true, and that it was for the public benefit that the alleged libel was published. (2) A plea of justification to an indictment for defamatory libel must set forth concisely the particular facts by reason of which its publication was for the public good, but it must not contain the evidence by which it is proposed to prove such facts, nor any statements purely of comment or argument. (3) A plea of justification, which embodies a number of letters which it is proposed to use as evidence, and which contains paragraphs consisting merely of comment and argument, is irregular and illegal. R. v. Grenier, 1 Can. Cr. Cas. 55.

INDICTMENT; SUFFICIENCY OF; AMENDMENT.

An indictment that does not set up in the statement of the charge all the essential ingredients of an offence against the law is defective and cannot be sustained. An indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad by reason of the omission of an essential ingredient of the offence. Such an indictment cannot be amended and must be set aside and quashed as the defect is a matter of substance. R. v. Cameron, 2 Can. Cr. Cas. 173.

[Observed in R. v. Macdougal, 15 Can. Cr. Cas. 466, 39 N.B.R. 396, 398; referred to in R. v. Gill, 14 Can. Cr. Cas. 302, 18 O.L.R. 234; R. v. Sand, 8 Can. Cr. Cas. 48; R. v. Cohen, 19 Can. Cr. Cas. 440, 5 D.L.R. 437.]

R.S.Q. 2614; MOTION FOR GRATUITOUS SUBPŒNAS.

(1) In the Province of Quebec, an accused can obtain the issue of subpœnas at the expense of the Government under R.S.Q., art. 2614, only in case of a crime which was a felony before the Criminal Code. (2) As libel was before the Criminal Code only a misdemeanour, the Court is not in such case authorized under that statute to order the gratuitous issue of the subpœnas desired by the accused. R. v. Grenier (No. 2), 2 Can. Cr. Cas. 204.

JUSTIFICATION; PUBLICATION IN THE PUBLIC INTEREST.

In a prosecution for an alleged defamatory libel contained in a newspaper article, condemning an employer's dismissal of employees belonging to a trade union and charging that the distribution of certain gratuities by the employer to his employees was impelled by motives of selfishness on his part and was for the purpose of winning public approval and favourable public comment through press notices thereof, a plea of justification will not be struck out on the objection that the facts therein alleged do not shew that it was for the public benefit that the publication should be made, if such plea contains a charge that the press notices favourable to the complainant were published at his instance. If the complainant in a prosecution for defamatory libel has himself called public attention to the subject matter of the alleged libel by obtaining the publication of newspaper articles commending his conduct therein, he thereby invites public criticism thereof and cannot object that the answer to his own articles is not a publication in the public interest. R. v. Brazeau, 3 Can. Cr. Cas. 89.

VENUE; CHANGE OF.

In order to obtain a change of venue in a prosecution for defamatory libel such facts must be shewn as will satisfy the Court that a fair trial cannot be had at the present venue, and it is not sufficient that the applicant's solicitor swears to a belief that a fair trial is impossible there because of the prosecutor's interest in political affairs. The fact that two abortive trials of the cause have already taken place at both of which the jury disagreed, is not of itself a ground for ordering a change of venue. R. v. Nicol, 4 Can. Cr. Cas. 1.

[Referred to in R. v. Stauffer, 19 Can. Cr. Cas. 214.]

DISCHARGE UNDER RECOGNIZANCE; SUBSEQUENT LIBELS.

Where a convicted person, instead of being sentenced is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. In Ontario, a private prosecutor in a prosecution for defamatory libel has no locus standi to make the application. Where fourteen years had elapsed since the conviction, and the only breaches of recognizance charged were the publication of several newspaper articles alleged to be de-

famatory of the prosecutor, the latter should be left to his remedy by action or indictment in respect of any fresh libels, even if he had a locus standi to enforce the recognizance. R. v. Young, 4 Can. Cr. Cas. 580.

[Followed in R. v. Siteman, 6 Can. Cr. Cas. 226.]

PLEA OF JUSTIFICATION; WITNESSES OUT OF CANADA; COMMISSION TO TAKE EVIDENCE.

A commission to take the evidence of witnesses abroad in a libel prosecution is properly ordered at the trial where the evidence relates wholly to a plea of justification just entered on record. An order for a commission to take such evidence should not be made before plea. The Queen v. Nicol, 5 Can. Cr. Cas. 31.

CRIMINAL LIBEL; COMMISSION EVIDENCE; ABORTIVE TRIALS; COSTS.

In British Columbia, following the practice there in civil cases, the costs of taking evidence under commission abroad on behalf of the defendant in a prosecution for criminal libel cannot be taxed against the prosecutor unless such evidence was used at the trial. On British Columbia, following the practice there in civil cases, the costs of abortive trials of an indictment for criminal libel cannot be taxed under Cr. Code, secs. 833 and 835, against the party who ultimately fails in the litigation. The King v. Nichol, 6 Can. Cr. Cas. 8.

COSTS; TAXATION OR ACTION FOR.

Where the accused, after his acquittal in a criminal libel action, proceeded to tax his costs and moved before the trial Judge for certain costs, and on obtaining an order with which he was dissatisfied abandoned the taxation and commenced a civil action against the prosecutors for his costs, the civil action will be allowed to proceed only on terms of the plaintiff undertaking to abide by such order as may be made therein as to the costs of the abandoned taxation in the criminal case. Nichol v. Pooley (No. 1), 6 Can. Cr. Cas. 12, affirmed in 6 Can. Cr. Cas. 269.

CRIMINAL LIBEL; PRIVATE PROSECUTION FOR; ENTRY OF NOLLE PROSEQUI BY ATTORNEY-GENERAL; LIABILITY OF PRIVATE PROSECUTOR FOR COSTS.

(1) The Attorney-General may exercise the power conferred by Code, sec. 732 of entering a nolle prosequi to an indictment for criminal libel, although the proceedings were instituted by a private prosecutor. (2) The discharge of the accused upon the entry of a nolle prosequi by the Attorney-General to an indictment for criminal libel is a judgment for the defendant entitling him under Code, sec. 833 to his costs against the private prosecutor. The King v. Blackley, 8 Can. Cr. Cas. 405.

Costs in criminal libel. 8 Can. Cr. Cas. 405, 408.

EVIDENCE; EXTRINSIC CIRCUMSTANCES; PARTICULARS.

(1) When an indictment for defamatory libel consisting of words harmless in themselves, but importing by innuendo an imputation of dishonorable conduct contains in addition to the enunciation of the incriminating words an allegation of the sense in which they should be understood the Crown will be allowed to prove extrinsic circumstances which impute this meaning to them. It is not necessary to enumerate these circumstances in the indictment, and the accused is sufficiently guarded against surprise by the right that he has to demand particulars. Failing to do so, he will not be allowed to object to the admission of the evidence above mentioned and the question of its legality is not one which can be reserved for the opinion of the Court of Appeal. (2) When the accused in a case of defamatory libel in a newspaper resorts to the defence allowed by the Revised Criminal Code, sec. 329 (1892 Code, sec. 297) that the publication of the libel was made without his knowledge, the Crown may prove the publication of former libels of a similar character by the same editor, in order to establish the liability of the accused resulting by the terms of article 297 by his continuing to retain this editor in the conduct of the newspaper. The King v. Molleur (No. 1), 12 Can. Cr. Cas. 8.

CRIMINAL LIBEL; EVIDENCE OF ILL-WILL TOWARDS PERSON LIBELLED NO EVIDENCE OF PUBLICATION; OTHER CRIMINAL ACTS NOT CONNECTED WITH OFFENCE CHARGED.

(1) Where irrelevant evidence was admitted which would influence the jury adversely to the accused and the jury were led to regard such evidence as an important element in establishing guilt, the conviction will be quashed or a new trial ordered on the defendant's appeal, although his counsel took no exception to the evidence when it was being put in. (2) On a charge of criminal libel evidence to shew that the accused bore ill-will towards the person libelled is too remote to be admitted in evidence as proof that the accused wrote the libel. (3) Evidence tending to shew that the accused had been guilty of acts of malicious injury to the property of the complainant's father is improperly admitted on a trial for criminal libel, such charges being of an entirely different character to that of libel. The King v. Law, 15 Can. Cr. Cas. 382.

CRIMINAL LIBEL; FORM OF INDICTMENT.

An indictment for defamatory libel which charges in terms that the defendant "unlawfully published a defamatory libel" and which sets out particulars of the time, the person defamed and the words claimed to

be defamatory, will not be quashed because of failure to also charge that the matter published was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him. The King v. Macdougall, 15 Can. Cr. Cas. 466.

CRIMINAL LIBEL; JUSTIFICATION; SUFFICIENCY OF PLEA.

To an indictment for libel, the language of which was couched in vague general terms, the defendant pleaded that the words and statements complained of in the indictment were true in substance and in fact, and that it was for the public benefit that the matters charged in the alleged libel should be published by him:—Held, that the plea was insufficient because it did not set out the particular facts upon which the defendant intended to rely; and that the omission from 37 Vict ch. 38, sec. 5 (R. S.C. ch. 163, sec. 4) of the words "in the manner required in pleading a justification in an action for defamation," which were contained in C.S.U.C. ch. 103, sec. 9, had not the effect of altering the rule, held, also, that this was a case in which the Court should, in the exercise of his discretion, quash the plea upon a summary motion, without requiring a demurrer, a course permitted by sec. 143 of R.S.C. ch. 174, as interpreted by sec. 2, sub-sec. (c). Regina v. Creighton (1890), 19 O.R. 339.

INFORMATION FOR LIBEL; SUFFICIENCY OF INFORMANT'S AFFIDAVIT; JUSTIFICATION.

On an application for a criminal information against defendants for a libel, the applicant's affidavit stated that he had read an article published in the National newspaper in Toronto, on the 16th of July, 1874, setting it out: that he was the person referred to; that the statements therein were untrue; and that they were intended to prejudice and injure him; that the defendants were, on the 16th of July, proprietors and publishers of said paper; and that the article was printed and published by them, and is the same article contained in the said newspaper, attached to the affidavit of R., "filed on this application." R.'s affidavit was sworn on the 22nd of August, and stated that "the annexed copy of the National newspaper, bearing date the 16th July, 1874, was on that day published in Toronto at No. 21 Adelaide street east," by defendant, "who are the publishers and proprietors thereof." The newspaper contained the libel set out in the applicant's affidavit. The application was not made until the 24th of August, two days after the affidavit was sworn:—Held, that the applicant's affidavit was sufficient; that the reference to R.'s affidavit was "filed on this application" could only mean, there being only one application, the application about to be made on these affidavits. Held, also, that it was no objection that the rule nisi was stated to have been moved by counsel for the Crown, instead of for the applicant. Held, also, that it was no objection that the affidavit described the applicant as "Esquire" only, for it was not necessary to shew that he occupied any public or official position. In answer to the application the defendants filed an affidavit stating that they had no personal knowledge of the matter contained in the alleged libels, but received the information from persons whom they believed to be reliable and trustworthy; that the Globe newspaper was controlled by the applicant, who was an active politician, and had published a number of articles violently attacking one S., who was a candidate for a public office, and the libels in question were published with a view of counteracting the effect of these articles and believing them to be true and without malice. Held, no answer. The Queen v. Thompson and Smallpiece (1874), 24 U.C.C.P. 252.

INDICTMENT FOR LIBEL; PLEA OF TRUTH; LIBEL VEL NON QUESTION FOR JURY.

On a trial on an indictment for libel, the defendant cannot plead or prove the truth of the libel. The English Act of 1792, 32 Geo. III. ch. 60, is in force in Canada, and so it is for the jury to say whether under the facts proved there is libel, and whether the defendant published it. R. v. Dougall, 18 L.C. Jur. 85.

CRIMINAL LIBEL; CHARGING CORRUPTION TO PUBLIC OFFICIAL; JUSTIFICATION.

The libel, which formed the subject of the first count, began by saying: "The party referred to by us as the head of a public institution, who purchased three votes at the time of the crisis, is the Hon. J. S.," the prosecutor. The second count was upon an alleged libel in which, besides specific charges against the prosecutor, he was said to be the most corrupt man in Canada. Per Harrison, C.J., the defendant was not entitled to put in evidence an article in a previous issue of his paper, charging the prosecutor with political intriguing, etc., on which a criminal information had been refused to the prosecutor, nor a letter written to the prosecutor alleged to be a request to supply money to be used for corrupt purposes, there being no evidence tendered of anything done by him in pursuance of such letter. Per Wilson, J., such evidence was admissible; but as it was not formally pressed the rejection of it formed no ground for a new trial. Regina v. Wilkinson (1878), 42 U.C.Q.B. 492.

CRIMINAL LIBEL; OWNERSHIP OF NEWSPAPER AT TIME OF PUBLICATION; VARIANCE IN PROOF.

Evidence that the defendant in a criminal

prosecution is, at the time of the trial, editor and proprietor of the journal in which the libel was printed, is insufficient. The defendant should be proved to have been proprietor or publisher at the date of publication. Regina v. Sellars, 6 Mont. L.N. 197.

A PLEA TO INFORMATION FOR; WHAT TO CONTAIN.

A plea to an information for libel under the Consol. Statutes, U.C., ch. 103, sec. 9, must allege the truth of all the matters charged; and, held, upon the information and plea set out below, that the plea in this case was clearly insufficient in that respect. Regina v. Moylan, 19 U.C.Q.B. 521.

CRIMINAL LIBEL; EVIDENCE OF TRUTH; DEATH OF WITNESS TO PROVE TRUTH; COSTS UPON REFUSAL OF APPLICATION.

In Trinity term, 1876, an application was made for a criminal information against defendants for the publication in their newspaper of certain alleged libellous articles, on the 23rd and 30th March, and 25th May, 1876, respectively, against the applicant. On shewing cause, the defendants' affidavits reiterated the charge, giving full particulars, and pointing out that B., a person who could prove their truth, had since died, namely, in June. These affidavits had been in the hands of the applicant's solicitors for upwards of six months, but no affidavits were filed in reply; and Easter term, commencing shortly after the publication, had been allowed to elapse without moving. Under the circumstances the application was refused, but, in view of the virulent and unwarranted language of the articles, without costs. Regina v. Kelly et al. (1877), 28 U.C.C.P. 35.

CRIMINAL LIBEL; FALSE CHARGE AGAINST PERSON IN AUTHORITY; ATTORNEY-GENERAL.

(1) A criminal information will not be granted except in case of a libel on a person in authority, in respect of the duties pertaining to his office. (2) Where the libel was directed against M., who was at the time Attorney-General, but alleged improper conduct upon his part when he was a Judge, an information was refused. (3) The applicant for a criminal information must rely wholly upon the Court for redress, and must come there entirely free from blame. (4) Where there is a foundation for a libel, though it fall far short of justification, an information will not be granted. Regina v. Biggs, 2 Man. L.R. 18.

CRIMINAL LIBEL; INFORMATION FOR TO SPECIAL CLASS OF PERSONS.

The Court, following recent English decisions, confining the granting of criminal informations for libel to the case of persons occupying an official or judicial position, and filling some office which gives the public an interest in the speedy vindication of their character, or to the case of a charge of a very grave or atrocious nature, refused leave to the manager of a large railway company to file a criminal information for libel, on the ground that he did not come within the description of persons referred to. Regina v. Wilson (1878), 43 U.C.Q.B. 583.

CRIMINAL LIBEL; REPORT OF JUDICIAL PROCEEDINGS; PRIVILEGE.

The privilege given to a report published in good faith of judicial proceedings does not extend to the publication of declarations made by one of the counsel out of Court and in private conversation. Desjardins v. Berthiaume, 16 Que. S.C. 506.

CRIMINAL LIBEL; JUSTIFICATION.

R. v. Laurier, 11 Rev. Leg. 184.

Justification cannot be proved unless it be pleaded that the publication was for the public good; Publication in district where trial takes place must be alleged; Amendment of indictment. R. v. Hickson, 3 L.N. (Mont.) 139.

EVIDENCE; TRIAL OF LIBEL ACTION; REFERENCE BEFORE JURY OF PAYMENT INTO COURT; PROVING POLICE COURT PROCEEDINGS.

(1) In an action for libel complaining of the statement in a report of a Police Court trial that the plaintiff had been found guilty of blackmail, where the defence is an honest misunderstanding of what was said by the magistrate, and an apology, questions as to what was said about the plaintiff by the witnesses in the Police Court are not admissible in cross-examination of the plaintiff. [Rex v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139, 15 B.C.R. 29, referred to.] (2) Rule 22, order 22, of the Supreme Court Rules of British Columbia applies to actions for libel, and, therefore, in such an action no reference can be made before the jury to the fact that money has been paid into Court. [Williams v. Goose, [1897] 1 Q.B. 471, 66 L.J.Q.B. 345; Klamborowski v. Cooke, 14 T.L.R. 88, and and Veale v. Reid, 117 L.T. Jo. 292, referred to.] (3) Where Police Court proceedings are relevant in an action the proper method of proving them is to put in the record of such proceedings. [Rex v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139, 15 B.C.R. 29, referred to.] (4) Where counsel for the plaintiff improperly refers in his opening to the jury to the fact that money has been paid into Court, and counsel for the defendant objects, a new trial will be ordered, though counsel for the plaintiff apologizes for his statement and withdraws it, and counsel for the defendant does not ask to have the jury discharged.

Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.

WHAT IS BLASPHEMOUS LIBEL.

Publication which in an indecent and malicious spirit assail and asperse the truth of Christianity or of the Scriptures in language calculated and intended to shock the feelings and outrage the belief of mankind are punishable as blasphemous libels. R. v. Pelletier, 6 Rev. Leg. 116.

INFORMATION FOR LIBEL; LEAVE TO FILE.

Leave to file a criminal information for libel can only be granted by the Full Court in Nova Scotia, i. e., the provincial Supreme Court, sitting en banc; a single Judge, although presiding over a Court for the disposal of criminal business in a county, has no jurisdiction to grant the leave. [R. v. Beale, 1 Can. Cr. Cas. 235, 11 Man. L.R. 448, and R. v. Labouchere, 12 Q.B.D. 320, 15 Cox C.C. 415, referred to.] R. v. Burgess, 23 Can. Cr. Cas. 424, 21 D.L.R. 333.

ATTRIBUTING INTENTION TO COMMIT SUICIDE.

A false statement made in writing that another person intended to commit suicide is not a libel involving a criminal charge. Stone v. World Newspaper Co., 30 Can. Cr. Cas. 292.

LIMITATIONS.

OF TIME ON APPEALS, see Appeal.

Time for application for certiorari, within six months under Ontario statute. 5 Can. Cr. Cas. 570.

THEFT; DELAY IN PROSECUTION FOR TWO YEARS; EFFECT.

On an indictment for stealing cooper's tools on the 5th of November, 1874, it appeared that the prisoner was not arrested for nearly two years afterwards. During that time—it was not shewn precisely when—he was proved to have sold several of the tools at much less than their value, representing that he was a cooper by trade, and was going to quit it, which was proved to be untrue. It was proved also that he was in the shop from which the tools were stolen the night before they were taken, and frequently; and that when arrested he offered the prosecutor $35 to settle and buy new tools, and offered the constable $100 if he could get clear:—Held, that though the mere fact of the possession by the prisoner, after such a lapse of time, might not alone suffice yet that all the facts taken together were enough to support a conviction for larceny. Regina v. Starr (1876), 40 U.C.Q.B. 268.

INFORMATION ON CHARGE OF ASSAULT.

(1) Cr. Code, sec. 841, limiting the time within which an information can be laid "in the case of any offence punishable on summary conviction," applies only to proceedings under the Summary Conviction clauses of the Criminal Code. (2) An information may be laid and proceedings taken thereon for the prosecution by indictment of an indictable offence, although the case is one which might have been summarily tried by a justice had the information been laid within the six months' limit provided by Cr. Code, sec. 841, and although that period had expired before the laying of the information. (3) An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction although the information was laid more than six months after the offence was committed. The Queen v. Edwards, 2 Can. Cr. Cas. 96.

[Referred to in R. v. Coolen, 7 Can. Cr. Cas. 523; followed in R. v. Muma, 17 Can. Cr. Cas. 289.]

AMENDMENT OF INFORMATION; LIMITATION OF TIME FOR PROSECUTION.

(1) An information for illegal selling of liquor under the Ontario Liquor License Act cannot be amended so as to charge an offence of a date more than thirty days before the amendment is made (2) The power of amending information under the Liquor License Act, sec. 104, under which the justice may "substitute for the offence charged therein any other offence" against the Act, is controlled by the limitation of time for laying a fresh information (sec. 95), and as to the substituted offence is to be treated as laid on the date of the amendment. R. v. Hawthorne, 2 Can. Cr. Cas. 468.

[Referred to in R. v. O'Connor, 20 Can. Cr. Cas. 81, 3 D.L.R. 23.]

PROSECUTION FOR CORRUPT PRACTICES.

A prosecution for corrupt practices in a provincial election is not an "action" for a penalty and is therefore not prescribed in one year under the Ontario Elections Act, sec. 195 (3) or in two years under the Ontario Limitation of Actions Act, R.S.O. ch. 72, sec. 1. Re A. E. Cross, 4 Can. Cr. Cas. 173.

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SUMMARY CONVICTIONS; LIMITATION OF TIME.

A prosecution under the revenue tax laws of a province to enforce payment of the tax is a proceeding for the recovery of a Crown

debt, and is not governed by a general statute of limitation, not expressly applying to the Crown, but requiring complaints in matters of summary conviction to be made within three months from the time when the matter of the complaint arose. R. v. Lee How, 4 Can. Cr. Cas. 551.

TIME FOR COMMENCING PROSECUTION; INCORPORATION OF PROCEDURE UNDER CRIMINAL CODE.

(1) The effect of sec. 2 of the Ontario Summary Convictions Act (R.S.O. 1897, ch. 90) is to incorporate sec. 841 of the Criminal Code which limits the time within which the summary proceedings shall be commenced to six months after the offence was committed, unless otherwise specially provided. (2) A summary prosecution in Ontario for erecting, putting up and placing within the fire limits of a town a wooden building contrary to a municipal by-law, is barred if a complaint is not laid until after the expiration of six months following the date of the offence. The King v. McKinnon, 5 Can. Cr. Cas. 301.

[Referred to in Croyslill v. Ang. Am. Tel. Co., 10 Que. P.R. 39.]

STATING TIME OF OFFENCE IN GENERAL TERMS; VALIDATING STATUTE; WITHIN SIX MONTHS BEFORE THE INFORMATION; "LAST PAST," MEANING OF.

A summary conviction alleging the offence as having been committed "within the space of six months last past previous to the information," does not disclose an offence within the period of six months before the laying of the information, and is not within the terms of the statute which makes the latter a sufficient specification as to time and which limits prosecutions to the same period. The King v. Boutilier, 8 Can. Cr. Cas. 82.

[Followed in R. v. Wambolt, 14 Can. Cr. Cas. 160.]

SEDUCTION UNDER PROMISE OF MARRIAGE; PROSECUTION WITHIN A YEAR; STATUTORY LIMITATION; ORIGINAL SEDUCTION AND PROMISE BEFORE THE YEAR.

Where a seduction under promise of marriage has taken place and the illicit intercourse between the parties is continued, upon renewals of promise, for more than a year before the commencement of the prosecution, a prosecution for the original seduction is barred by Code, sec. 551 (c) and a conviction is not warranted as for a subsequent seduction within the year as the woman is not then of "previously chaste character." The King v. Lougheed, 8 Can. Cr. Cas. 184.

[Approved in R. v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.]

RESERVED CASE; APPLICATION FOR.

A case may be reserved for the opinion of the Appellate Court after sentence has been imposed. The King v. McGuire, 9 Can. Cr. Cas. 554.

SUMMARY CONVICTION; LIMITATION OF TIME FOR PROSECUTION.

Where the limitation of time for bringing a prosecution is contained in a separate section of the statute creating the offence, it is not essential to the validity of the conviction that it should shew on its face that the limitation has not been exceeded. The King v. Clark (No. 2), 12 Can. Cr. Cas. 485.

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A summary conviction alleging the offence as having been committed "within the space of six months last past previous to the information" does not disclose an offence within the period of six months before the laying of the information, and is not within the terms of a statute which makes the latter a sufficient specification as to time and which limits prosecutions to the same period. [R. v. Boutilier, 8 Can. Cr. Cas. 82, followed.] The King v. Wambolt, 14 Can. Cr. Cas. 160.

TIME LIMIT FOR PROSECUTION; PERIOD FOR LAYING INFORMATION; OFFENCE STATED AS BETWEEN TWO DATES; DAY INCLUDED PRIOR TO TIME LIMIT.

Where the time of the offence is stated in a summary conviction as being between two dates and includes a period prior to the time limit for which information could be laid, the conviction will be quashed for want of jurisdiction if the evidence does not shew that the offence was in fact committed within the time limit. Ex parte Hebert, 15 Can. Cr. Cas. 165.

TIME FOR LAYING INFORMATION.

Sec. 95 of the Liquor License Act (Ont.) requiring all information or complaints for the prosecution of any offence under the Act to be laid within thirty days after the commission of the offence, and sec. 102 of the same Act permitting a trial magistrate to amend or alter an information under the Act and to substitute for the offence charged therein any other offence under the Act, must be read together and thus read do not permit a substitution in an information charging the accused with selling liquor without a license on a certain date, of a different charge on a different date at a time more than thirty days after the alleged commission of such different and substituted offence. The King v. O'Connor, 20 Can. Cr. Cas. 75, 3 D.L.R. 23.

[Rex v. Ayer, 14 Can. Cr. Cas. 210, 17 O.L.R. 509; Rex v. Guertin, 15 Can. Cr. Cas. 251, 19 Man. L.R. 33, specially referred to.]

KEEPER OF BAWDY HOUSE; INDICTMENT; TIME FOR COMMENCEMENT OF PROSECUTION.

The offence, under Cr. Code, sec. 228, of keeping a bawdy house, being punishable, upon indictment, there is no limitation of time for commencement of a prosecution for it by indictment, although the keeper is also declared by the Cr. Code, sec. 239, to be a loose, idle or disorderly person or vagrant, punishable in this character upon summary conviction, subject to the six months' limitation of Cr. Code, sec. 1142. (Per Magee, J.). The King v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.

SUMMARY CONVICTION OFFENCE; EXAMINATION; PERSONATION.

The limitation of six months enacted by the Cr. Code for the prosecution of summary conviction offences (Cr. Code, sec. 1142) applies only where the prosecution is under the procedure of Pt. XV. relating to summary convictions; it has no application to a proceeding by way of indictment although there was an alternative method of prosecution by summary conviction under the law creating the offence. A charge under sec. 409 of the Criminal Code for knowingly availing oneself of the results of personation at an examination from and after the date of such examination, is a charge of a continuing offence, and would not be barred by Code, sec. 1142, although the examination was held more than six months before a charge was laid under Pt. XV. of the Criminal Code. R. v. Lartie, 25 Can. Cr. Cas. 300.

OFFENCES UNDER POST OFFICE ACT.

Cr. Code, sec. 1142, applies to limit the period within which summary proceedings can be taken for the offence of using cancelled postage stamps in contravention of the Post Office Act, R.S.C. 1906, ch. 66. R. v. Gourlay, 26 Can. Cr. Cas. 23.

PROSECUTIONS UNDER ADULTERATION ACT (CAN.).

The time for laying an information for an offence punishable on summary conviction under the Adulteration Act, R.S.C. 1906, ch. 135, is two years under sec. 50 of that Act and sec. 135 of the Inland Revenue Act, which it makes applicable; sec. 1142 of the Cr. Code does not apply. R. v. Regina Trading Co., 28 Can. Cr. Cas. 85, 35 D.L.R. 403.

PROSECUTIONS UNDER ADULTERATION ACT (CAN.).

The limit for laying an information for an offence punishable on summary conviction under the Adulteration Act (Can.), is two years (R.S.C. 1906, ch. 135, sec. 50); and sec. 1142 of the Cr. Code does not apply. R. v. John Irwin Co., 31 Can. Cr. Cas. 54.

LIQUOR ACT, 1902 (ONT.).

See Intoxicating liquors.

LIQUOR LICENSE.

See Intoxicating liquors.

LOAN CORPORATIONS.

LEAVE TO APPEAL; CONVICTION UNDER PROVINCIAL LAW; CONTINGENT INSTALMENT CONTRACTS; UNREGISTERED COMPANY.

The judgment of a Divisional Court affirming a conviction under the Ontario Loan Corporations Act is final, and the Court of Appeal cannot grant to the accused leave to appeal to the latter Court. The King v. Pierce (No. 2), 10 Can. Cr. Cas. 177.

LOCALITY OF CRIME.

CONSPIRACY; OVERT ACTS CHARGED AS COMMITTED IN SEPARATE COUNTIES; PROVING LOCALITY OF CRIME.

(1) It will be assumed that a conspiracy alleged in an indictment (or charge) to have taken place within two counties some distance apart is not identical with a conspiracy proved to have been wholly carried on in only one of the counties named. (2) Where a conspiracy is shewn to have been carried on in two counties there is jurisdiction to commit for trial and to hold the trial itself in either of the counties or in another county with the same province if the accused persons are apprehended in such other county. (3) Where persons are brought by process from one county to another upon a conspiracy charge and committed for trial therein but the Crown fails to prove against them any overt act committed within the county in which the proceedings are taken, although charged as committed in both counties, the Court of that county has no jurisdiction to convict for a conspiracy committed wholly within the county from which the accused were brought. (4) The defendants brought by process into the county of trial are to be considered as in custody solely in respect of the charge laid and jurisdiction is not conferred on the Courts of the county to which they are taken to try them, because of their presence in custody, on any other charge preferred by the Crown as to which such Court would otherwise have no jurisdiction. (5) An allegation of the place of the offence is a material one and necessary to be proved to confer jurisdiction where the accused were not found or apprehended in the same county in which the trial is to

take place. (6) Semble, had the charge in the preliminary enquiry not included both counties as the locality of the conspiracy and had not evidence been proven before the committing magistrate of overt acts in his county by some of the persons charged, the committal for trial and the indictment or charge which followed might have been quashed; but if the evidence of an overt act within the county upon which the committal order was founded is discredited at the subsequent trial the fact of the committal having been made does not aid the jurisdiction. The King v. O'Gorman, 15 Can. Cr. Cas. 173.

[Referred to in Fournier v. Attorney-General, 19 Que. K.B. 436, 17 Can. Cr. Cas. 113.]

OFFENCE PARTLY IN TWO PROVINCES.

Semble, where a telegram in a false name is sent from one province for delivery in another with intent to defraud, the prosecution may take place in either province. The King v. Galloway, 15 Can. Cr. Cas. 317.

GIVING NAME OF LOCALITY NOT WHOLLY WITHIN TERRITORIAL JURISDICTION OF MAGISTRATE.

A summary conviction for an offence in the magisterial district is not supported by evidence which designates the locality of the offence by a name which applies to a section of country extending partly within the limits of the magisterial district and partly outside of such limits; and semble, it will not be presumed that the portion of the designated locality within the magistrate's jurisdiction was intended. The King v. Oberlander, 16 Can. Cr. Cas. 244.

[Referred in R. v. Picard, 21 Can. Cr. Cas. 250, 11 D.L.R. 423.]

NEWSPAPER PUBLISHED IN SAME PROVINCE, BUT OUTSIDE OF JUDICIAL DISTRICT IN WHICH PROCEEDINGS TAKEN.

Although the only publication alleged was at Montreal in the Montreal judicial district, the resultant interference with the course of justice also took place at Quebec, where the Judges attacked held Court and the Superior Court of the Province of Quebec therefore had jurisdiction to deal with the offence by rule nisi in the Quebec judicial district. Fournier v. Attorney-General, 17 Can. Cr. Cas. 108.

OFFENCE COMMITTED IN ONE PROVINCE; ACCUSED TO ACCOUNT FOR SUBJECT-MATTER OF THEFT IN ANOTHER PROVINCE.

A railway conductor may be prosecuted in Alberta under sec. 355 of the Criminal Code, for the theft of cash paid him therein by a passenger as fare, notwithstanding it was his duty to account for it in British Columbia, where, in Alberta, he denied to the railway company the receipt of the money, since such denial amounted to a refusal to account therefor in the later province. The King v. Martin, 19 Can. Cr. Cas. 376, 4 D.L.R. 650.

LORD'S DAY ACT (CAN.).

See Constitutional law; Sunday.

LOTTERY.

See also Gaming; Betting.

Lottery offences; Note. 6 CAN. CR. CAS. 52.

Lottery offences under Criminal Code. 25 Can. Cr. Cas. 7.

DISPOSING OF PROPERTY BY A MODE OF CHANCE.

The defendant was convicted before a police magistrate of an offence under R.S.C. ch. 159, sec. 2, which prohibits the "selling or offering for sale of any lot, card, ticket or other means or device for selling or otherwise disposing of any property real or personal, by lots, tickets or any mode of chance whatever." His modus operandi was as follows: He held a kind of concert in the street, and having gathered an audience, he proceeded to sell boxes of what he called "Parker's Pacific Pens." Before selling the pens, he placed in an empty box 100 envelopes, each containing a $1 bill, ten envelopes with a $5 bill in each, five envelopes with a $10 bill in each, and one envelope with a $50 bill, making altogether $250 in 116 envelopes. He also placed in the box 116 envelopes containing only blank pieces of paper. Every person paying $1 for one box of pens was entitled to draw one envelope, and persons paying $5 for a box of pens could draw eight envelopes; but he would not take more than $5 from any one person. If the $50 bill was drawn before two-thirds of the pens were sold, he would put another $50 bill in the envelope and fifty envelopes with blank papers. He said he did not sell the envelopes; that he would not take $20 for one of them; but that he sold the pens and distributed the money to advertise the pens:—Held, following Reg. v. Freeman, 18 O.R. 524, that the conviction was right. [Reg. v. Dodds, 4 O.R. 390, and Reg. v. Jamieson, 7 O.R. 149, distinguished.] Reg. v. Parker, 9 Man. R. 203.

EXCEPTION AS TO WORKS OF ARTS; MONEY ALTERNATIVE.

(1) The disposal by a lottery or mode of chance "of any property" under Cr. Code, sec. 205 (1b) need not be of any specific article or property, and it will constitute an offence although the winner obtains only the privilege of choosing from certain prizes offered. (2) The exception from the provisions of Cr. Code, sec. 205 in respect of lotteries, which by sec. 205 (6b) is made in respect of the distribution of paintings, etc., among ticket holders of any incorporated

society established for the encouragement of art, will not apply if money may be had by the winners instead of paintings, etc., and this notwithstanding that the option is wholly that of the society to pay in money one-half the stated value of the painting. R. v. Lorrain, 2 Can. Cr. Cas. 144.

CONSPIRACY TO COMMIT OFFENCE.

(1) Provincial legislatures have no power to authorize the running of lotteries. (2) No action can be maintained for the recovery of money under a contract for the operation of a lottery scheme which would contravene the criminal law. (3) Where in a civil action it appears that the plaintiff entered into a conspiracy with the defendant to commit an unlawful act and that the action is brought to recover money paid in furtherance of such conspiracy, it is the duty of the Court ex mero motu to notice the illegality, although not formally pleaded. Such an illegality cannot be cured by the defendant's pleas or attempted waiver. (4) Where there are two agreements, both of which are in furtherance of the unlawful scheme, the second being in form a contract of loan but collateral and auxiliary to the first which provides for the operation of the lottery, both agreements are invalid and unenforceable. Brault v. St. Jean-Baptiste Association of Montreal, 4 Can. Cr. Cas. 284.

PRIZE DEPENDENT UPON CHANCE WITHOUT SKILL; ILLUSORY CONDITION.

Where tickets for a drawing by lot are sold as part of a scheme for the disposal of goods, and the holder of the winning ticket is required by the conditions of the drawing to shoot a turkey at fifty yards in five shots in order to win the prize, such circumstance does not necessarily take the case outside of the lottery sections of the Criminal Code. It is a question for the jury whether such condition was imposed as a contest of skill, or as a mere pretence in evasion of the lottery law. Where the evidence shews that any person could easily comply with the condition and the jury found the advertiser of the scheme guilty of advertising a lottery, the verdict will be supported as, in effect, finding that there was no real element of skill involved in the condition. The King v. Johnson, 6 Can. Cr. Cas. 48.

[Referred to in R. v. Johnston, 7 Can. Cr. Cas. 536.]

NEWSPAPER PRIZE COMPETITION; ESTIMATE OF NUMBER OF VOTES.

A competition for a prize offered for the nearest estimates of the number of votes to be cast at a coming election and the sale of certificates of admission thereto in consideration of money paid or services performed, does not constitute a lottery offence under Code, sec. 205. The King v. Johnston, 7 Can. Cr. Cas. 525.

[Discussed in R. v. Fish, 11 Can. Cr. Cas. 202.]

NEWSPAPER PRIZE COMPETITION; ESTIMATE OF NUMBER OF DAILY SALES IN STORE; CHANCE OR SKILL.

The advertising by a firm of shopkeepers in a newspaper of a prize to be awarded to the one of their customers who could make the nearest guess to the number of their cash sales on a given day, is not a violation of sec. 205 of Cr. Code. The King v. Fish, 11 Can. Cr. Cas. 201.

FINDING LOTTERY TICKETS AND EQUIPMENT; ONUS OF PROOF NOT PLACED ON DEFENCE.

(1) The finding of lottery tickets and other paraphernalia of a lottery on the premises entered under a search order for instruments of gaming does not in itself constitute a prima facie case nor shift the onus of proof to the defence. (2) Sec. 985 of the Revised Criminal Code which declares that the finding of instruments of gaming upon an order of search under Code, sec. 641, shall constitute prima facie evidence that the place is used as a common gaming house and that play was going on, has no application to a charge under sec. 236 for selling lottery tickets. The King v. Hong Guey et al., 12 Can. Cr. Cas. 366.

FOREIGN BONDS WITH PRIZE DRAWINGS; SALE IN CANADA ILLEGAL.

The sale of bonds such at the French "Panama bonds," which by their terms in addition to the obligation to pay a fixed sum at maturity entitle the holder to participate in prize drawings to take place as frequent intervals during their currency, is illegal in Canada as being in substance a lottery within sec. 236 of the Cr. Code, 1906. The King v. Picard, 13 Can. Cr. Cas. 298.

OPERATING BUSINESS BY MODE OF CHANCE.

(1) Upon a charge of carrying on a business by modes of chance contrary to the lottery clauses of the Cr. Code (Cr. Code, 1906, sec. 236), evidence of persons who had canvassed for business on her behalf with which the lottery features were proposed, is not admissible evidence against the accused where not connected by evidence that the accused did in fact hold the lottery drawings suggested by the canvassers. (2) Where the charge is for carrying on an illegal lottery business and not for fraudulently representing that the accused was carrying on such business, the prosecution must prove that the business was in fact carried on as alleged and not merely that the accused represented that she was conducting such business or that she authorized her agents to so represent. The King v. Lumgair, 19 Can. Cr. Cas. 123.

COUPON WITH STORE PURCHASES; AUTOMOBILE TO WINNING NUMBER.

The giving of an automobile by a department store under an advertised scheme whereby all purchasers of $1 worth of goods or more obtained a free coupon belonging to a series from which one particular number had been selected as the winning number to be disclosed after the close of the competition, is an offence under the lottery clauses of the Cr. Code; and the advertisement and management of such scheme are punishable under sub-secs. (*a*) and (*c*) respectively of Cr. Code, sec. 236. [Taylor v. Smetton (1883), 11 Q.B.D. 207; Hall v. McWilliam (1901), 85 L.T. 239; Willis v. Young, [1907] 1 K.B. 448, referred to; and see Annotation on "Lotteries" at end of this case.] R. v. Hudson's Bay Co., 25 Can. Cr. Cas. 1.

FREE DISTRIBUTION OF OPTION CERTIFICATES.

It is not a lottery offence under sub-sec. (*a*) of Cr. Code, sec. 236 to publish a scheme for the drawing, without payment or obligation to pay, of certificates giving a privilege of purchase of a class of article at a fixed price alleged to be lower than the value, where no sales of such article are made except to those who draw certificates and they are under no obligation to purchase. R. v. Robinson, 29 Can. Cr. Cas. 153, 41 D.L.R. 46.

MAGISTRATE.

See Justice of the peace; Police magistrate; Disqualification of magistrate.

MAINTENANCE.

See Champerty.

MALICIOUS PROSECUTION.

Certifying record of acquittal for use in action for malicious prosecution. 6 Can. Cr. Cas. 189.

EVIDENCE OF PLAINTIFF'S ACQUITTAL.

In an action for malicious prosecution, the plaintiff sought but was not permitted to prove his acquittal before the County Judge's Criminal Court of a charge of misdemeanour, by means of the production of the original record signed by the County Judge under the Speedy Trials Act, R.S.C., ch. 175, and produced and verified by the clerk of the peace in whose custody it was, or else by being allowed to put in a copy thereof, certified by that officer:—Held, that the evidence should have been admitted in either of the above two forms, and judgment dismissing the action was set aside and a new trial ordered. (Decision of McMahon, J., at the trial reversed.) O'Hara v. Dougherty, 25 O.R. 347.

PROOF OF SUFFICIENCY OF ARREST.

In an action for malicious arrest, the arrest is not proved by shewing that the bailiff to whom the warrant was directed went to the plaintiff's house and told him at the door that he had a writ against him, but did not enter the house, nor touch him, and afterwards left him on his promise to put in bail the next day, which he did. Perrin v. Joyce, 3 U.C.O.S. 300.

RECORD OF ACQUITTAL IN ACTION FOR.

Semble, that a person tried for felony and acquitted can only obtain a copy of the indictment and record of acquittal, to be used in an action for malicious prosecution, on the fiat of the Attorney-General; and the granting or refusing such application cannot be reviewed by the Court. The application here was for a rule calling on the Attorney-General to shew cause why judgment of acquittal should not be entered on the indictment:—Held, that the indictment not being a record of the Court, or brought into it by certiorari, the Court had no jurisdiction. Regina v. Ivy (1874), 24 U.C.C.P. 78.

RECORD OF ACQUITTAL; NECESSITY FOR PRODUCTION OF.

In an action for malicious prosecution, the indictment, with an endorsement thereon of the acquittal of the plaintiff of the criminal charge of which he had been prosecuted, was produced by the clerk of the Court having been sent to him by the registrar of the Queen's Bench Division to whom the indictment had been returned and which he had been subpœnaed by the plaintiff to produce, the Court being informed that the Attorney-General had refused his fiat to enable a record of acquittal to be made up. The defendant's counsel objected to the admission of the indictment, and its admission was refused:—Held, that the indictment so endorsed and produced was not, under the circumstances, sufficient evidence of the termination of the prosecution, but that the formal record of acquittal should have been produced; and that no such record, or a copy thereof, could be obtained without a fiat of the Attorney-General. Quære, whether the termination of such prosecution can be proved by admissions made by the defendant on his examination for discovery. Hewitt v. Cane (1894), 26 O.R. 133.

TERMINATION OF CRIMINAL PROCEEDING; "NO BILL" BY GRAND JURY; HONEST BELIEF OF PROSECUTOR.

There cannot be a record of proceedings between the King and an accused person in a criminal prosecution until at least a "true bill" has been found by the grand jury. The production by the proper officer of a certified copy of the Bill of Indictment, returned "no bill," is sufficient in view of the provisions of the Evidence Act, R.S.B.C.

1897, ch. 71. Where the act, in respect of which the criminal proceedings were launched, was done in the light of day, in open view of the defendant, and in pursuance of a statutory right, the trial Judge was right in leaving it to the jury to say whether, in the circumstances, the defendand really thought the plaintiff was a thief. Tanghe v. Morgan, 11 B.C.R. 455.

BURDEN OF PROOF; DISCHARGE FROM PROSECUTION; PROBABLE CAUSE.

In an action for damages for malicious prosecution the onus of evidence is on the plaintiff to prove, not only that he was discharged from the prosecution but that the defendant that prosecuted him acted maliciously and without reasonable or probable cause. Desaulniers v. Hird, 15 Que. K.B. 394.

EVIDENCE; MALICE INFERRED; CIVIL ACTION.

(1) In an action for damages resulting from false arrest the onus of proving that the complainant acted imprudently and without reasonable and probable cause in procuring such arrest lies upon the plaintiff. (2) The entire absence of reasonable and probable cause constitutes malice in law which entitles the plaintiff to recover damages. The principles of the French law as laid down in art. 1053 of the Civil Code of the Province of Quebec and not the principles of the English law govern in such a case. (3) Evidence of an alleged incriminating admission said to have been made by the plaintiff, after his acquittal, is not admissible for the defence in an action for malicious prosecution in proof of reasonable and probable cause where the question of guilt is not in issue. [Copeland v. Leclerc (1886), M.L.R. 22 B.R. 365, disapproved: Compare Watt v. Clark, 18 O.R. 602.] Canadian Pacific Railway Co. v. Waller, 19 Can. Cr. Cas. 190, 1 D.L.R. 47.

TERMINATION OF PROSECUTIONS; QUASHING OF TECHNICAL GROUNDS; PROBABLE CAUSE.

There must be a final termination of the prosecution in favour of the accused before he can maintain an action against the informant for malicious prosecution; such termination means a final judgment discharging the accused as innocent and not merely by the quashing of the indictment on account of a technically or irregularity apart from the merits. [Compare Mortimer v. Fisher, 11 D.L.R. 77; Cockburn v. Kettle, 12 D.L.R. 512; Fancourt v. Heaven, 18 O.L.R. 492; Baxter v. Gordon, 13 O.L.R. 598; Pearce v. Street, 3 B. & Ad. 397.] The entry of a "nolle prosequi" may be a termination of the prosecution in favour of the accused for the purposes of his action for malicious prosecution where not entered on account of an irregularity or technicality. The fact that the informant who was afterwards sued for malicious prosecution had first consulted counsel and laid all the facts before him and had been advised by such counsel to lay the information is not in all cases a bar to the action being maintained. but is to be considered in determining the questions of malice and want of reasonable and probable cause. [Ravenga v. Macintosh, 2 B. & C. 693, doubted.] Where counsel's advice to the prosecutor upon the true facts fully laid before him to lay an information for a criminal offence is acted upon by the prosecutor and this is followed by a committal for trial and the finding of a true bill upon such facts, the prosecutor, against whom no express malice is shewn, is justified in his prosecution although a conviction is not secured; and a verdict for damages for false arrest and malicious prosecution will not under such circumstances be supported. Richard v. Goulet, 23 Can. Cr. Cas. 327, 19 D.L.R. 371.

TERMINATION OF PROSECUTION; PROOF.

In the absence of proof that the withdrawal of the prosecution was brought about by a compromise or arrangement to which the accused was a party proof of such withdrawal is a termination of the prosecution in favour of the accused. [Mortimer v. Fisher, 11 D.L.R. 77, applied.] Tamblyn v. Westcott, 23 Can. Cr. Cas. 391, 20 D.L.R. 131.

[Referred to in R. v. Rousseau, 24 Can. Cr. Cas. 390.]

REASONABLE AND PROBABLE CAUSE; RECEIVING STOLEN GOODS; PURCHASE IN BULK.

The fact that a junk dealer had purchased in bulk a quantity of goods which could not properly be classed as junk at a gross undervalue from a nontrader in such goods is sufficient to put such purchaser upon inquiry as to their ownership and may be set up in proof of reasonable and probable cause in defence of an action for malicious prosecution brought by the junk dealer on being acquitted of receiving the goods with knowledge that they were stolen. [Desaulniers v. Hood, 15 Que. Q. B. 394, referred to.] The person preferring the charge has a legal right to require that his recognizance be taken to prosecute where the magistrate discharges the accused, and the fact that the prosecutor exercises such legal right, particularly where a true bill was afterwards returned, will not alone displace his defence of reasonable and probable cause in an action for malicious prosecution brought by the accused, who was acquitted on the trial. Klein v. Katz, 24 Can. Cr. Cas. 153, 24 D.L.R. 794.

PROBABLE CAUSE; MALICE CHARGE OF THEFT.

Neither malice or want of reasonable and probable cause are necessary inferences against the informant in a criminal charge for theft of timber, because of such informant having first instituted civil proceedings against the trespasser with the sole purpose of recovering the price and before being

advised by his solicitor that the facts justified a prosecution for theft, if the informant later instituted criminal proceedings in pursuance of his solicitor's advice and the charge was dismissed. [Collins v. Gould, 9 D.L.R. 665; Morrison v. Wilson, 14 D.L.R. 815; Dugay v. Myles, 15 D.L.R. 388, cited; Burgoyne v. Moffatt, 10 N.B.R. 13, distinguished.] Priest v. McGuire, 25 Can. Cr. Cas. 139, 27 D.L.R. 290.

EVIDENCE; CONCLUSIONS OF TRIAL JUDGE; INFERENCES; REASONABLENESS.

Where the trial judge, sitting without a jury, has found on undisputed evidence that an offence for which the plaintiff might have been arrested without a warrant has been committed, and that the defendant police officer acting on a photograph and description from another city, honestly believed that such an offence had been committed, and that it had been committed by the plaintiff, he is justified in drawing the inference that there were reasonable and probable grounds for the arrest and granting the protection of sec. 30 of the Criminal Code as regards the arrest itself. But where the case was one of mistaken identity, the officer will still be liable in damages for his detention of the accused for an unreasonable time in obtaining further information on the question of identity. Anderson v. Johnson, 30 Can. Cr. Cas. 268, 43 D.L.R. 183, affirming 29 Can. Cr. Cas. 24, 38 D.L.R. 63, 10 Sask. L.R. 352.

MALICE; WANT OF PROBABLE CAUSE; FAILURE TO MAKE ENQUIRY.

If circumstances of suspicion of a crime exist when might readily have been explained by proper enquiry on the part of the person instituting criminal proceedings his failure to make enquiry is some evidence of want of reasonable and probable cause; and absence of reasonable and probable cause as some evidence from which malice may be inferred for the purposes of an action of damages for malicious prosecution, but if it be found that the informant had an honest belief in the guilt of the person he accused and prosecuted only for the enforcement of the law and not from an improper motive, he is not liable in damages for failure to make proper enquiry although there was no reasonable and probable cause for the prosecution. Scott v. Harris, 30 Can. Cr. Cas. 363, 44 D.L.R. 737.

MANDAMUS.

To compel exercise of jurisdiction but not to correct judicial error only. 7 Can. Cr. Cas. 204.

Locus standi of applicant. 7 Can. Cr. Cas. 212.

SUMMARY CONVICTION NOT UNDER SEAL; MANDAMUS TO ENFORCE EXECUTION.

A conviction must be under seal. A conviction may be returned and proved at any time during the hearing of an appeal therefrom to the General Sessions, or, in the discretion of the chairman, even during an adjournment for judgment. A minute of conviction signed by the justice, but not sealed, was returned to the Sessions upon the entering of an appeal therefrom by the defendants. The jury found the defendant guilty of the offence of which he had been convicted, but on motion for judgment he objected that the conviction was not sealed. The chairman reserved judgment until a day named, and during the adjournment the justices returned and filed a conviction under seal. The chairman then declined to receive it, or to give judgment, holding that there was no conviction upon which to found the appeal, which had been heard: —Held, that the prosecutor was not entitled to a mandamus to compel him to deliver judgment; for the reception of the conviction in evidence at that period was in the chairman's discretion, which could not be reviewed. Re Ryer and Plows (1881), 46 U.C.Q.B. 206.

TO ISSUE ORDER FOR COSTS ON APPEAL.

Under 32 and 33 Vict. ch. 31, secs. 65, 74 (D.), the Court of Quarter Sessions at which an appeal is heard must determine on quashing a conviction, whether any and what costs are to be paid, and when. Where, therefore, the only order made was, "Conviction quashed with costs:"—Held, that no subsequent session of the Court could interfere by way of an amendment of the order or otherwise, and a rule for mandamus to the chairman and clerk of the sessions to issue the said order, with a provision for payment by the respondents to the appellant of the costs of the appeal forthwith after taxation, was discharged, but under the circumstances without costs. Re Rush and Bobcaygeon Corp. (1879), 44 U.C.Q.B. 199.

REFUSAL OF TO ISSUE DISTRESS WARRANT.

The Court refused a mandamus to the mayor of a municipality to issue a distress warrant on a conviction made by him, under the Temperance Act of 1864, where the by-law and conviction were open to grave objections, which had been taken on the trial before him. Regina v. Ray (1878), 44 U.C.Q.B. 17.

TIME FOR ISSUING.

The defendant was convicted in July, 1874, under the Public Health Act, 36 Vict. ch. 43 (O.), of creating a nuisance; the magistrates refusing to hear witnesses for the defence, on the ground that the statute made no provision for such witnesses being called:—Held, that an application in May, 1875, for a mandamus to re-open the complaint, was not too late, and the writ was granted; the refusal to hear on side being the same as if the case had not been heard

at all. Semble, that a certiorari might issue in such a case, notwithstanding sec. 35 of the Act. Re Holland, 37 U.C.C.P. 214.

TO COMPEL MAGISTRATE TO RECEIVE EVIDENCE.

At the hearing of a criminal charge before a County Judge sitting as police magistrate evidence given before a special committee of the House of Commons, and taken down by stenographers was tendered before the magistrate and refused by him:—Held, that the Court had no power to grant a mandamus to the County Judge, directing him to receive such evidence. Rose, J., while concurring in the decision that a mandamus should not issue, was of opinion that Parliament having ordered the prosecution the evidence should have been received by the magistrate. Subsequent resolution of the House of Commons authorizing the evidence to be given. The Queen v. Connolly et al. (1891), 22 O.R. 220.

WARRANT OF ARREST; MAGISTRATE'S REFUSAL TO ISSUE.

That a magistrate did not properly appreciate the evidence submitted upon an application for the issue of a warrant of arrest for an indictable offence is not a ground for a mandamus to compel him to grant a warrant against his opinion, formed in good faith. Thompson v. Desnoyers, 3 Can. Cr. Cas. 68.

MANDAMUS TO JUSTICES TO TAKE INFORMATION; CIVIL PROCEDURE.

An application for a mandamus against a magistrate is a civil and not a criminal proceeding, although the act which it is proposed the justice shall be ordered to do is the taking of an information for an offence against the criminal law. The procedure upon such applications in Ontario is governed by the Ontario Judicature Act, and the application for an order absolute must be made to a single Judge in Court and not to a Divisional Court. The King v. Meehan (No. 1), 5 Can. Cr. Cas. 307.

MANDAMUS TO COMPEL A "PRELIMINARY ENQUIRY."

The Court will not grant to the prosecutor a mandamus to compel a rehearing by the magistrate of an application for process in respect of an indictable offence, if the magistrate has exercised his discretion (although erroneously) in refusing the process after being put in possession of the facts on which he can exercise discretion. If the magistrate on an application for process erroneously holds that the offence is not indictable, and that he therefore has no jurisdiction to hold a preliminary enquiry in respect thereof, a mandamus will lie to compel him to do so. The King v. Meehan (No. 2), 5 Can. Cr. Cas. 312.

[Referred to in Re Broom, 18 Can. Cr. Cas. 255.]

COURT STENOGRAPHER A PUBLIC OFFICER; MANDAMUS; NONPERFORMANCE OF OFFICIAL DUTY.

(1) A Court stenographer is a public official against whom a mandamus may issue for nonperformance of his official duty to furnish an applicant with a copy of evidence taken at a criminal trial. (2) Where upon an application for a mandamus it appears that the Court stenographer has furnished a complete copy of his record of the evidence, the application must be dismissed although the transcript furnished be shewn to be inaccurate by reason of the omission of rulings made by the trial Judge or of counsel's admissions taken in lieu of evidence. The King v. Campbell, 10 Can. Cr. Cas. 326.

PRELIMINARY ENQUIRY; MANDAMUS TO MAKE AN ORDER TO DISMISS OR COMMIT ACCUSED FOR TRIAL.

Semble, the justices might have been compelled by mandamus to make an order whereby the preliminary enquiry would be terminated either by a dismissal of the charge or the committal of the accused for trial. Durrand v. Forrester, 15 Can. Cr. Cas. 125.

APPEAL TO HEAD OF DEPARTMENT BEFORE APPLYING TO COURTS; MANDAMUS AND NOT HABEAS CORPUS THE REMEDY.

Mandamus and not habeas corpus is the proper remedy by which to review the refusal of the Controller of Customs to permit a Chinaman to re-enter Canada without payment of the entry tax on the ground that being a Chinese "merchant" he is exempt by sec. 7 of the Chinese Immigration Act, R.S.C. 1906, ch. 95. Re Lee Him, 16 Can. Cr. Cas. 383.

INFORMATION; AMENDMENT OF ILLEGAL AFTER EXPIRY OF TIME LIMITED FOR PROSECUTION; PROHIBITION TO MAGISTRATE.

(1) An information for an offence under a liquor law which omits a material ingredient of the offence cannot be amended by adding the same after the expiry of the statutory limit for bringing a prosecution. (2) Prohibition will issue to prevent the magistrate from proceeding upon an information so amended after the expiry of the time limit for bringing a charge. [R. v. Guertin, 15 Can. Cr. Cas. 251, followed.] The King v. Speed, 17 Can. Cr. Cas. 24.

MANDAMUS TO REVIEW JUSTICE'S RULING; EXTRAORDINARY CIRCUMSTANCES MUST BE SHEWN.

Only under extraordinary circumstances will the Court grant a mandamus to a justice holding a preliminary enquiry to review the justice's ruling as to the admissibility of evidence. The King v. Martin, 18 Can. Cr. Cas. 107.

REFUSAL TO ISSUE SUMMONS; APPLICATION FOR MANDAMUS; DISCRETION OF MAGISTRATE.

Where a magistrate has tried a charge of assault depending wholly upon the evidence of the complainant and of the defendant and has dismissed the charge because he believed the defendant rather than the complainant, he is not bound to issue a summons for perjury on the information of the discredited complainant against the defendant in respect of the latter's evidence at the trial, and a mandamus will not be granted to compel him to do so. Re Broom, 18 Can. Cr. Cas. 254.

TO COMPEL REINSTATEMENT OF CASE; CRIMINAL APPEAL.

Mandamus lies to require an inferior court to enter continuances and to hear an appeal from a summary conviction which it had improperly refused to hear on the merits upon an erroneous ruling against the sufficiency of the notice of appeal. R. v. Trottier, 22 Can. Cr. Cas. 102, 14 D.L.R. 355.

WARRANT FOR ARREST; DISCRETION OF MAGISTRATE.

The discretion vested by law in a magistrate to refuse a warrant of arrest for an indictable offence will not be interfered with by a superior court by way of mandamus, nor will a mandamus be granted where a warrant of arrest had been granted by the magistrate, but, on reconsideration, he had directed its withdrawal before it was executed. R. v. Biddinger, 22 Can. Cr. Cas. 217, 15 D.L.R. 511.

TO COMPEL ARREST; NONRESIDENT WITNESSES: SAFE CONDUCT.

Mandamus will not lie to compel a magistrate to issue a warrant for the arrest on a criminal charge of conspiracy of persons resident out of Canada who are temporarily therein solely for the purpose of giving evidence before a committee of a provincial legislature in respect of the very matter which is sought to be made the subject of the criminal charge, while such nonresidents are under the protection of a safe-conduct granted to them by the legislature. Marsil v. Lanctot, 25 Can. Cr. Cas. 223, 28 D.L.R. 380.

TO REHEAR APPEAL FROM SUMMARY CONVICTION; INFORMATION.

Where a summary conviction is appealed against under the procedure of Cr. Code, secs. 749 and 750, and the appeal was allowed without any evidence being taken, on the sole ground that the information was insufficient, such decision, even if erroneous under Cr. Code, sec. 753, because the objection had not been raised in the magistrate's Court from which the appeal was taken, is not a decision upon a mere preliminary point, but one upon the merits; and mandamus will not lie, even with the consent of the County Judge, who had so decided, to compel him to reopen the appeal. [Long Point Co. v. Anderson, 18 A.R. (Ont.) 401, and R. v. Middlesex Justices, 2 Q.B.D. 516, applied.] R. v. County Judge of Frontenac; Re McLeod and Amiro, 25 Can. Cr. Cas. 230, 8 D.L.R. 726.

TO AID APPEAL.

Mandamus will not lie to a district court judge because of his allowance of an appeal taken under Cr. Code, sec. 750, on the failure of the prosecutor or of the Attorney-General to appear in opposition thereto, the writ not being intended to direct in what manner the trial below shall be conducted, but merely that the inferior court shall exercise its jurisdiction in the event of its erroneously declining so to do. [R. v. Kingston Justices, 86 L.T.N.S. 591, referred to.] R. v. Wung Tun, 26 Can. Cr. Cas. 8, 28 D.L.R. 698.

[Referred to in R. v. Fields, 27 Can. Cr. Cas. 51, 30 D.L.R. 728.

SUMMARY CONVICTION; PENALTY; STATUTORY AMOUNT.

Mandamus does not lie at the instance of the prosecution to compel a magistrate who, in making a summary conviction, has imposed a lesser penalty than that fixed by the particular statute to correct the error by imposing the amount named in the Act; the fixing of the punishment is a judicial and not merely a ministerial act notwithstanding the direction of the statute. [R. v. Case (No. 1), 7 Can. Cr. Cas. 204, followed; R. v. Wung Tun, 26 Can. Cr. Cas. 8, 28 D.L.R. 698, referred to; see also R. v. Case (No. 2), 7 Can. Cr. Cas. 212, 6 O.L.R. 104.] R. v. Fields, 27 Can. Cr. Cas. 51, 30 D.L.R. 728.

MANSLAUGHTER.

See also Murder; Homicide.

Insufficient post-mortem examination; Evidence of cause of death. 1 Can. Cr. Cas. 246.

Note for parents' neglect to supply medical aid to child. 5 Can. Cr. Cas. 378.

KILLING BY PEACE OFFICER OF FUGITIVE IN PURSUIT; WOUNDING TO STOP FLIGHT; QUESTIONS FOR JURY.

When a peace officer, pursuing a fugitive whom he had a right to arrest without a warrant, found that the fugitive was, in his opinion, likely to escape for the time being owing to superior speed, it is a question for the jury, on the trial of the officer for manslaughter in killing the fugitive by a shot from his revolver intended only to wound and so stop his flight, whether, under all the circumstances, the officer was justified under sec. 41 of the Code in such shooting in order to prevent the escape of

such fugitive, or whether such escape could not have been prevented by reasonable means in a less violent manner. R. v. Smith (1907), 17 Man. R. 200.

TREATMENT BY CHRISTIAN SCIENTIST; FAILURE TO PROLONG LIFE BY USUAL MEDICAL REMEDIES.

The prisoner, who practised as a Christian Scientist, was called in by the parents of a child suffering from diptheria. She was not expected and was not retained as a medical attendant. She did nothing but sit silently by the child, without giving any medical and other treatment of any kind. The child died ot the disease, and the prisoner was indicted for manslaughter. According to the medical evidence the life of the child might have been saved or prolonged if the usual medical remedies had been applied:—Held, that the prisoner could not be convicted under sec. 212 or sec. 214 of the Crim. Code. Held, also (dubitante), that the father of the child could not be indicted, under secs. 209 and 210, for not having supplied the child with a necessary of life, viz., medical aid, nor could the prisoner be indicted as an accessory (under sec. 61) to the father's neglect. Regina v. Beer, 32 C.L.J. 416.

NEGLIGENCE OF MASTER IN NOT PROVIDING MEDICAL HELP TO SERVANT.

The deceased, a lad, aged about 15, was engaged by the prisoner as a farm-hand, on the terms of receiving for his work his board, lodging and clothing. He died on the 14th February, after having been in the prisoner's employment about nine months. Death was caused by the gangrenous condition of many parts of his body, resulting from frost bites. He was in the habit of wetting his bed, and on this account was made to sleep in the stable, and had slept there for two or three months up to the 10th February. From the 1st to the 10th February the weather was excessively cold. The lad's fingers had been badly frozen at least three weeks before his death, and it was found that the prisoner must be taken to have known it for that length of time, nevertheless, he paid no attention to it until the 10th February. During the night of the 9th-10th February, the deceased's feet were frozen solid to the ankles; this was discovered by the prisoner, who then took him to the house. It was found that the lad became so frozen, by reason of the earlier frost-bites rendering him unable to attend to himself properly, and his being left without assistance in the stable in excessively cold weather. The prisoner, on bringing the lad to the house, attended to him personally, asked a neighbor for a remedy for frost-bites, drove to a physician, got from him a prescription for frost-bites, but did not disclose to him the serious condition the lad was in. On and after the 10th February the lad was helpless, and died on the 14th February. The prisoner had means to procure medical attendance:—Held, that in view of the age of the deceased, the circumstances of the country, the fact of there being no provision for maintaining poor people, it was the duty of the prisoner, as master towards the deceased as his servant, to have taken care of him, and that by his omission to do so he was guilty of gross negligence, to which the lad's death was attributable, and that, therefor, the prisoner was guilty of manslaughter. The Queen v. Brown (1893), 1 Terr. L.R. 475.

SHOOTING AT SUPPOSED "EVIL SPIRIT;" PAGAN BELIEF.

Homicide under a mistaken Indian belief that the object shot at was not a human being but an evil spirit which had assumed human form and would attack human beings, is manslaughter. R. v. Machekequonabe, 2 Can. Cr. Cas. 138.

JUSTIFICATION; EXCUSABLE HOMICIDE; REASONABLE APPREHENSION OF GRIEVOUS BODILY HARM TO WIFE AND CHILDREN.

(1) Reasonable apprehension of immediate danger of grevious bodily harm to his wife and children, then in the house of the accused, is a justification of shooting the deceased, who was one of a party who had invaded the prisoner's house and committed a wholly unprovoked assault upon him, and who had, up to the time of the shooting, continued their violent and unjustifiable conduct there towards the accused and his family, and were destroying chattels in the house. (2) On a trial for murder, if the trial Judge directs the jury that imminent peril of the prisoner's own life or of the lives of his family is a ground of justification for killing, in defence of his household, one of a party committing an unprovoked assault upon him, but does not direct them that a reasonable apprehension of immediate danger of grievous bodily harm to the prisoner or to his wife and family is an equal justification, such omission constitutes "a substantial wrong or miscarriage" occasioned on the trial (Cr. Code, sec. 746 (f)); and a new trial should be ordered, where the circumstances shewn in evidence are such as to point much more to the latter ground of justification than to the former. R. v. Theriault, 2 Can. Cr. Cas. 444.

[Referred to in R. v. Lew, 1 D.L.R. 103; Alaska Packers' Association v. Spencer, 10 B.C.R. 490; distinguished in R. v. Fouquet, 10 Can. Cr. Cas. 255, 262, 14 Que. K.B. 94; Ex parte R. v. Daley, 16 Can. Cr. Cas. 177, 39 N.B.R. 416.]

INDICTMENT OF CORPORATION FOR; DEMURRER.

(1) A corporation is not subject to indictment upon a charge of any crime the

essence of which is either personal criminal intent or such a degree of negligence as amounts to a wilful incurring of the risk of causing injury to others. (2) Cr. Code, secs. 213 and 220, as to want of care in the maintenance of dangerous things, do not extend the criminal responsibility of corporations beyond what it was at common law. (3) There is no power under Code, sec. 639 or otherwise to impose a fine or any other punishment in lieu of imprisonment, for the offence of manslaughter, and there is consequently no judgment or sentence applicable to a conviction of a corporation for that offence. R. v. Great West Laundry Co., 3 Can. Cr. Cas. 514.

CORPORATION; NEGLECT OF DUTY CAUSING DEATH.

(1) Although a corporation cannot be guilty of manslaughter, it may be indicted, under Cr. Code, sec. 252, for having caused grevious bodily injury by omitting to maintain in a safe condition a bridge or structure which it was its duty to so maintain, and this notwithstanding that death ensued at once to the person sustaining the grevious bodily injury. (2) A fine is the punishment which must be substituted under Cr. Code, sec. 639 in the case of a corporation, in lieu of the imprisonment mentioned in Cr. Code, sec. 252, and the amount is in the discretion of the Court (Cr. Code, sec. 934). (3) The expression "grevious bodily injury" includes injuries immediately resulting in death, and as a corporation is not amenable to a charge of manslaughter, the death is as to it a circumstance in aggravation of the crime, and does not enlarge the nature of the offence. R. v. Union Colliery Co., 3 Can. Cr. Cas. 523, affirmed in 4 Can. Cr. Cas. 400, 31 Can. S.C.R. 81.

[Referred to in R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 426.]

CORPORATION; NEGLECT OF DUTY CAUSING DEATH.

(1) Under sec. 213 of the Criminal Code a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control. (2) The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a ground for quashing the indictment. (3) As the Criminal Code provides no punishment for the offence, the common law punishment of a fine may be imposed on a corporation indicted under it. Union Colliery Co. v. R., 4 Can. Cr. Cas. 400.

[Considered in R. v. Toronto R. Co., 10 Can. Cr. Cas. 115, 31 Can. S.C.R. 81; followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141; referred to in R. v. Hays, 12 Can. Cr. Cas. 429; R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 426.]

SHIP COLLISION; NEGLIGENCE; RECKLESS DISREGARD OF HUMAN LIFE.

It is not necessary to order intercolonial extradition for the purpose of having a jury determine the controverted facts, if a prima facie case is not made out, and if, in consequence, an acquittal might at a trial be properly directed by the trial Judge. On a charge of manslaughter against the master of a ship in respect of a collision resulting in loss of life, such recklessness must appear as will amount to a wilful attempt upon the lives of people in putting them to danger, and not merely an error of judgment. The Queen v. John Delisle, 5 Can. Cr. Cas. 210.

SELF-DEFENCE; CHARGE OF MANSLAUGHTER; COMMITTAL FOR TRIAL; BAIL.

Where a prisoner committed for trial on a charge of manslaughter would ordinarily be admitted to bail, bail will not be refused because the Crown prosecutor swears to a belief that he can prove the offence to have been murder. The Queen v. Spicer, 5 Can. Cr. Cas. 229.

NEGLECT OF PARENT TO SUPPLY NECESSARIES TO CHILD.

(1) A parent who neglects to provide his child under the age of sixteen with medicine and medical treatment, when the same is a reasonable requirement for the child, and when the parent is able to supply the same, is thereby guilty of criminal neglect, under Code, sec. 210. (2) The term "necessaries" in Code, sec. 210, includes medicines and medical treatment, in cases where ordinarily prudent persons would obtain them. (3) A conscientious objection to medical treatment, because of a belief in the doctrines of the sect known as "Christian Scientists" is not a "lawful excuse" for omitting to provide medicines and medical aid, under Code, sec. 210. (4) Semble, evidence of witnesses testifying on behalf of the defence, to alleged cures effected through "Christian Science" treatment, consisting of silent prayer, etc., is only admissible to shew, in mitigation of the offence, that the prisoner's omission to provide other aid than that of "Christian Science" was because of his adherence to the doctrine of the sect, and in good faith, and not with any wilful intent to injure the child. The King v. Lewis, 7 Can. Cr. Cas. 261.

[Discussed in R. v. Couture, 15 Can. Cr. Cas. 154.]

ELECTION OF SPEEDY TRIAL; SUBSEQUENT APPLICATION OF CROWN TO SUBSTITUTE MURDER CHARGE.

(1) After a committal for trial at the instance of the Crown upon a charge of manslaughter and arraignment thereon under the Speedy Trials clauses and election of the accused for speedy trial without a jury, the proceedings in the County Court

Judge's Criminal Court will not be stayed at the instance of the Crown to enable a charge of murder to be substituted. (2) In order to justify a finding of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and must be incapable of explanation upon any other reasonable hypothesis than that of guilt. The King v. Telford, 8 Can. Cr. Cas. 223.

PEACE OFFICER SHOOTING AT FUGITIVE; REASONABLE AND PROBABLE CAUSE.

(1) The question whether a peace officer, on reasonable and probable grounds, believed that an offence for which the offender might be arrested without a warrant had been committed by the fugitive fleeing to escape arrest, is one for the jury and not for the Judge to decide. (2) If a person, with intent to steal something out of a shop or store, opens a door leading into it by lifting the latch or turning the knob and then enters the store, although during business hours, for the purpose of carrying out his unlawful intention, he may be convicted of shop breaking under sec. 461 of the Code. (3) When a peace officer, pursuing a fugitive whom he had a right to arrest without a warrant, found that the fugitive was, in his opinion, likely to escape owing to superior speed, it is a question for the jury, on the trial of the officer for manslaughter in killing the fugitive by a shot intended only to wound and so stop his flight, whether, under all the circumstances, the officer was justified under sec. 41 of the Code in shooting, or whether the officer should not have taken other means. (4) On flight to avoid arrest, the force justifiable in the pursuing officer, under Code, sec. 41, relates to the present pursuit without regard to the probability of the fugitive being subsequently discovered should he escape. The King v. Smith, 13 Can. Cr. Cas. 326.

FALL OF PERSON ASSAULTED RESULTING FATALLY; NO INTENT TO DO BODILY HARM.

Where a person strikes another wantonly and unlawfully, but without any intention of doing him bodily harm, and thereby caused the other to fall and dislocate his spine, and death results therefrom, the assaulting party is guilty of manslaughter, although death would not ordinarily result either from the blow or the fall. The King v. Chisholm, 14 Can. Cr. Cas. 15.

BOXING CONTEST; DEATH OF CONTESTANT; MANSLAUGHTER.

On a trial for manslaughter against one of the contestants in a so-called boxing contest in respect of the death of the other contestant in the ring following a knock-out blow, the jury in considering whether the contest was one prohibited by the provisions of the Criminal Code as to prize fights, may take into consideration the weight of the gloves as bearing on the intention that the fight should terminate by one or the other being incapacitated, although limited to ten rounds. (Dictum per Harvey, C.J.) R. v. Pelkey, 21 Can. Cr. Cas. 387, 12 D.L.R. 780.

INTENT; DRUNKENNESS; MANSLAUGHTER; PRESUMPTION.

Where there was evidence to go to the jury on a murder trial that the defendant took up a gun at the suggestion of the deceased (his brother) during a drunken orgie in which both participated, and that he pointed it at the deceased and fired, although the brothers were on friendly terms and no motive was apparent for the act, the jury should be instructed that if the drunkenness of the accused prevented his forming an intention to do serious harm with the gun, he would be guilty only of manslaughter and not of murder. [R. v. Doherty, 16 Cox C.C. 306, and R. v. Meade, [1909] 1 K.B. 895, applied.] The presumption in a criminal case that a man intends the natural consequences of his acts may be rebutted, in the case of a man who was drunk when he committed the offence, by shewing his mind to have been so affected by drink that he was at the time incapable of knowing that what he was doing was likely to inflict serious injury. [R. v. Doherty, 16 Cox C.C. 306, and R. v. Meade, [1909] 1 K.B. 895, applied.] R. v. Wilson, 21 Can. Cr. Cas. 448.

ACCIDENTAL SHOOTING; HUNTING; MANSLAUGHTER.

The criminal liability of the accused, who while hunting with his friend accidently shot the latter while aiming at what he believed to be a moose, is not sufficiently enhanced by the circumstance that the hunting took place in the close season (the latter infringement being merely malum prohibitum and not malum in se) to warrant a conviction for manslaughter on that ground alone, and the jury may be directed to acquit unless they find that the accused was criminally negligent in discharging the gun without exercising due care and precaution. R. v. Oxley, 23 Can. Cr. Cas. 262, 19 D.L.R. 721.

DRUNKENNESS REDUCING CRIME TO MANSLAUGHTER.

Homicide is reduced from murder to manslaughter where the accused, at the time he committed the act, was so under the influence of liquor that his reason was dethroned and he did not know what he was doing or know that he was liable to cause grevious bodily harm. [Compare R. v. Jessamine, 19 Can. Cr. Cas. 214, 1 D.L.R. 285, 3 O.W.N. 753, and R. v. Wilson, 21 Can. Cr. Cas. 448, 46 N.S.R. 59.] R. v. Stoddard, 25 Can. Cr. Cas. 81, 26 D.L.R. 271.

NEGLECT OF INFIRM FATHER.

A son who has received his aged father into his household and undertaken his care and support may be convicted of manslaughter if the father dies from exposure while under the son's charge and from insufficient care and food where the son had the means to supply the food and the means to prevent the father from suffering from exposure, but was reckless whether the father died or not and was wickedly negligent with respect to the duty owed to the father who was incapacitated by old age, infirmity and illness from looking after himself or from withdrawing himself from the son's charge; the charge is one imposed upon the son "by law" within the meaning of Cr. Code, sec. 241, under such circumstances. R. v. Dalke, 25 Can. Cr. Cas. 98, 27 D.L.R. 633.

INSANITY THROUGH DRINK; MANSLAUGHTER.

Homicide by shooting a person unknown to the accused, done without premeditation when the latter was temporarily insane from excessive drinking is not murder but manslaughter; a sentence of fifteen years was imposed because the jury made a recommendation of mercy, but without that recommendation life imprisonment would have been the appropriate punishment. [See also R. v. Wilson, 21 Can. Cr. Cas. 448, 46 N.S.R. 59.] R. v. Kane, 25 Can. Cr. Cas. 443, 28 D.L.R. 380.

INDIRECT CONSEQUENCES OF CRIMINAL ACT.

A man engaged in a criminal act is liable for its indirect as well as for its direct consequences, and a verdict of manslaughter for the death of a young girl under the age of consent will be supported if it appears that the accused had induced her to go alone with him to a secluded apartment and there had criminal sexual intercourse with her, following which she had jumped from the window to the street to get away from him and was instantly killed by the fall. R. v. Valade, 26 Can. Cr. Cas. 233.

MANSLAUGHTER; EVIDENCE; NEGLECT OF HUSBAND TO PROVIDE MEDICAL ATTENDANCE.

R. v. Sanderson, 31 Can. Cr. Cas. 60.

MARRIAGE.

PER VERBA DE PRESENTI; LEGALITY OF.

In the year 1878 a white man and an Indian woman domiciled in the North-West Territories, entered into a contract of marriage per verba de presenti in the Territories without a ceremony of any kind, and cohabited as man and wife until the former's decease:—Held, in view of the legal provisions for the organization of the Territories and the actual condition, with reference to the facilities for the solemnization of marriage, at least in the portions of the Territories in the vicinity of the contracting parties' place of residence that there was not a legally valid marriage. Re Sheran, 4 Terr. L.R. 83.

UNLAWFUL SOLEMNIZATION OF MARRIAGE; "RELIGIOUS DENOMINATION;" STATUTORY FUNCTIONARIES.

"The Reorganized Church of Jesus Christ of Latter Day Saints" is a religious denomination within the meaning of R.S.O. ch. 131, sec. 1; and a duly ordained priest thereof is a minister authorized to solemnize the ceremony of marriage. Upon a case reserved, a conviction of such a priest for unlawfully solemnizing a marriage was quashed. Semble, the words of the statute "church and religious denomination" should not be construed so as to confine them to Christian bodies. Regina v. Dickout (1893), 24 O.R. 250.

UNLAWFULLY SOLEMNIZING MARRIAGE; MINISTER OF INDEPENDENT CHURCH; NO CEREMONIAL APPOINTMENT.

A person acting as the pastor of an independent church which is not affliated with any religious denomination and which has no rites or ceremonies for the appointment or ordination of a minister, is not authorized to perform a marriage ceremony in Ontario under R.S.O. ch. 162, sec. 2, and for doing so is liable under Cr. Code, 1906, sec. 311, for the indictable offence of solemnizing a marriage without lawful authority. The King v. Brown, 14 Can. Cr. Cas. 87.

[Referred to in R. v. Cook, 15 Can. Cr. Cas. 53.]

MARRIAGE ACT (MAN.); VALIDATION OF MARRIAGE INCLUDES PERSONS MARRIED IN FOREIGN LANDS.

The provisions of the Manitoba Marriage Act validating (under the limitations of that section) all marriages after two years between persons not under legal disqualification notwithstanding irregularities, "so far as respects the civil rights in Manitoba of the parties or their issue, and in respect of all matters within the jurisdiction of the Legislature of Manitoba," apply to persons whether married within the province or in foreign countries. [Sec. 30 of Marriage Act, 5 and 6 Edw. VII. (Man.) ch. 41, construed.] (Per Haggart, J.A.) Zdrahal v. Shatney, 20 Can. Cr. Cas. 205, 7 D.L.R. 554.

MASTER AND SERVANT.

Liability of master for acts of servant, see Inland Revenue.

Frauds on employers; Obtaining advance of transportation charges; Failure to refund; Ontario Master and Servant Act, 6 Can. Cr. Cas. 505.

Liability of master under penal laws for

servants' acts or defaults. 26 Can. Cr. Cas. 208.

TERMINATION OF ENGAGEMENT; JURISDICTION OF MAGISTRATE; NOTICE OF ACTION.

A magistrate having entertained a case under the Master and Servants' Act C.S. U.C., ch. 75, as amended by 29 Vict. ch. 33 (D.), and convicted the plaintiff, 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 shewn a professional opinion to that effect and referred to the statute:—Held, 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 U.C.Q.B. 130.

FAILURE TO PROVIDE MEDICAL AID TO SERVANT.

Sec. 211 of the Code does not impose a criminal responsibility upon the master to provide the servant with medical attendance or medicine, and, semble, per Rouleau, J., medical aid is not within the term "necessaries" under Cr. Cas. Code, sec. 210. R. v. Coventry, 3 Can. Cr. Cas. 541.

MEDICAL ACTS.

Practising medicine; Particular acts. 1 Can. Cr. Cas. 14, 22, 114.

PRACTISING MEDICINE FOR HIRE; EXAMINING SYMPTOMS AND PRESCRIBING MEDICINE.

The defendant was convicted under the Ontario Medical Act, R.S.O. ch. 148, sec. 45, for practising medicine for hire. The evidence shewed that when the complainant went to the defendant he told him his symptoms; that he did not know what was the matter with himself; that he left it to the defendant to choose the medicine, after learning the symptoms; and that, upon the advice of the defendant, he took his medicine, went under a course of treatment extending over some months, and paid the price agreed upon:—Held, that there was evidence to support the conviction. [Regina v. Coulson, 24 O.R. 246, distinguished; Regina v. Howarth, 24 O.R. 561, followed.] Regina v. Coulson (1896), 27 O.R. 59.

MASSAGE; "PRACTISING MEDICINE."

A professed diagnosis of an ailment, followed by a manual manipulation of the patient, for reward, as a means of curing diseases is not "practising medicine" under the Ontario Medical Act. R. v. Valleau, 3 Can. Cr. Cas. 435.

[Adopted in Bargman v. Bond, 14 Man. L.R. 510; referred to in R. v. Couture, 15 Can. Cr. Cas. 151.]

PATENT MEDICINE; DIAGNOSIS.

The selling of a "patent medicine" or specific for the treatment of a disease, after enquiries by the seller into the nature of the complaint and its symptoms, is practising medicine if the selection of the remedy is made by the seller; and the seller, not being a registered medical practitioner, is guilty of practising medicine, "for gain or hope of reward," although no charge is made except for the medicine. R. v. Barnfield, 3 Can. Cr. Cas. 161.

[Considered in Bergman v. Bond, 14 Man. L.R. 509; referred to in R. v. Couture, 15 Can. Cr. Cas. 151.]

PRACTISING MEDICINE.

Prescribing medicine to one person on one day is not "practising." Evidence of acts of practising, antecedent and subsequent may be given, but they must be approximate in time. R. v. Lee, 4 Can. Cr. Cas. 416.

[Referred to in R. v. Raffenberg, 15 Can. Cr. Cas. 297.]

"PRACTISING;" PROVING MORE THAN A SINGLE ACT.

(1) A conviction for illegally practising medicine must shew the exercise of that calling upon more than one occasion within the prescriptive period within which a prosecution must be brought. (2) The conviction must set out the particular acts of the accused which are held to constitute the illegal practising. (3) A conviction stating the offence as having been committed, between dates specified, by prescribing, etc., for "R. and others" will be set aside if the evidence discloses no offence as regards the attendance upon R.: and it cannot be sustained by proof of altogether separate offences shewn to have been committed within the stated time as regards other persons. (4) The conviction cannot be amended, on an appeal in which no new evidence is taken, by inserting in lieu of the words "and others" the names of such other persons. R. v. Whelan, 4 Can. Cr. Cas. 277.

[Referred to in R. v. Van Norman, 19 O.L.R. 447, 14 O.W.R. 659; R. v. Lee, 4 Can. Cr. Cas. 419.]

ONTARIO MEDICAL ACT; UNREGISTERED PERSON USING TITLE OR DESCRIPTION IMPLYING LEGAL QUALIFICATION TO PRACTISE.

Evidence that a person not licensed as a physician under the Ontario Medical Act had on his door plate the letters "Dr." prefixed to his name, is alone sufficient to prove a charge of using a description calculated to lead people to infer that he is

a legally qualified physician. The King v. Foster, 8 Can. Cr. Cas. 281.

PRACTISING MIDWIFERY WITHOUT BEING REGISTERED; "MEDICINE AND SURGERY;" MEDICAL PROFESSION ORDINANCE, N.W. T.

An unregistered person who practises midwifery only, is not liable to fine under the Medical Profession Ordinance (N.W. T.), such not being the practice of either "medicine" or "surgery" as used therein. The King v. Rondeau, 9 Can. Cr. Cas. 523.

[Referred to in R. v. Raffenberg, 15 Can. Cr. Cas. 296.]

PRACTISING MEDICINE; OCCULTISM; "PASSES."

(1) When a child of ten years of age unable to describe her own symptoms and incompetent to choose a method of treatment is treated for epilepsy by a woman who pretends to cure by hand passes and a so-called gift of healing for which the woman receives payment, the latter is guilty of practising medicine for hire and hope of reward under the Quebec Medical Act, although neither drugs nor medicines are prescribed. (2) The phrase "practising" medicine means more than practising with medicines or drugs and includes a method or system for curing disease dependent upon occultism. The King v. Couture, 15 Can. Cr. Cas. 147.

PRACTISING MEDICINE OR MIDWIFERY; MEANING OF "PRACTISE;" TREATMENT OF ONE PATIENT.

The offence of practising medicine or midwifery contrary to the Medical Profession Act (Sask.), may be established by shewing attendance continuing for two weeks upon one patient. R. v. Raffenberg, 15 Can. Cr. Cas. 295.

FALSELY PRETENDING TO BE A HEALER OF THE SICK; ISOLATED CASE INSUFFICIENT.

(1) The same principle applies to the trial of cases of falsely pretending to be a healer of the sick as to cases of practising medicine without a license, and it is essential as to either offence that more than an isolated case should be proved. (2) Where the information for an offence punishable on summary conviction charges the offence in general terms and there is no statutory definition giving the particulars of the acts which will constitute the offence, Code, sec. 723, will not apply to validate an information which does not specify the means by which the offence was committed. (3) There being no statutory definition of what constitutes a false pretending to be a healer of the sick, which is punishable on summary conviction under the Saskatchewan Medical Act, an information for that offence is defective if it does not specify the acts complained of. The King v. Armstrong, 18 Can. Cr. Cas. 72.

INDICTMENT OF PHYSICIAN FOR CRIMINAL OPERATION; SUBSEQUENT ENQUIRY BY MEDICAL COUNCIL IN PROCEEDINGS TO DEBAR FROM MEDICAL PRACTICE.

(1) The Medical Council has disciplinary jurisdiction under the Ontario Medical Act over every registered medical practitioner for unprofessional conduct constituting an indictable offence, although he has not been convicted of the offence. (2) If the practitioner was indicted and acquitted of the charge by a Criminal Court before the hearing by the Medical Council in the proceedings taken for removal of his name from the medical register, the fact of such acquittal is not a ground for prohibition to the Medical Council at the outset of the inquiry, as such fact, if a defence in law, should be presented as such to the Medical Council. (3) An inquiry held under statutory authority by the Medical Council of the Ontario College of Physicians and Surgeons, into a charge of professional misconduct against a registered practitioner is not a "prosecution" within the meaning of sec. 59 of the Ontario Medical Act, R.S.O. 1897, ch. 176, and therefore the time limitation which that section provides does not apply to same. (4) An objection that the statutory requirement of two weeks' notice in respect of some of the charges before the Council had not been complied with, is answered by the fact of an adjournment for that length of time before taking the evidence pertaining thereto. (5) The provisions of the Ontario Medical Act for debarring from medical practice physicians guilty of criminal offences and other professional misconduct are enactments of civil law and not of criminal law and are not ultra vires of the provincial legislature. (6) The proceedings before the Medical Council are civil proceedings, and the medical practitioner whose professional conduct is under review before the Council cannot set by way of estoppel his previous acquittal by a Criminal Court, and thereby prevent the question of his guilt or innocence being gone into, if such question is material. (Per Riddell, J., in Court below.) (7) The acquittal on a criminal trial under Cr. Code, sec. 303 for unlawfully operating to procure a woman's miscarriage is not a bar to the statutory proceedings under the Ontario Medical Act, involving the same act as infamous or disgraceful conduct in a professional respect, to strike the name of the defendant off the register of physicians and surgeons. (Per Riddell, J., in Court below.) Re Stinson and Medical Council, 18 Can. Cr. Cas. 396.

PRACTISING WITHOUT LICENSE; ALBERTA STATUTE.

The Effect of sec. 63a, of the Medical Profession Act, Alta. (amendment of 1911-12), is that a person who professes to practise

medicine is to be held to actually practise; therefore an information or conviction is not irregular for charging that the accused "practised or professed to practice medicine and surgery," such allegation being merely a statement of different modes of the offence within the curative provisions of Cr. Code, sec. 725. [R. v. McDonald, 6 Can. Cr. Cas. 1; R. v. Brine, 8 Can. Cr. Cas. 54, and R. v. Brouse, 21 Can. Cr. as. 17, 9 D.L.R. 478, followed.] A medical student who himself prescribes for patients of the registered physician in the Province of Alberta, with whom he is associated as an assistant, and does such acts as would constitute the practise of medicine if done wholly on his own account, is liable for unlawfully practising medicine in contravention of the Medical Profession Act, 1906, Alta., ch. 28, as amended by 1911-12 Alta., ch. 27, although he receives no renumeration from the registered practitioner for his work other than being supplied by the latter with free board and lodging. Re Wagner, 25 Can. Cr. Cas. 406.

UNLAWFUL PRACTICE; CHIROPRACTIC; SASKATCHEWAN MEDICAL ACT.

Chiropractic treatment for disease is within the prohibition of the Medical Profession Act, R.S.S. 1909, ch. 106, sec. 64, if given by an unlicensed person for hire, gain or hope of reward; and a chiropractic doing business for gain is properly convicted if he has not been registered under the provisions of that Act. R. v. McSloy, 26 Can. Cr. Cas. 381, 31 D.L.R. 726.

ILLEGAL PRACTICE; LICENSE; SUMMARY CONVICTION; PARTNERSHIP; MEDICAL PROFESSION ACT.

A summary conviction for illegal practice of medicine without a license is not to be made against a partnership firm in the firm name at least without shewing who the individuals are who compose the firm. An adjudication of imprisonment in default of paying a fine must state who the parties are who are liable to such imprisonment. Re Roske & Messenger, 30 Can. Cr. Cas. 393.

MENACES.

See also Threats; Extortion.

Meaning of "menace." 1 Can. Cr. Cas. 54.

DEMAND WITH; THREAT OF PROSECUTION.

(1) A demand of money from a hotelkeeper under threat of prosecution for selling intoxicating liquor in prohibited hours contrary to a liquor license statute if the demand be not complied with, may constitute the offence under Cr. Code, sec. 404, of demanding money with menaces with intent to steal the same. (2) A threat of prosecution for selling liquor during prohibited hours made to a licensee, who to the knowledge of the prisoner had been previously convicted of an offence under the liquor license laws and who was therefore liable to a cancellation of his license, as well as to heavy penalties if again convicted, is such a threat as is calculated to do him harm and as would be likely to affect any man in a sound and healthy state of mind, and any such threat is an illegal menace. R. v. Gibbons, 1 Can. Cr. Cas. 340.

LETTERS; REASONABLE AND PROBABLE CAUSE.

(1) On a charge of delivering a letter demanding property with menaces and without reasonable and probable cause (Code, sec. 403), the question as to whether the demand was made without reasonable and probable cause is one of fact for a jury. (2) The onus of proof is upon the prosecution to prove a want of reasonable and probable cause, in a charge of demanding property with menaces. R. v. Collins, 1 Can. Cr. Cas. 48.

VERBAL THREATS TO BURN BUILDINGS.

Threats verbally made to burn the complainant's buildings are not indictable under the Criminal Code, and gives rise only to proceedings to force the offender to give security to keep the peace. Ex parte Welsh, 2 Can. Cr. Cas. 35.

DEMAND WITH MENACES; THREATENING THE ARREST OF DEBTOR.

(1) To demand and obtain possession of goods from a debtor for the purpose of holding them as security for a debt actually owing, is not a demand with menaces made with "intent to steal," although such possession is obtained by means of an unjustified threat of the debtor's arrest made by the creditor's agent without any honest belief that the debtor was liable to arrest. (2) The procuring of possession of goods by a creditor by means of a threat of the debtor's arrest does not constitute "theft" or "stealing" under Cr. Code, sec. 305, if done only for the purpose of holding the goods as security for an overdue debt, as in such case the taking is with "colour of right." R. v. Lyon, 2 Can. Cr. Cas. 242.

THREATENING LETTER; ACCUSING OF OFFENCE WITH INTENT TO EXTORT.

The "offence" to accuse, or threaten to accuse, a person whereof with intent to extort or gain anything from him is made an indictable offence by Cr. Code, sec. 406, need not be an offence under the Code or other Dominion law, but may be an offence under a provincial law. R. v. Dixon, 2 Can. Cr. Cas. 589.

[Referred to in R. v. Cornell, 8 Can. Cr. Cas. 416, 6 Terr. L.R. 105.]

MENS REA.

See Intent.

MILITARY LAW.

See also Soldiers; Aliens.

Desertion from military law. 26 Can. Cr. Cas. 218.

LIMITED APPLICATION OF THE ARMY ACT AND THE KING'S REGULATIONS TO CANADIAN VOLUNTEER CORPS; REFUSAL OF COMMANDING OFFICER TO CALL "VOLUNTARY PARADE" OF REGIMENT; ARREST BY DIRECTION OF SERVICE OFFICER; COURT MARTIAL.

(1) An officer in command of a volunteer militia is under no obligation to call out his regiment at the instance of his senior officer for a drill or parade for which no pay is allowed to the men, and his arrest at the order of such senior officer for failing to do so is illegal and the senior officer is liable in damages therefor. (2) Absence of malice on the part of the defendant and probable cause of believing himself justified do not constitute a defence to an action for false arrest, although material as affecting the measure of damages. Cole v. Cooke, 8 Can. Cr. Cas. 300.

UNDISCHARGED MEMBER OF PERMANENT CORPS IN CANADIAN MILITIA; ARREST FOR MILITARY OFFENCE AFTER EXPIRATION OF TERM OF ENLISTMENT.

An undischarged member of the permanent corps of the Canadian militia remains subject to military law and to trial by court-martial for a military offence committed while he remained in the service after the expiration of his term of enlistment. Re Harris, 15 Can. Cr. Cas. 375.

OBSTRUCTING REGIMENT ON MARCH; STREET CAR AT STREET CROSSING; ACCIDENTAL OBSTRUCTION.

Where the alleged obstruction of a regiment on parade by an electric car of which the accused was the motorman, appears on the rehearing on appeal to have been accidental, the Court will reverse the summary conviction. The King v. McIntosh, 17 Can. Cr. Cas. 295.

DESERTION; EVIDENCE.

Under the Order-in-Council of January 6, 1916, the proof of engagement for overseas service by the soldier charged with being absent without leave is complete on production of the signed enlistment paper and proof that the accused had been passed as fit for military service and that the military unit had been regularly established; and prima facie proof of absence without leave may be made by the production of a letter to that effect from the officer commanding the Military District; it is no answer for the accused to shew at the trial that the age he gave at enlistment as under 45 was incorrect and that he was over that age. [See Annotation on Military Desertion Law at end of this case.] R. v. Poulin, 26 Can. Cr. Cas. 216, 31 D.L.R. 14.

MILITIA; DESERTION FROM; CHARGE BEFORE STIPENDIARY; ABSENT WITHOUT LEAVE.

A charge of desertion and being absent without leave under par. 13 of the Canadian order-in-council passed 9th November, 1917, may be the subject of summary conviction as regards the absence within the six months preceding the information although charged to have continued from a prior date. R. v. Graves, 30 Can. Cr. Cas. 279; 43 D.L.R. 696.

MINING.

ILLEGAL SALE OF UNSMELTED ORE; SALE WITHOUT ANY MINE OWNER'S AUTHORITY.

(1) Where unsmelted ore is turned over to a smelter proprietor by a person having no mine owner's authority under Code, sec. 424, upon an agreement to pay for the silver realized on smelting, the transaction is not a sale merely of the refined silver but of the crude ore, and is an offence under Code, sec. 424. The King v. Barber, 17 Can. Cr. Cas. 236.

MISCHIEF.

Injury to trees, 8 Can. Cr. Cas. 396.

CONVICTION FOR; INSUFFICIENCY.

Held, that a conviction purporting to be under Consol. Stat. C. ch. 93, sec. 28, 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, etc., without alleging damage to any property, real or personal, and without finding damage to any amount, was bad, and the conviction was therefore quashed. Regina v. Caswell (1870), 20 U.C.C.P. 275.

KILLING CATTLE; INTENT.

On a charge of unlawfully and maliciously killing cattle it appeared that the animal was killed by the prisoners, when it was in a helpless and dying condition, and that the prisoners thought it was an act of mercy to kill it:—Held, that the killing was not malicious, that the implication of malice was rebuttable, and had been in fact rebutted, a mens rea on the part of the prisoners being disproved. Power of the trial Judge to refuse a particular verdict considered. The Queen v. Mennel et al., 1 Terr. L.R. 487.

MALICIOUSLY DESTROYING RECORD OF POLICE COURT.

Held, also, that maliciously destroying an information or record of the Police Court is felony within the same Act. Regina v. Mason (1872), 22 U.C.C.P. 246.

CONVICTION NOT ALLEGING THE PARTICULAR ACT DONE BY DEFENDANT.

A summary conviction under R.S.C. ch. 168, sec. 59, alleged, the words of the statute, that the defendant unlawfully and maliciously committed damage, injury, and spoil to and upon real and personal property of the Long Point Company:—Held, that this was not sufficient without its being alleged what the particular act was which was done by the defendant which constituted such damage, etc., and what the particular nature and quality of the property, real and personal, was in and upon which such damage, etc., was committed; and the conviction was quashed for uncertainty. Regina v. Spain (1889), 18 O.R. 385.

MALICIOUS INJURIES TO PROPERTY ACT; PROCEDURE THEREUNDER.

One of the sections of the Act respecting Malicious Injuries to Property enacted that an offender should on summary conviction be liable to a penalty not exceeding $100 over and above the amount of injury done or to three months' imprisonment. A conviction thereunder adjudged the defendant "to forfeit and pay the sum of $5 as a penalty, together with $50 for the amount of injury done as compensation in that behalf:"—Held, that it was not the intention of the section in question that there should be two separate penalties, but that one penalty should be fixed by first ascertaining the amount of damages and then adding to that amount such sum, not exceeding $100, as the justice should deem proper; and that it was, therefore, beyond the jurisdiction of the justice to award a sum "as compensation." Held, also, that the words "as compensation in that behalf" could not be struck out as surplusage under the power of amendment given by section 80 of the Summary Convictions Act, and the $50 be treated as part of the penalty, inasmuch as the effect of such an amendment would be to punish the offender, not according to the conviction of the magistrate, but according to the conviction as amended by the Court, which was not the intention of that provision. The conviction also adjudged the payment of a sum for costs which comprised several items, which exceeded the amounts allowed therefor by the tariff fixed by the Summary Convictions Act as amended by 52 Vict. (1889), ch. 45, sec. 2, or were not mentioned in the tariff. Held, that the conviction was therefore bad, and that it could not be amended by striking out the charges improperly made. The conviction also adjudged in default of payment, imprisonment for three months. Held, that sec. 68 of the Summary Convictions Act applied, and that, inasmuch as the penalty imposed together with the costs did not exceed $25, two months was the maximum term of imprisonment which could be imposed. It being contended that the Court had no power on appeal to quash a conviction for defects or errors appearing on the face of the conviction. Held, that the Court had such power. [McLennan v. McKinnon, 1 O.R. 219, on this point not followed.] Regina v. Tebo (1889), 1 Terr. L.R. 196.

WILFUL DAMAGE TO PROPERTY; OUSTER OF JURISDICTION OF MAGISTRATE; "COLOUR OF RIGHT."

(1) The "colour of right" on the part of the defendant, which under Cr. Code, sec. 481 (2), removes the criminal character of an act of damage to property, means an honest belief in a state of facts, which if it actually existed, would constitute a legal justification or excuse. (2) Proof of such "colour of right," in respect of the destruction of a fence complained of under Part XXXVII. of the Cr. Code, ousts the jurisdiction of the magistrate to summarily try the charge under sec. 507. The King v. Johnson, 8 Can. Cr. Cas. 123.

[Referred to in R. v. Watier, 17 Can. Cr. Cas. 9; followed in R. v. Daigle, 15 Can. Cr. Cas. 58.]

WILFUL INJURY TO PROPERTY; SUMMARY CONVICTION; NATURE OF PROPERTY AND OF DAMAGE; UNCERTAINTY IN CONVICTION.

Upon a summary conviction under Code, sec. 511 for wilful injury to property, it is necessary that the conviction should specify the particular act done and the nature of the property damaged, otherwise the conviction will be void for uncertainty and will not support a commitment in similar terms. The King v. Leary, 8 Can. Cr. Cas. 141.

WILFULLY DAMAGING AN "ARTIFICIAL INLAND WATER," MEANING OF.

A drainage ditch filled with water is not an "artificial inland water" within the meaning of Code, sec. 499 (C), sub-sec (c), making it an indictable offence to wilfully destroy or damage any inland water or canal. The King v. Braun, 8 Can. Cr. Cas. 397.

WILFUL DESTRUCTION OF FENCE; COLOUR OF RIGHT.

(1) "Colour of right" as a defence in a prosecution for damage to property means an honest belief in the existence of a state of facts which, if it actually existed, would at law justify or excuse the act done. (2) Where the law absolutely prohibits a particular act, ignorance of that law does not constitute "colour of right," in respect of the doing of the prohibition act. (3) Where it appears in a criminal prosecution under Code, sec. 530, for damage to fences that the defendants had "colour of right" as to part only of the fences destroyed and that they could not reasonably have supposed

that the destruction of the remainder of the fence was necessary for the assertion of their supposed right of way, the defendants may be summarily convicted of such excess and ordered to pay compensation in respect thereof. The King v. Daigle, 15 Can. Cr. Cas. 55.

[Referred to in Watier, R. v., 17 Can. Cr. Cas. 14, and see R. v. Tebo, supra, 1 Terr. L.R. 196.]

WILFUL DAMAGE; UNAUTHORIZED CASTRATION OF STRAY STALLION.

(1) The unauthorized castration of a stallion is a damage by maiming or wounding, and if done wilfully and with malicious intent constitutes an offence under Code, sec. 510, as to mischief. (2) Legal malice is essential to the offence of "wilful destruction or damage" of property under Code, sec. 510. The King v. Kroesing, 16 Can. Cr. Cas. 312.

MISCHIEF TO MINES; "COLOUR OF RIGHT;" HONEST BELIEF.

An honest belief on the part of the accused that he had a moral right to do the act charged as mischief will not alone constitute "colour of right" so as to exempt him from criminal liability; there must be a fair and reasonable supposition of right in view of what the accused actually knew and of what he ought to have known. [R. v. Daigle, 15 Can. Cr. Cas. 55, referred to.] The King v. Watier, 17 Can. Cr. Cas. 9.

WILFUL DAMAGE; FAIR CLAIM OF RIGHT; JURISDICTION.

Where rural municipalities had a statutory right to open temporary roads across private property and the municipal council had passed a resolution purporting to give the defendant and her agents the right to cross the informant's land in pursuance of which defendant instructed her agent to cross the land with a load of hay, believing that she had the right to do so, an inference is raised that the defendant acted under a fair and reasonable supposition of right (Cr. Code, sec. 540), displacing the liability to summary proceedings under Cr. Code, sec. 539, for wilful injury to property; and where there was no evidence to the contrary, the justices were without jurisdiction and their summary conviction of defendant was quashed on certiorari. R. v. Adamson, 25 Can. Cr. Cas. 440.

MONOPOLY.

RESTRAINT OF TRADE; PRICE RESTRICTION AGREEMENT.

A price restriction agreement between the wholesaler and the retail dealer whereby the latter was to sell certain goods bought from the wholesaler only at prices therein stated, will not be enforced because of its illegality under Criminal Code, sec. 498, if its stipulations are such as unreasonably to enhance the price of the goods to the purchasing public. [Wampole v. Karn, 11 O.L.R. 619; Weidman v. Shragge, 20 Can. Cr. Cas. 117, 46 Can. S.C.R. 1, 2 D.L.R. 734 followed; Elliman v. Carrington, [1901] 2 Ch. 275; Miles Medical v. Park, 220 U.S. 373, referred to.] Stearns v. Avery, 24 Can. Cr. Cas. 339.

COMBINATION IN RESTRAINT OF TRADE: PURCHASE OF ASSETS OF SOLE COMPETING COAL MINING COMPANY; CONSPIRACY.

An agreement between a company owning coal areas and the company operating its mines on a royalty rental to purchase the mines of their sole local competitor for the purpose of closing them and so of obtaining a virtual monopoly in the district is an illegal combination in restraint of trade under Cr. Code, sec. 498 (*d*) in unduly preventing or lessening competition in a commercial commodity if the purchase was not reasonably necessary for the protection of the business interests of the parties to it; nor is it sufficient to protect the transaction that otherwise the high rate of earnings and the consequent dividend rate of the purchasing companies might not be maintainable. [Weidman v. Schragge 20 Can. Cr. Cas. 117, 2 D.L.R. 734, 46 Can. S.C.R. 1, followed.] Stewart v. Thorpe (No. 1), 27 Can. Cr. Cas. 409, varied in 28 Can. Cr. Cas. 218, 36 D.L.R. 752.

BUYING OUT COMPETITOR; COMBINATION IN RESTRAINT OF TRADE; CR. CODE, SEC. 498.

An arrangement between coal companies for the purpose of buying out a competitor is not illegal under sec. 498 (*d*) of the Criminal Code as tending to unduly prevent or lessen competition. That sub-section applies to arrangements among persons who remain in the business, as to the method by which they will carry it on and to regulations among themselves so as to lessen competition, and not to an arrangement to buy out the property of a competitor who is left free to acquire other properties and so to continue in competition with his vendees. Stewart v. Thorpe (No. 2), 28 Can. Cr. Cas. 218, 36 D.L.R. 752, varying 27 Can. Cr. Cas. 409.

UNDUE RESTRAINT OF TRADE; CR. CODE, SEC. 498.

The mere fact that for a consideration which was reasonable, the owner of a salt works and plant should agree to give the sole and exclusive control for a limited period to another person of those works and plant, retaining only a right to manufacture for the local trade and sell to that trade at prices to be fixed by the purchaser of the control of the salt works, does not make such an agreement illegal ex facie

under sec. 498 of the Criminal Code. [Attorney-General of Australia v. Adelaide S.S. Co., [1913] A.C. 781, applied.] MacEwan v. Toronto General Trusts Co. 28 Can. Cr. Cas. 387, 35 D.L.R. 435, reversing 29 D.L.R. 711, 36 O.L.R. 244.

MOTOR VEHICLE.

See Automobile.

MUNICIPAL BY-LAW.

Regulating storage of petroleum products, see Constitutional law.

Regulation of hawkers and peddlers, see Peddlers.

Infraction of; Who may prosecute. 1 Can. Cr. Cas. 81.

Municipal by-law; Negativing exception; Amendment; Note on. 3 Can. Cr. Cas. 385.

Harbouring unlicensed dog; Separate property of wife; Liability of husband. 7 Can. Cr. Cas. 465.

By-law requiring pool rooms to be closed on Sundays; Powers of provincial legislatures. 9 Can. Cr. Cas. 453.

PROHIBITING EXHIBITIONS BY SHOW MEN.

A city by-law, passed under sub-sec. 25 of sec. 489 of the Con. Mun. Act (1892), 55 Vict. ch. 42 (O.), prohibited exhibitions of wax works, menageries, circus riding, and other such life shows, usually exhibited by show men:—Held, that this would not support a conviction for exhibiting a machine called a merry-go-round, as constituting no offence under the by-law or statute. Regina v. Whitaker, 24 O.R. 437.

PROOF OF.

Proof of a municipal by-law cannot be made by affidavit on a prosecution for an offence thereunder. R. v. Banks, 1 Can. Cr. Cas. 370.

REASONABLENESS; SUNDAY OBSERVANCE.

A municipal by-law as to Sunday observance which exceeds in its prohibition the terms of the provincial law by including classes of persons not included by the latter is too wide in its scope, and is void for unreasonableness. R. v. Petersky, 1 Can. Cr. Cas. 91.

WHOLESALE TRADER; LICENSE.

A manufacturer of clothing who sells the manufactured goods in quantities to be resold by his vendees by wholsale, is a wholesale trader within the meaning of a municipal license law imposing a tax, with penalty for default in payment, upon every person carrying on the business of a "wholesale merchant or trader." R. v. Pearson, 1 Can. Cr. Cas. 337.

ENACTING CLAUSE TOO EXTENSIVE.

A summary conviction under the Ontario Municipal Act for peddling without a license is bad if the municipal by-law, although reciting the exceptions contained in the proviso of sec. 583 (14), is not so limited as regards its enacting sections. R. v. Smith, 3 Can. Cr. Cas. 383.

[Referred to in R. v. McGuire, 13 Can. Cr. Cas. 326.]

POLICE OFFICER PROSECUTING FOR BENEFIT OF MUNICIPALITY.

Where a prosecution is instituted by a police officer in his own name as informant, in respect of an offence against a municipal by-law, the police officer is personally a party both to the proceedings before the magistrate and to the appeal from his decision and the municipal corporation is not properly named as a party to such appeal, nor can costs be awarded in favour of the corporation. Bothwell v. Burnside, 4 Can. Cr. Cas. 450.

TRANSIENT TRADERS BY-LAW; DESCRIPTION OF OFFENCE.

In order to support a summary conviction under a municipal by-law passed under the transient traders' clause of the Ontario Municipal Act, R.S.O. 1897, ch. 223, sec. 583 (30-33), the proceedings must shew either that the accused is a transient trader or that he occupied premises in the municipality for a temporary period. R. v. Roche, 4 Can. Cr. Cas. 64.

[Referred in R. v. Murdock, 4 Can. Cr. Cas. 92.]

MUNICIPAL BY-LAW AGAINST SUNDAY TRADING; CARRYING ON RETAIL BUSINESS; TRIFLING SALE; UNREASONABLY LARGE FINE IMPOSED.

Where an unreasonably large fine has been imposed by a magistrate under a municipal by-law for a trifling offence thereunder, the Court having jurisdiction to retry the case on appeal may set aside the conviction and reconvict with a lesser penalty. Sing Kee v. Johnston, 5 Can. Cr. Cas. 454.

TRANSIENT TRADER'S LICENSE BY-LAW; PROSECUTION OF PERSON IN SAME TRADE AS MAGISTRATE; DISQUALIFICATION.

A magistrate who is engaged in the same kind of business as a trader prosecuted under a transient trader's license law is thereby disqualified from adjudicating upon the charge. The King v. Leeson, 5 Can. Cr. Cas. 184.

TRANSIENT TRADERS' LICENSE; GOODS ORDERED TO BE MADE FROM SAMPLES; "OFFERING GOODS FOR SALE," MEANING OF.

(1) The Ontario Municipal Act, R.S.O. 1897, ch. 223, sec. 583, does not require a transient traders' license from a person who engages a room at a hotel and there solicits orders for clothing to be made up from samples of cloth exhibited, and to be forwarded when made up to the customer.

(2) Such a person is not a "hawker" or "pedlar" under the Municipal Act, and a transient trader cannot be said to "offer" goods for sale within the meaning of the statute unless there is some visible presentation of the goods themselves which are the subject of the sale. (3) The Ontario statute 2 Edw. VII. (1902), ch. 12, sec. 14, which declares that no conviction under the Ontario Summary Convictions Act shall be removed by certiorari except upon the ground that an appeal would not afford an adequate remedy does not prevent the granting of the writ where the magistrate had no jurisdiction over the matter adjudicated. The King v. St. Pierre, 5 Can. Cr. Cas. 365.

[Discussed in R. v. Cook, 14 Can. Cr. Cas. 498.]

SUNDAY OBSERVANCE BY-LAW; VALIDITY.

(1) A municipality has the power under sec. 50, sub-secs. 109 and 110 of the Municipal Clauses Act of British Columbia to pass a by-law closing any kind of licensed premises, except saloons. (2) A municipality is not empowered by sec. 7 of the Liquor Traffic Regulation Act (B.C.) to pass any closing by-law, the intention of the section being to prohibit the sale, inter alia, during such hours as may be prescribed by the municipality under the authority of some other statute. (3) Where a statute creates offences and provides the necessary machinery for the carrying out of its provisions, a by-law to put it in force is unnecessary and bad. Hayes v. Thompson, 6 Can. Cr. Cas. 227.

[Followed in Re Maloney v. City of Victoria, 13 B.C.R. 194; 9 B.C.R. 249.]

SUNDAY OBSERVANCE; MONTREAL CITY BY-LAW AS TO PETTY TRADING; BY-LAW INVALID FOR UNREASONABLENESS.

Montreal City By-law, No. 281, permitting the sale on Sunday of "fruits, cigars, confectionery and temperance beverages" by all persons who sell all these things and are not engaged in trade is invalid as arbitrary and unjust because it does not authorize the sale of tobacco as well as cigars, and because it does not extend to all persons who are engaged in the same business. City of Montreal v. Fortier, 6 Can. Cr. Cas. 340.

TRANSIENT TRADERS; LICENSE; UNCERTAINTY IN CONVICTION.

(1) A butcher, selling meat periodically at a particular place in a municipality in which he is neither resident nor assessed, is a "transient trader" within the Ontario Municipal Act, sec. 583 (30). (2) A summary conviction in Ontario for violation of a "transient trader's by-law" should not be quashed for uncertainty in not specifying the date of the offence or the particular place within the municipality at which the selling took place, if such particulars appear from the depositions, such defects being amendable under 2 Edw. VII. (Ont.) ch. 12, sec. 15. The King v. Myers, 7 Can. Cr. Cas. 303.

VACCINATION; PUBLIC HEALTH REGULATIONS; UNREASONABLE REQUIREMENT.

A by-law holding the manager of a business establishment liable, under pain of fine or imprisonment, for allowing his employees to visit any factory or business establishment in the city unless such employee is provided with a vaccination certificate, is invalid for unreasonableness. City of Montreal v. Garon, 7 Can. Cr. Cas. 358.

EARLY CLOSING BY-LAW; BY-LAW IN EXPRESS TERMS OF STATUTE; REASONABLENESS; CONSTITUTIONAL LAW; POWER TO REGULATE HOURS FOR THE KEEPING OPEN OF RETAIL STORES.

(1) A municipal by-law is not invalid upon the ground of its being unreasonable or oppressive or in restraint of trade, if passed in the express terms of a statute under which the legislature delegated to municipal councils the power to pass by-laws in respect to the subject matter. (2) The question of reasonableness is in such cases solely for the legislature if the subject matter is within its legislative power. (3) The Shop Regulation Act of Manitoba, which purports to authorize municipalities to limit the hours in which shops shall be kept open for the sale of goods by retail is intra vires of the provincial legislature as a matter of merely local nature under the British North America Act. The King v. Schuster, 8 Can. Cr. Cas. 354.

GAMING; POLICE POWER; SUPPRESSION OF GAMBLING HOUSES.

Even if a provincial legislature has authority to authorize municipalities to pass by-laws "for suppressing gambling-houses," a municipal by-law assuming to prohibit a person from allowing a game of cards to be played for money in his house is invalid as being in excess of the power delegated. The King v. Spegelman, 9 Can. Cr. Cas. 169.

KEEPING BILLIARD ROOM OPEN IN PROHIBITED HOURS; UNCERTAINTY; TIME OF OFFENCE.

(1) A conviction for refusing to close a billiard room after a closing hour fixed by a municipal by-law which applied to Saturdays only is bad if it does not shew on its face that the offence took place on a Saturday. (2) A conviction for keeping a billiard room open contrary to a municipal by-law "after the hour of half-past eight" is bad unless it specifies whether the time was in the morning or evening, if the by-law applies to the evening only. (3) A conviction under a by-law must shew on its face whether the date of the alleged offence was before or after the by-law came

into operation. Re Fisher, 9 Can. Cr. Cas. 451.

[Distinguished in R. v. Baird, 13 Can. Cr. Cas. 243.]

CAB STANDS; RESTRICTION OF USE OF STREET BY "UNENGAGED" CABS; CABS WAITING AT HOTEL UNDER CONTRACT WITH HOTEL COMPANY; PAYMENT OF NOMINAL HIRE UNTIL USED.

A cabman is not liable under a municipal by-law prohibiting cabs standing on the street while "waiting for hire or engagement or while unengaged," if in fact he is kept waiting at the door of an hotel for the exclusive use of guests thereof under contract with the hotel proprietor. The King v. Maher, 10 Can. Cr. Cas. 25.

MUNICIPAL HEALTH REGULATIONS; DEPOSIT OF REFUSE; OWNER AS WELL AS TENANT OCCUPYING LIABLE TO CONVICTION; NOTICE OF DEFAULT NOT REQUIRED.

Under legislative authority to a municipality to regulate and prevent the depositing of refuse in yards and to require the owner or occupant to remove the same, a by-law is valid which makes both the owners and occupants responsible; and the owner is liable to summary conviction in default without notice from the municipality previous to the summons, although the premises are in possession of his tenant. Beauchamp v. City of Montreal, 10 Can. Cr. Cas. 50.

LICENSE AND REGULATION OF LIVERY STABLE KEEPERS; BY-LAW TO COMPEL HIRER TO PAY DAMAGES DONE TO VEHICLE INVALID.

A municipal council having power to license and regulate livery stable keepers has no jurisdiction to pass a by-law providing for the summary conviction and fining of the hirer for refusal to pay the amount of damage done to the horse or vehicle hired while in his use and possession. The King v. Alford, 10 Can. Cr. Cas. 61.

STREET OBSTRUCTION; SHOP WINDOW EXHIBITION; NUISANCE; DEVICE TO ATTRACT A CROWD.

A merchant who procures the celebration of a marriage in his shop window in public view from the street for advertising purposes, and thereby draws a crowd and causes the street to be obstructed, is properly convicted under a municipal by-law prohibiting devices or performances tending to the collection of persons on the streets. Workman v. City of Montreal, 10 Can. Cr. Cas. 121.

REGULATING SALE OF COAL AND WOOD; DELIVERY WITHIN MUNICIPALITY UPON CONTRACT MADE ELSEWHERE; ONTARIO MUNICIPAL ACT.

A by-law under the Ontario Municipal Act cannot impose a fine for failure to weigh coal and wood on market scales, in cases where the delivery within the municipality is maded in pursuance of a contract made elsewhere. The King v. Woollatt, 11 Can. Cr. Cas. 19.

KEEPING BILLIARD TABLES, ETC., FOR HIRE OR GAIN; LICENSING LAW; HOUSE OF PUBLIC ENTERTAINMENT.

(1) The collection by an incorporated club from such of its shareholders as used the club billiard tables and bowling alleys of charges based on the number of games played, the receipts from which were applied in payment of club expenses, does not prove a "keeping for hire or gain" by the club. (2) An incorporated club to the privileges of which only its shareholders are admitted, is not a house of public entertainment or resort within a licensing by-law passed under the Ontario Municipal Act. The King v. Dominion Bowling and Athletic Club, 15 Can. Cr. Cas. 105.

LEGISLATIVE POWERS; LORD'S DAY ACT; CLOSING OF PLACES OF AMUSEMENT ON SUNDAY.

(1) Although an Act to prevent the profanation of the Lord's Day is, in a broad sense, an Act in a criminal matter exclusively within the legislative competence of the Parliament of Canada, a provincial legislature may for the maintenance of good order in municipalities, authorize the latter to order by by-law the closing, during Sunday, of theatres, moving picture shows or other entertainments to which the public is admitted. (2) A by-law which prohibits the "taking part and assisting" at these shows, etc., under penalty of a fine, applies to those who pay the admission fee and attend as spectators. (3) The Quebec statute 9 Edw. VII., ch. 80, sec. 7, authorizing such by-law, is valid as a mere modification of the Quebec statute 7 Edw. VII. ch. 42, the right to enact which was reserved to the Province by the Dominion Lord's Day Act. Tremblay v. City of Quebec (No. 1), 16 Can. Cr. Cas. 253.

[Discussed in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 500.]

LEGISLATIVE POWER BEFORE CONFEDERATION; EFFECT OF FEDERAL LAWS.

(1) A municipal by-law of the City of Quebec which orders the closing, on Sunday, of theatres and moving picture shows under penalty, is valid under the peace, order and good government clause of the city charter granted by the late Province of Canada before Confederation, and which is still in force. (2) Such charter and the municipal by-laws thereby authorized are a part of the provincial law within the saving clause (sec. 16) of the Federal statute, the Lord's Day Act, and are not repealed or varied by the latter statute. Tremblay v. City of Quebec (No. 2), 16 Can. Cr. Cas. 487.

CALLING "SCAB" TO PERSON WORKING IN STRIKER'S PLACE.

For a sympathizer with a body of striking workmen, while on a public street during the progress of a strike wherein it had been necessary to call troops to maintain peace and order, to call one who takes the place of a striker a "scab" or "a born scab" is a violation of a municipal by-law imposing a fine upon one who shall, while on a public street, use abusive, insulting and provoking language to any person thereon, since such language tended to incite disorder and public disturbance. The King v. Elderman, 19 Can. Cr. Cas. 445.

LEGISLATIVE POWERS; BY-LAW AS TO OFFENCE ALREADY MADE CRIMINAL.

A municipal by-law is ultra vires where it purports to provide a penalty for the identical offence which is already subject to penalty under a provision of the criminal law. The King v. Laughton, 20 Can. Cr. Cas. 30, 6 D.L.R. 47.

BY-LAW REGULATING "TRANSIENT TRADERS;" WHO IS A TRANSIENT TRADER; TAKING ORDERS.

(1) A person is not a "transient trader" requiring a municipal license as such under the Ontario Municipal Act, 1903, 3 Edw. VII., ch. 19, sec. 583, where, although not permanently resident within the municipality nor assessed therein, he takes orders for hair goods and toilet articles to be supplied directly to the public and not to the retail trade only, if the samples from which orders are solicited are not sold by him and the orders are taken and the business transacted at one place only (ex. gr. an hotel) and the orders so taken are addressed to a firm located in another municipality subject to acceptance or rejection by the firm after being transmitted to its place of business. [Rex v. St. Pierre (1902), 4 O.L.R. 76, followed.] (2) One who, though not a resident in a municipality, merely exhibits samples of, and takes orders for, his goods therein, the goods themselves not being within the municipality, does not "offer goods for sale," and is not a "transient trader," within the meaning of provisions of the Municipal Act, 1903 (Ont.), or of a municipal by-law passed thereunder. (3) In order to constitute an offence against a municipal by-law passed under the authority of the provisions of the Municipal Act relating to "transient traders," 3 Edw. VII. (Ont.), ch. 19, sec. 583 (30 and 31), the goods offered for sale must be goods in the municipality. (Per Britton, J.) The King v. Pember (No. 2), 20 Can. Cr. Cas. 60, 3 D.L.R. 347, affirming 20 Can. Cr. Cas. 57, 2 D.L.R. 542.

REGULATION OF MILK VENDORS; LICENSE; CLERICAL ERROR; REFORMATION.

Under an information for alleged violation of a sanitary by-law of a municipal corporation against an alleged licensed dairyman for selling milk in the year 1912 below a certain standard, where the defendant seeks to escape the provisions of the by-law upon the ground inter alia that his last license as a dairyman which he produced read for the year 1911 but it is shewn that the period which both the issuer of the license and the licensee himself had really intended to cover in the document was the year 1912, and that the variance was a mere clerical error, the license will be read as covering the year 1912 (not 1911) under the maxim, "Falsa orthographia non vitiat cartam." City of Regina v. Sharley, 20 Can. Cr. Cas. 164, 5 D.L.R. 877.

LICENSES; VEHICLES FOR HIRE; CHARACTER CERTIFICATE.

Statutory authority to a municipality to license and regulate the driving of cabs, hacks, motor cars and other vehicles plying for hire, does not authorize the municipality to limit licenses to such persons as are certified by the Chief of Police to be good moral character. [Slattery v. Naylor, 13 A.C. 446, referred to; and see Toronto v. Virgo, [1896] A.C. 88.] R. v. Sparks, 21 Can. Cr. Cas. 184, 10 D.L.R. 616.

REGULATION OF BUSINESS; PEDLARS AND HUCKSTERS; COUNTY BY-LAW.

A county by-law prohibiting hawking and peddling with a county without a license does not apply to a boundry road between two counties by virtue of secs. 433 and 439 of the Ontario Consolidated Municipal Act, 3 & 4 Geo. V. ch. 43, R.S.O. 1914, ch. 192, which provides that the soil and freehold of every highway shall be vested in the municipality or corporation that for the time being has jurisdiction over it, and that the councils of townships between which they run shall have joint jurisdiction over boundary roads, where it does not appear that the county council enacting such by-law ever assumed control of such boundary road under sec. 446 (3) of such Act. R. v. Hamilton, 22 Can. Cr. Cas. 57, 13 D.L.R. 898, affirmed in 22 Can. Cr. Cas. 154, 15 D.L.R. 150.

REGULATION OF LAUNDRIES; ULTRA VIRES.

When a Legislature interferes with a legitimate and necessary business or calling, the statutory power conferred upon a municipality must be clearly indicated and then specifically followed in any by-law passed thereunder, and a by-law providing that no building or structure of any kind shall be "constructed and used for a laundry or wash-house" within a specific portion of a municipality is ultra vires under a statute empowering the municipality to define the limits within which laundries or wash-

houses might be "established, maintained or operated." Where a statute confers upon a municipal council power to determine upon the expediency or necessity of measures relating to its affairs, its judgment upon matters thus committed to it, while acting within the scope of its authority, cannot be controlled by the courts, the decision of the council being, in the absence of fraud, final and conclusive, and in the creation of a restricted district for a lawful calling the question of expediency and necessity is for the municipal council and not for the court. [Kruse v. Johnson [1898] 2 Q.B. 91, applied.] A municipal by-law creating a restricted district for a lawful business or calling, e.g., laundries or washhouses, will be strictly construed. Glover v. Sam Kee, 22 Can. Cr. Cas. 297.

BY-LAW AGAINST DRUNKENNESS IN PUBLIC PLACES; REMEDYING OMISSION TO AFFIX SEAL; CONVICTION FOR OFFENCE PRIOR.

Because of the validating provisions of the Ontario Municipal Act, 1913, sec. 258 (3), R.S.O. 1914, ch. 192, sec. 258(3), in respect of municipal by-laws which were not duly sealed when passed, a summary conviction under an unsealed municipal by-law cannot be quashed, although the by-law was sealed only after objection taken before the magistrate at the hearing of the charge, as the effect of the statute is to permit the sealing to relate back to the date of passing the by-law. R. v. Faux, 23 Can. Cr. Cas. 75, 17 D.L.R. 718.

CABDRIVING REGULATIONS; LOITERING IN STREET; POLICE POWERS.

Whether or not the accused cabdriver loitered about the streets with his cab in contravention of a police commissioners' by-law subject to which he obtained his cab license, is a question of fact for the determination of the justice which will not ordinarily be disturbed on a motion to quash a summary conviction under the by-law. R. v. Aitcheson, 25 Can. Cr. Cas. 36.

TRANSIENT TRADERS; FRUIT PRODUCED IN ONTARIO CONSIGNED FOR SALE.

A fruit farmer who consigns a carload of fruit to his town agent and gives him written authority to sell the same on his account is not liable to conviction as a "transient trader" in respect of sales made to the public generally by the agent from the car at its destination, although he did not take out a "transient trader's" license under a town by-law passed in conformity with the Municipal Act, R.S.O. 1914, ch. 192, sec. 420: the words "transient traders and other persons whose names are not entered on the assessment roll, etc." which appear in that section mean transient traders and other trading persons, and do not include a farmer selling his own produce, although he may ship in carload lots to a far distant point in the province, nor is the farmer pro hac vice a trader within the meaning of the section read in conjunction with the exemptions of farmers' produce contained in other sections of the Municipal Act. R. v. Geddes, 25 Can. Cr. Cas. 198, 28 D.L.R. 378.

TRANSIENT TRADERS.

A conviction under a municipal by-law regulating transient traders can be supported only where the offence is within the precise terms of the by-law itself, although the powers of the municipality had been extended so as to enable it to regulate the acts relied upon as constituting the offence. R. v. Roche, 4 Can. Cr. Cas. 64, 32 O.R. 20; R. v. Preston, 1 O.W.N. 983, referred to.] R. v. Pure Milk Corporation Limited, 25 Can. Cr. Cas. 47.

REGULATION OF TRANSIENT TRADERS.

The mere delivery of goods within a municipality by a person employed to make delivery in accordance with customers' orders for fixed quantities given elsewhere, with the taking of which the defendant employee was not connected, will not support a conviction of such employee for conducting the business of a transient trader in contravention of a transient trader's by-law passed under the Municipal Act, R.S.O. 1914, ch. 192, sec. 420 (6). R. v. Borror, 25 Can. Cr. Cas. 97, 28 D.L.R. 377.

JURISDICTION; VALIDITY OF BY-LAW; CABMEN.

The recorder of the city of Montreal has no jurisdiction to declare null a municipal by-law or resolution passed by the City Council or by the police commission in a matter which is left to its discretion, on the ground that it is discriminatory and contrary to the public interest; the duty of the recorder is to ascertain if the by-law has been violated and to decide accordingly without considering any such question. A summary conviction which declares a cabman guilty of waiting for fares at a place other than that stated in his license, whilst the complaint against him stated merely that he had done so at a place other than a cabstand, is illegal and can be set aside by a certiorari under art. 1293 C.P. (Que.) if the complaint was not amended. Donnely v. Semple, 26 Can. Cr. Cas. 63.

CONSTITUTIONALITY; NOTICE OF ATTORNEY-GENERAL; RECORDER; JURISDICTION.

When in a suit before the Recorder's Court of the City of Montreal, the unconstitutionality of a municipal by-law and of a law of the Quebec Legislature purporting to authorise the city to adopt this by-law is raised, the recorder must not give judgment on the merits unless the notice required by article 114 of the Code of Procedure (Que.) had been given to the Attorney-General of the province; and if the recorder gives a final judgment on the ques-

tion without requiring that notice his judgment can be set aside on a writ of certiorari. City of Montreal v. Turgeon, 26 Can. Cr. Cas. 67, 29 D.L.R. 777.

COMMERCIAL TRAVELERS; LICENCE; REASONABLENESS; QUASHING CONVICTION.

A summary conviction under a municipal by-law imposing a license tax on commercial travellers selling direct to the consumer will be quashed on certiorari if the Court is satisfied by evidence that the license fee sought to be imposed is prohibitive. [R.S.S. ch. 84, sec. 184 and City Act 1915 (Sask.) ch. 16, sec. 204, considered.] R. v. Pierce, 26 Can. Cr. Cas. 140, 30 D.L.R. 753.

HEALTH REGULATIONS; BY-LAWS AS TO SALE OF MILK.

The City of Montreal has statutory authority under 14-15 Vict. 1851 (Can.) ch. 128, sec. 58 and under subsequent provincial statutes to pass a by-law to prohibit under penalty the sale in the city of adulterated or unwholesome milk, or milk not conforming to a specified standard; such by-law may be supported not only as a public health regulation but as warranted under the pre-Confederation statutes continued in force by sec. 129 of the British North America Act, 1867, until repealed or altered by competent legislative authority. Sec. 58 of the statute of the Province of Canada 1851, 14-15 Vict. ch. 128, which confers on the City of Montreal power to pass by-laws for the welfare, health and local government of the city, remains in force notwithstanding subsequent federal and provincial legislation upon those subjects; and a milk regulation by-law passed thereunder is not repugnant to the federal statutes dealing with the adulteration of foods. [See R.S.C. 1906, ch. 133.] Savaria v. Geoffrion, 27 Can. Cr. Cas. 36.

SMOKE REGULATION; RAILWAY ROUND-HOUSE.

The ventilating flue of a railway "round-house" used for the purpose of taking away the smoke emitted from locomotives standing in the round-house is not within clause 45 of sec. 400 of the Municipal Act, R.S.O. 1914, ch. 192, dealing with smoke regulation by-laws; and the railway company is not liable to conviction under a municipal by-law passed under clause 45 for the discharge of the smoke of locomotives through the round-house ventilating flue. [R. v. C.P.R., 24 Can. Cr. Cas. 226, 25 D.L.R. 444, followed.] R. v. Grand Trunk R. Co., 27 Can. Cr. Cas. 138.

LICENSES; SALES BY SAMPLE; COMMERCIAL TRAVELLERS.

Where the enabling statute authorizes a by-law to be passed by a city for licensing commercial travellers for nonresident traders selling directly to consumers, a by-law which is not restricted to nonresidents is ultra vires because it is broader than the statute authorizes, and a summary conviction thereunder will be quashed although the trader whom the accused represented was a nonresident. R. v. Pierce, 27 Can. Cr. Cas. 442, 34 D.L.R. 630.

TRANSIENT TRADERS; HAWKERS AND PEDLARS.

A man carrying goods in a motor-truck and selling them from place to place without localizing his trade in any particular place is a hawker or pedlar and not a "transient trader" within the licensing clauses of the Municipal Act R.S.O. 1914, ch. 192, sec. 420; and as a hawker he is exempt from the license fee under sec. 416 of that Act if he sells to retail dealers only. Rex v. Scales and Roberts, Limited, 30 Can. Cr. Cas. 82.

BY-LAWS; UNAUTHORIZED GARBAGE COLLECTION; SUMMARY CONVICTION.

A provincial legislature may authorize a city municipality to give the exclusive rights of garbage collection by contract to one person, and to authorize summary conviction proceedings against any other person collecting garbage in the city without its authority. R. v. Chadderton, 30 Can. Cr. Cas. 142.

CRIMINAL CODE OFFENCES; BY-LAWS; ULTRA VIRES.

A municipal by-law attempting to deal with and impose punishment for an offence already dealt with by the Criminal Code is ultra vires. R. v. Lorette, 30 Can. Cr. Cas. 238, 43 D.L.R. 129.

DEALT WITH BY DOMINION STATUTE; ULTRA VIRES.

When the Parliament of Canada in exercise of its power to legislate in regard to criminal matters has prohibited the doing of a certain act, a municipal by-law afterwards passed by which it is attempted to penalize the same act is ultra vires. Drapeau v. Recorder's Court, 30 Can. Cr. Cas. 249, 43 D.L.R. 309.

MUNICIPAL CORPORATION.

See Municipal by-law; Constitutional law.

MURDER.

See also Manslaughter; Homicide; Self-defence.

Administration of similar poison to another person as proving intent. 1 Can. Cr. Cas. 4.

Attempt to commit, cruelty to child; Evidence. 1 Can. Cr. Cas. 413.

By committing an abortion. 1 Can. Cr. Cas. 246.

Dying declaration as evidence. 1 Can. Cr. Cas. 351.

Motive, life insurance. 1 Can. Cr. Cas. 373.

Murder or manslaughter; Provocation. 4 Can. Cr. Cas. 61.

Dying declaration as evidence; Scope of declaration. 5 Can. Cr. Cas. 324.

Note on evidence by dying declaration. 5 Can. Cr. Cas. 328.

Murder or manslaughter; Omission to charge jury as to lesser offence on indictment for murder. 8 Can. Cr. Cas. 423, 439.

Proving the corpus delicti. 9 Can. Cr. Cas. 446.

EVIDENCE; RELEVANCY OF.

On a trial for murder, the death of the deceased was shewn to have been caused by his being stabbed by a sharp instrument. It was proved that the prisoner struck the deceased, but neither a knife nor other instrument was seen in his hand. For the prisoner evidence was offered that on the day preceding the homicide, the prisoner had a knife which could not have inflicted the wound of which deceased died; and that on that day, the prisoner parted with it to a person who held it until after the crime was committed. The learned Judge at the trial refused to admit this evidence:—Held, that the evidence was properly rejected. (Galt, J., dissenting.) Regina v. Herod (1878), 29 U.C.C.P. 428.

EVIDENCE OF AN ACCOMPLICE; CORROBORATION OF.

Prisoner being indicted for the murder of one H., the principal witness for the Crown stated that the crime was committed on the 1st of December, 1859, on a bridge over the river Don, and that the prisoner and one S. (who had been previously tried and acquitted) threw H. over the parapet of the bridge into the river. The counsel for the prisoner then proposed to prove by one D. that S. was at his place, fifty miles off, on that evening, but the learned Judge rejected the evidence, saying that S. might be called, and if contradicted might be confirmed by other testimony. S. was called, and swore that he was not present at the time, but he not being contradicted, D. was not examined:—Held, that the presence of S. was a fact material to the enquiry, and that D. therefore, should have been admitted when tendered; and, the prisoner having been found guilty, a new trial was ordered. Regina v. Brown (1861), 21 U.C.Q.B. 330.

PROOF OF MOTIVE; SIMILAR FACTS.

On a trial for murder, the alleged motive being the obtaining of insurance moneys on policies effected by the prisoner on the life of the deceased, evidence of the previous attempt by the prisoner to insure another person for his own benefit cannot be given in evidence against him. Regina v. Hendershott and Welter (1895) 26 O.R. 678.

REDUCING CHARGE TO ASSAULT; EFFECT.

Held, following Regina v. Bird, 2 Den. C.C. 94, and Regina v. Phelps, 2 Moo. C.C. 240, that on an indictment for murder the prisoner cannot be convicted of an assault under 32 and 33 Vict. ch. 29, sec. 5. Regina v. Canes et al. (1872), 22 U.C.C.P. 185.

MURDER OR MANSLAUGHTER; PROVOCATION.

(1) Although, by Cr. Code, sec. 229 (3) no one shall be held to give provocation to another by doing that which he had a legal right to do, it is for the jury, and not for the Judge, to determine any preliminary question of fact upon which the alleged legal right depends. (2) Where the facts shewn were that the prisoner had called at the house of the deceased and, on being forcibly ejected by the latter, drew a revolver and shot him, the jury have to consider whether the deceased before laying hands on the prisoner ordered him to leave the house, and gave him time to leave, and whether, if such were done, the violence used by the deceased in ejecting the prisoner was greater than was necessary for that purpose. (3) It is a misdirection for the trial Judge in such a case to charge that the deceased had a legal right to eject the prisoner as he did, and that therefore there was no provocation to reduce the crime from murder to manslaughter, and such a direction is the withdrawal from the jury of the questions of fact involved in the determination of the question of legal right, and entitled the prisoner to a new trial. R. v. Brennan, 4 Can. Cr. Cas. 41.

[Discussed in R. v. Barrett, 14 Can. Cr. Cas. 474, 1 S.L.R. 382; distinguished in R. v. Fouquet, 10 Can. Cr. Cas. 255, 262, 14 Que. K.B. 94.]

CONSTRUCTIVE MURDER; CONSPIRACY; ATTEMPT TO EFFECT UNLAWFUL ESCAPE BY FORCE OF ARMS; EVIDENCE OF COMMON DESIGN.

Where a package of revolvers was thrown into a carriage in which three prisoners conjointly charged with a crime were being conveyed under lawful arrest and the prisoners all struggled to obtain revolvers, two of them succeeding in doing so, whereupon all of them attempted to effect a forcible escape during which one of the peace officers was shot dead by one of the prisoners, but by which of them is unknown, proof that the defendant had one of the revolvers in the melee and had ordered another of the peace officers present to "give up" immediately after another of the prisoners had told the defendant to "give it to him" is, with such facts, sufficient evidence of a conspiracy by the three prisoners for an unlawful purpose, to wit, the escape, and of common design to use for its accomplishment any amount of violence and force; and a conviction of the defendant for murder is, therefore, proper without proof that he fired the fatal shot. It

was proper for the trial Judge to instruct the jury that "where all the parties proceed with the intention to commit an unlawful act and with the resolution or determination to overcome all opposition by force, that if by reason of such resolution one of the party is guilty of homicide, his companions would be liable to the penalty which he has incurred." The shooting of the constable by one of the conspirators, in the prosecution of such common purpose, was an act which was or ought to have been known to be a probable consequence of prosecuting such purpose, and each of the conspirators became under Cr. Code, sec. 61 (2) a party to the homicide. The King v. Rice, 5 Can. Cr. Cas. 509.

COMPLICITY OF TWO PERSONS JOINTLY INDICTED; PLEA OF GUILTY BY ONE PRISONER; ACQUITTAL OF OTHER PRISONER ON PLEA OF NOT GUILTY; SUBSEQUENT APPLICATION TO CHANGE PLEA OF "GUILTY" TO "NOT GUILTY."

Where two persons are jointly indicted for murder and one pleads guilty and the other not guilty, and the trial upon the latter plea results in an acquittal, leave should be granted the other defendant to change his plea of guilty to one of not guilty, if the circumstances of the case are such that the verdict of acquittal already given in respect of the one would be absolutely inconsistent with the guilt of the other who had pleaded guilty. The King v. Herbert, 6 Can. Cr. Cas. 214.

PRISONER'S EVIDENCE ON HIS OWN BEHALF; INFERENCE OF MOTIVE FROM DEMEANOUR OF ACCUSED.

(1) Where the accused charged with murder goes into the witness box on his own behalf, and then and there for the first time makes known his claim that he was a mere eye-witness of the murder, and that the principal witness for the prosecution had committed the deed, the trial Judge may properly direct the jury that they may draw inferences from the prisoner's previous silence on the matter of such claim, and consider whether the facts in evidence shewed the motive for such silence to be founded on a consciousness of innocence, ex. gr., that he would thereby better establish his innocence, or to be a design founded on a knowledge of guilt to advance a false defence at the last moment and to take the prosecution by surprise. (2) Even if the charge were erroneous in that respect, a new trial should not be granted if there was ample evidence of guilt apart from that question, and if, in the opinion of the Court of Appeal, no substantial wrong or miscarriage was occasioned by the error. (Cr. Code, sec. 746 (f)). (3) The trial Judge may, in his discretion allow the Crown to put in, in rebuttal, evidence contradictory of the evidence for the defence on a collateral fact, although it is in effect cumulative of the case in chief, and may allow the defence to call witnesses in reply to that so admitted for the Crown. The King v. Higgins, 7 Can. Cr. Cas. 68.

[Referred to in R. v. Pollard, 15 Can. Cr. Cas. 82, 19 O.L.R. 96, 103.]

INTERROGATION OF PRISONER BY POLICE OFFICER; PROOF THAT ANSWERS WERE VOLUNTARY; DIFFERENT CHARGE SUBSEQUENTLY PREFERRED.

(1) There is a distinction between confessions obtained before and after arrest, the arrest itself constituting an inducement or pressure upon the accused to speak; and in order to satisfy the onus upon the Crown of proving that a confession in answer to questions put by a constable to a prisoner was voluntary, it must be shewn that the accused was warned that what he said might be used against him. (2) A confession obtained from a person under arrest for theft in answer to questions put by a police officer without any warning being given to the prisoner is not admissible against him upon a charge of murder subsequently preferred. The King v. Kay, 9 Can. Cr. Cas. 403.

[Discussed in R. v. Hoo Sam, 19 Can. Cr. Cas. 269, 1 D.L.R. 569.]

CORPUS DELICTI; CIRCUMSTANTIAL EVIDENCE OF IDENTITY; TRIAL; RIGHT OF REPLY; COMMENT ON FAILURE OF ACCUSED TO TESTIFY.

(1) On a trial for murder, if the fact of the death of a human being is established by direct proof and the remains of the dead man have been so destroyed by fire that direct identification is impossible, circumstantial evidence is admissible to prove the identity of the remains and also the identity of the person who caused the death. (2) While the fact of death must always be established by direct proof, the fact of the killing by the defendant as alleged may be proved by circumstantial evidence supporting the charge beyond a reasonable doubt. (3) Crown prosecutors in the North-West Territories acting under instructions from the Department of Justice at Ottawa are within the provision of Code, sec. 661 respecting counsel acting on behalf of the Attorney-General or Solicitor-General and have the right to reply although no witnesses are examined for the defence. (4) A statement by the Crown counsel in his address to the jury that the prisoner's counsel "took the very best and wisest course in not having the prisoner go on the witness stand" and that he, the Crown counsel, thinks it was wise for the prisoner himself, is a comment unfavourable to the accused on his failure to testify on his own behalf and is within the prohibition of sec. 4 (2) of the Canada Evidence Act, 1893. (5) Where comment has been made in contravention of the Canada Evidence Act, upon

the failure of the accused to testify, the same is a substantial wrong to the prisoner, and entities him to a new trial. The King v. Charles King, 9 Can. Cr. Cas. 426.

TRIAL FOR MURDER; CHARGE OF JUDGE; MISDIRECTION; MURDER AND MANSLAUGHTER; BENEFIT OF DOUBT.

(1) Where the Judge in a trial for murder concludes his charge thus: "The verdict of the jury is generally resumed in a few words, in the solemn words of guilty or not guilty," it is not to be inferred that such is a direction to bring in but one of the two verdicts of guilty or not guilty of murder, if in the other parts of the charge he has sufficiently pointed out the distinction between murder and manslaughter, and instructed them as to their duty to find whether the prisoner acted with or without intent to kill. (2) Where the Judge considers that no doubt exists, he is not obliged to instruct the jury that the prisoner is entitled to the benefit of any doubt they may entertain, such a course being more likely to impede than to assist them in the discharge of their duty. The King v. Fouquet, 10 Can. Cr. Cas. 255.

DYING DECLARATION; BELIEF OF DECLARANT THAT HE WILL NOT RECOVER; DECLARATION SIGNED AND SWORN IN NARRATIVE FORM; ADMISSIBILITY.

(1) The essential element of a dying declaration is the abandonment of hope of recovery, and evidence tending to shew a belief that death was impending is not displaced by a statement of deceased to his physician and members of the family that he did not think he could recover, but he knew they would do all they could for him. (2) A written statement signed and sworn to by the deceased before a justice of the peace after being read over to him may be admitted as a dying declaration in a homicide case, although in narrative form not embodying the exact words of the declarant. The King v. Magyar, 12 Can. Cr. Cas. 114.

SHOOTING; EVIDENCE OF DELIBERATE ACT AS OPPOSED TO DEFENDANT'S CLAIM OF ACCIDENT.

(1) In a criminal trial, as in a civil case, only the issues presented by the evidence need be submitted to the jury. (2) On a trial for murder by shooting, where the evidence for the prosecution was of a deliberate shooting and the accused giving evidence on his own behalf claimed that the shooting was accidental and there was no evidence of provocation, a verdict of guilty will not be set aside on the ground that the trial Judge withdrew from the jury the question of manslaughter by instructing them that their verdict on the evidence must be either one of guilty of murder or one of acquittal. The King v. Barrett, 14 Can. Cr. Cas. 464.

SELF-DEFENCE AND JUSTIFICATION.

(1) In support of a plea of self-defence on a charge of murder, previous assaults of the deceased on the prisoner and on members of the prisoner's family are admissible to shew the nature of the assault he had reason to fear. (2) The bad character of the deceased as a cruel and violent man towards his family may be shewn in support of a plea of self-defence and justification on a charge against the son of having murdered his father in an altercation during which the father had threatened to kill him and his mother. The King v. Drouin, 15 Can. Cr. Cas. 205.

NEGATIVE INTENT; REDUCING CHARGE TO MANSLAUGHTER; INTOXICATION OF ACCUSED.

(1) The presumption that a man intends the natural consequences of his act may be rebutted by shewing that his mind was so affected by his state of intoxication that he was then incapable of knowing that what he did was likely to cause serious injury. (2) The extent of the intoxication of the accused at the time he beat his wife to death with an iron poker is a proper one to be considered by the jury on his trial for murder, and where there was evidence from which the jury might find that his intoxication was such that he was incapable of forming any intention whatever, it is the duty of the trial Judge to charge the jury as to the law applicable to such a state of facts on the question of the intent involved in the charge, although no request for a direction thereon was made by prisoner's counsel. (3) The Court of Appeal may order a new trial where the jury has not been directed as to a material question raised upon the evidence which might, with a proper direction, have resulted in a verdict of manslaughter instead of murder. (4) On an application to the Court of Appeal to direct a stated case and for leave to appeal after refusal of the trial Judge to reserve a case, the Court may, with the consent of counsel for the prisoner and of counsel for the Crown, forthwith hear the appeal as if a case had been stated. The King v. Blythe, 15 Can. Cr. Cas. 224.

[Followed in R. v. Daley, 16 Can. Cr. Cas. 177; referred to in R. v. Monvoisin, 18 Can. Cr. Cas. 122.]

SELF-DEFENCE AND JUSTIFICATION.

(1) In support of a plea of self-defence in a homicide case and as shewing grounds for apprehending that the life of the accused was in danger, evidence is admissible of previous assaults and attempted assaults by the deceased upon the accused and of threats made by him against the accused. (2) Evidence is also admissible for the defence of assaults made by the deceased upon others of which the accused knew at the time of the shooting, as shewing the vio-

lence which the accused might expect from him. (3) Evidence merely of the bad character of the deceased is not admissible but the defence may shew that the deceased was a man of violent temper. The King v. Martha Scott, 15 Can. Cr. Cas. 442.

BLOOD-STAINED CLOTHING POINTED OUT BY CROWN PROSECUTOR.

(1) A provincial legislature having legislative power over the constitution of Criminal Courts may dispense with the issue of commissions of assize without concurrent legislation by the Dominion Parliament being obtained in respect of the incidental change in practice whereby the reading of a commission at the opening of the Court is omitted. (2) Where the Crown counsel in opening a prosecution for murder pointed to blood-stained clothing in the Court room and told the jury that it was human blood and the clothes belonged to the accused, but the wife of the accused on being called for the Crown to support such statements was held to be an incompetent witness, and no evidence was given in support of such statement nor was anything said to the jury to counteract the impression which such statement would make, upon them, an order should be made for a new trial. (3) A substantial wrong may be occasioned to the accused within the meaning of Code, sec. 1019 by a mere nondirection as well as by a misdirection, and the jury should have been told to disregard the statement so made by the Crown counsel. (4) The accused is not estopped from raising such question of nondirection by the failure of his counsel to ask a direction at the trial. (5) If an interpreter is found by the trial Judge not to be correctly interpreting the evidence either from incapacity or dishonesty the Judge may discharge the jury and postpone the trial so that another interpreter may be procured, but where no such facts are shewn, although the interpreter was considered by the Judge to be inapt, there is no substantial wrong entitling the accused to a new trial. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. v. Sylvester, 19 Can. Cr. Cas. 314, 1 D.L.R. 186.]

ACCESSORY; COUNSELLING AND PROCURING.

(1) On a charge against the putative father of an illegitimate child of having counselled and procured the mother to murder the child, evidence of sexual intimacy between the accused and the child's mother for several years immediately prior to the birth of the child is admissible for the prosecution as shewing motive and the influence of the accused over the woman. (2) Evidence on behalf of the accused to shew that the woman, who was called as a Crown witness, had been sexually intimate with other men than the prisoner, which allegation she denied on cross-examination is not relevant and was properly rejected, where the evidence so tendered could not affect the question of paternity, nor contravert the evidence that the accused believed himself to be the child's father. (3) The trial Judge having charged the jury that it was not usual or proper to convict on the uncorroborated evidence of an accomplice, but that the case could not be taken from them, and having fairly pointed out to the jury the points as to which there was corroboration and also those as to which there was no corroboration, the conviction should not be set aside on a claim of misdirection. The King v. McNulty, 17 Can. Cr. Cas. 26.

[Followed in R. v. Betchel, 19 Can. Cr. Cas. 424, 5 D.L.R. 497.]

MURDER BY STABBING; EVIDENCE.

(1) On a trial for murder by stabbing it is not error to admit evidence of the finding in the prisoner's room, where he was arrested, of knives belonging to him capable of producing the fatal wound. (2) The trial Judge is at liberty to state to the jury his own impressions of the evidence, provided he makes it clear to the jury that they are the sole judges of the facts. (3) It is not error on a trial for murder for the trial Judge to call back the jury at the usual hour for adjournment after they had been deliberating two hours upon a verdict and ask them, on again retiring, to see if they could agree in five minutes, and at the same time to remind them that they could, if they saw fit, recommend to mercy. The King v. Ventricini, 17 Can. Cr. Cas. 183.

[Referred to in R. v. Hoo Sam, 19 Can. Cr. Cas. 267, 1 D.L.R. 569, 20 W.L.R. 571.]

EVIDENCE; QUESTION FOR JURY; LEAVE TO APPEAL REFUSED.

The finding beside the body of the murdered woman of a letter shewn to be the property of the accused and to have been in his possession on the night of the murder is evidence properly for the jury, and its cogency as against the explanation offered by the evidence of the accused given on his own behalf is solely for the consideration of the jury and will not be interfered with by the Court of Appeal. The King v. Bennett, 17 Can. Cr. Cas. 322.

MURDER; IMPROPER ADMISSION OF EVIDENCE; NEW TRIAL; SUBSTANTIAL WRONG OR MISCARRIAGE.

(1) Where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warrant-

ed the conviction, the Court of Appeal may order a new trial. (2) While a person accused of murder, who gives evidence as a witness on his own behalf, may be asked on cross-examination, if he had made threats against the life of the deceased, the jury must not be informed either directly or indirectly by the Crown counsel, that a witness examined at the preliminary enquiry had sworn to such threats, unless that witness is produced or his deposition at the preliminary enquiry is given in evidence after proof of the preliminaries necessary to make it admissible. Allen v. The King, 18 Can. Cr. Cas. 1.

[Referred to in R. v. Hoo Sam, 19 Can. Cr. Cas. 272, 1 D.L.R. 569; The King v. Lew, 1 D.L.R. 105.]

JUDGE'S CHARGE TO JURY; COMMENT ON FACTS.

Where upon a trial for murder the trial Judge commented upon the facts in his charge to the jury upon the basis of certain allegations not having been proved by reason of which the jury may have considered that certain testimony was withdrawn from their consideration, the Court will grant the accused a new trial, although his counsel did not object on that ground at the trial nor ask to have the last mentioned testimony re-read to the jury or specially called to their attention. The King v. Paul, 18 Can. Cr. Cas. 219.

DUTY OF CROWN PROSECUTOR ON OPENING CASE TO THE JURY; REFERENCE TO CONFESSION.

(1) It is the duty of the Crown Prosecutor, on a trial for murder, in his opening statement, to state generally to the jury everything pertaining to which he intends to offer evidence, and if he does not do so, the prisoner may, when evidence is offered that has not been referred to in such opening statement complain of being taken by surprise. (Per Trenholme, J.) (2) In his opening statement to the jury, the Crown Prosecutor, on a trial for murder, may state that he intends to offer evidence of a confession by the prisoner of the crime charged against him. Trepanier v. The King, 19 Can. Cr. Cas. 290.

SELF-DEFENCE; DANGER; PLACING IN FEAR OF VIOLENCE; COUNTER ATTACK; MANSLAUGHTER.

(1) Where the deceased took a gun to drive away several persons who had unlawfully congregated and were causing a disturbance in front of his house, and in handling the gun, took it by the barrel and used it as a club, its accidental discharge upon himself when so used, although resulting in his death, is not sufficient, where it does not appear that the deceased had been placed in any fear of violence from the accused, to charge the disturbers with murder, even if their acts prior thereto technically constituted an assault. (Dictum per Graham, J.) (2) If the defendants had no intention, when they assembled in front of the residence of the deceased, beyond that of annoying him and his family, against whom they had some ill-feeling, and if, being drunk, their passions were inflamed by the production by the deceased of a loaded gun, and the deceased used the gun as a club and was mortally wounded by its accidental discharge, and if the death was hastened by the subsequent battery of the deceased by defendants in sudden and uncontrollable passion on seeing the gun and hearing its discharge, which caused them to think they had been shot at and that one of them had been wounded by the shooting, although in fact he had only been hit with the stock of the gun, the crime of the defendants, if any, was manslaughter, and not murder. (Dictum per Russell, J.) The King v. Graves (No. 2), 20 Can. Cr. Cas. 384, 9 D.L.R. 30.

EXCUSE; DURESS AND COMPULSION.

Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence, does not in point of law acquit of the crime the party so under compulsion to assist in a murder, where no actual physical force is exercised upon the person of the compelled party, nor is the nature of the offence thereby reduced; so, where matter relied upon as a confession of the accused included an exculpatory statement by him that he had been forced by an alleged third party to hand over a razor to him, with which then and there to cut the throat of the murdered person under a threat by the third party that if the accused did not give up the razor the third party would forthwith shoot the accused, and that the noise of the shooting would bring the police, it is not error for the trial Judge to instruct the jury that such part of the prisoner's story, even if believed, formed no excuse in law and that his participation would make him an accessory liable as for the principal offence under sec. 69 of the Crim. Code, 1906. Compulsion is not a defence when the crime is of a henious character unless the compulsory act is such as to make the accused person a mere inert physical instrument; the making of threats of immediate death or grievous bodily harm to be inflicted upon the accused should he fail to immediately comply with the direction to commit or participate in committing a heinous crime, ex. gr. murder, does not constitute an excuse in law. R. v. Fardato, 21 Can. Cr. Cas. 144, 10 D.L.R. 669.

INTENT; SHOOTING; EVIDENCE; REASONABLE DOUBT.

If a person deliberately does an act which was calculated to cause the death of an-

other, he will be presumed to have intended the death of that other, although he may have hoped that death would not result; and, where death results, he will be liable to be convicted of murder unless he proves extenuating circumstances which may reduce the act from murder to manslaughter or to justifiable or excusable homicide. If the firing of the fatal shot was done for the purpose of facilitating the commission of robbery or the flight of the robber, but not with the intention of doing grievous bodily murder. [Cr. Code, 1906, secs. 259 and 260, considered; see also Graves v. The King, 9 D.L.R. 589, 21 Can. Cr. Cas. 44, 47 Can. S.C.R. 568.] The evidence to convict on a charge of murder must be such as to convince the jury beyond all reasonable doubt that the accused is guilty; but a juror is not to create materials of doubt by resorting to trivial suppositions and remote conjecture as to possible states of fact different from that established by the evidence. R. v. Krafchenko, 22 Can. Cr. Cas. 277, 17 D.L.R. 244.

[Considered in R. v. Kelly, 27 Can. Cr. Cas. 140.]

Justifiable or excusable homicide; in defence of brother; Cr. Code, secs. 52 and 55; 26 Can. Cr. Cas. 93. R. v. Callahan, 26 Can. Cr. Cas. 93.

EXCUSE; PREVIOUS ABUSE AND THREATS.

It is no justification of homicide that the deceased had on previous occasions abused and threatened the accused so as to make the latter apprehensive either of being killed or of receiving grievous bodily harm, if, at the time of the shooting, the accused was well armed and he was in no immediate danger from the other who was neither armed nor in a position threatening attack. R. v. Moke, 28 Can. Cr. Cas. 296, 38 D.L.R. 441.

PROVOCATION; DIRECTING JURY; MANSLAUGHTER ON MURDER CHARGE.

Where there are no circumstances in evidence which could reduce the charge of murder to manslaughter, such as sudden provocation, the trial Judge need not direct the jury that they have the alternative power to find a verdict of manslaughter. [R. v. Jagat Singh, 25 Can. Cr. Cas. 281, 28 D.L.R. 725, considered; Eberts v. The King, 20 Can. Cr. Cas. 273, 7 D.L.R. 538, applied.] R. v. Sparkes, 29 Can. Cr. Cas. 116, 41 D.L.R. 102.

NAME.

IDENTITY OF ACCUSED; OBJECTION TO WRONG NAME.

(1) A person who is charged under a wrong name, and who pleads without objection to same, is not entitled after conviction to be released under a writ of habeas corpus on the ground that she is not the person against whom the commitment was issued. (2) The proper time to take objection to a wrong name under which an accused is charged is before pleading to the charge, at which time the mistake may be corrected by an amendment. Ex parte Corrigan, 2 Can. Cr. Cas. 591.

[Followed in R. v. Mullen (No. 2), 18 Can. Cr. Cas. 81.]

ASSUMED NAMES IN PETITION.

To petition the provincial legislature, under assumed names for an Act of incorporation, is not a criminal offence. Marsil v. Lanctot, 25 Can. Cr. Cas. 223, 28 D.L.R. 380.

NECESSARIES.

See also Child; Master and servant; Husband and wife.

NEGLECT TO PROVIDE MEDICAL NECESSARIES FOR CHILD; TREATMENT BY CHRISTIAN SCIENCE.

The prisoner, who practised as a Christian Scientist, was called in by the parents of a child suffering from diptheria. She was not expected and was not retained as a medical attendant. She did nothing but sit silently by the child, without giving any medical and other treatment of any kind. The child died of the disease, and the prisoner was indicted for manslaughter. According to the medical evidence the life of the child might have been saved or prolonged if the usual medical remedies had been applied:—Held, that the prisoner could not be convicted under sec. 212 or sec. 214 of the Crim. Code. Held, also, (dubitante) that the father of the child could not be indicted, under secs. 209 and 210, for not having supplied the child with a necessary of life, viz., medical aid, nor could the prisoner be indicted as an accessory (under sec. 61) to the father's neglect. Regina v. Beer, 32 C.L.J. 416.

NEGLECT TO PROVIDE NECESSARIES FOR CHILD; MEDICAL ATTENDANCE AND REMEDIES AS "NECESSARIES."

(1) Medical attendance and remedies are necessaries within the meaning of secs. 209 and 210 of the Criminal Code and any one legally liable to provide such is criminally responsible for neglect to do so, as well under the common law as under the Code. (2) Conscientious belief that it is against the teachings of the Bible and therefore wrong to have recourse to medical attendance and remedies is no excuse. (3) The Part headings of the Criminal Code have the same effect as preambles to statutes and the heading "Duties tending to the preservation of life" prefixed to Part XVI. is to be regarded in the construction of the Code sections contained in that Part. (4) The terms "necessaries of life" and "necessaries" in secs. 209 and 210 mean such

necessaries as tend to preserve life. The King v. Brooks, 5 Can. Cr. Cas. 372.

NEW TRIAL.

See also Appeal; Reserved case.

Plea of "autrefois acquit," first trial on various counts and conviction on one only. 7 Can. Cr. Cas. 38.

Substantial wrong or miscarriage; Evidence apart from question upon which charge was erroneous. 7 Can. Cr. Cas. 68.

No right to re-elect for speedy trial, if former trial by jury. 7 Can. Cr. Cas. 92.

Misdirection on point of law; Substantial wrong. 7 Can. Cr. Cas. 95.

NEW TRIAL ON RESERVED CASE; MISDEMEANOURS; EVIDENCE OF INJUSTICE.

A new trial may be ordered on a reserved case, in misdemeanours, where it appears to the Court on the evidence that an injustice may have been done to the defendant. [Reg. v. Bain, 23 L.C.J. 327, followed.] The Queen v. Ross (1884), 1 Mont. L.R. (Q.B.) 227, 28 L.C.J. 261.

LIBEL SHEWN TO PROSECUTOR BEFORE PUBLICATION; NOT A DEFENCE OR GROUND FOR A NEW TRIAL.

Upon an indictment for libel, published at defendants' instance in a newspaper, it appeared that the editor (who was not indicted) before inserting the libel shewed it to the prosecutor, who did not express any wish to suppress the publication, but wrote a reply, which was also inserted:—Held, not such a defence for the parties indicted, as to render a conviction illegal, and a new trial was refused. Reg. v. McElderry (1860), 19 U.C.Q.B. 168.

VERDICT OF A JURY CONTRARY TO RECOMMENDATION OF JUDGE.

The jury were told that the testimony of the prisoner's accomplices was not sufficiently corroborated to warrant a conviction, whereupon they came into Court stating that they thought the prisoner guilty, but that he ought not to be convicted upon the evidence. They were then told that they ought to acquit, but after a short interval they returned a verdict of guilty. Before recording their finding, the presiding Judge recommended them not to convict on the evidence, saying, however, that they could do so if they thought proper; and they nevertheless adhered to their verdict:—Held, no ground for a new trial, for there was neither error nor misconduct in fact or in law, in either of which cases only the statute intended that the Court might interfere by granting a new trial. Reg. v. Seddons (1866), 16 U.C.C.P. 389.

NEW CORROBORATIVE EVIDENCE.

The discovery of new corroborative evidence is no ground for a new trial. R. v. McIlroy (1864), 15 U.C.C.P. 116.

[See Fawcett v. Motherwell, 14 C.P. 104; Hooper v. Christoe, 14 C.P. 117; McDermott v. Ireson, 38 U.C.Q.B. 1.]

RAPE; EVIDENCE; AFFIDAVITS NOT RECEIVED ON MOTION FOR A NEW TRIAL.

Upon motion for a new trial under Con. Stat. of U.C. ch. 112, on behalf of a prisoner who had been convicted of rape, the weight to be attached to the evidence upon which the conviction was found being entirely a question for the decision of a jury, the Court in its discretion refused a new trial, although not entirely satisfied with the finding of the jury on the facts proved:—Held, also, that affidavits of facts which were not shewn to have become known since the trial, were not admissible on a motion for a new trial. The Queen v. Chubbs (1864), 14 U.C.C.P. 32.

NEWLY DISCOVERED EVIDENCE; PRODUCTION OF WARRANT FOR DESTRUCTION OF LIQUOR; FAILURE TO PRODUCE DOCUMENTS AT TRIAL.

Upon an application to the Divisional Court for a new trial the defendants produced a document, which, it was alleged, was the written order under which the liquor was destroyed:—Held, that as there was no explanation why this order was not produced at the trial, it was too late to produce it now, and a new trial could not be granted even assuming that the order contained the adjudication as to the forfeiture of the liquors. Bond v. Conmee (1889), 16 Ont. App. R. 398. [Judgment of the Common Pleas Division, 15 O.R. 716, affirmed.]

FAILURE TO RESERVE QUESTIONS; DISCRETION TO GRANT UPON QUASHING CONVICTION.

Where no application has been made for a new trial, and the question of whether a new trial shall be granted has not been reserved, the Court sitting in appeal and error will not make an order for a new trial, when the conviction is quashed. R. v. Hincks, 24 L.C. Jur. 116.

SICKNESS OF PRISONER'S COUNSEL; TRIAL FOR RAPE; PRISONER'S AFFIDAVITS AS TO PROSECUTRIX SOLICITATIONS.

One of the prisoner's counsel, while addressing the jury, was seized with a fit, and adjournment was not requested, no claim made that such counsel's absence prejudiced the defendant, and the senior counsel continued the absent counsel's address to the jury and made no claim he was under any disadvantage:—Held, no ground for a new trial. The prisoner made an affidavit denying the charge of rape, but admitted he had criminal connection with the prosecutrix, as he alleged, at her solicitation, and other circumstances exculpating him were sworn to by him as to which

the prosecutrix and her husband could have deposed if they had been examined thereon upon the trial. Held, no ground for new trial. [R. v. Chubbs, 14 C.P. 32, followed.] R. v. Fick, 16 U.C.C.P. 379.

RULE NISI IN CRIMINAL CASES; DISCRETION TO GRANT.

It is not desirable to grant rules nisi for new trials in criminal cases where there is no probability of their being made absolute, inasmuch as it is calculated to excite expectations not likely to be realized, and to raise doubts as to the promptness and certainty of punishment. R. v. Finkle, 15 U.C.C.P. 453.

ACTION FOR FALSE IMPRISONMENT; EXCESSIVE DAMAGES.

New trial granted for excessive damages in action for false imprisonment. Armour v. Boswell et al., 6 U.C.O.S. 153.

CONVICTION FOR FORGERY; ALTERING DATE OF A NOTE BY ENDORSEE; SUFFICIENCY OF EVIDENCE.

The prisoner was indicted for forgery. The facts appearing in evidence being that a promissory note had been drawn by himself payable two months after date to the order of one T. S. and afterwards endorsed by said S. the prisoner then altered the note from two to three months and discounted it at the Bank of B.N.A. in London, C.W. Upon this fact the jury convicted him of forgery. The motion for a new trial was made under Stat. 20 Vict. ch. 61, on the ground that the forgery or uttering, if any, was a forgery of, or the uttering of, a forged endorsement (the note having been made by himself) and that there was no legal evidence of an intent to defraud:—Held, that by altering the note in his own possession after it was endorsed, it was a forgery of a note, and not of an endorsement; and secondly, that the passing of the note to the third party, who was thereby defrauded, was sufficient evidence of an intent to defraud. R. v. Craig, 7 U.C.C.P. 239.

DISCREPANCY IN TESTIMONY OF THE SAME WITNESS AT THE INQUEST AND AT THE TRIAL.

The prisoner, having been indicted with two others acquitted, was convicted of the murder of one H., whose body was found in a field adjoining the railway, on Monday, the 10th April, apparently about three days after death, which had clearly been caused by violence. One M., the chief witness for the Crown, swore that on the Friday night previously he heard cries in this field, a quarter of a mile from his house, and that he saw three persons walk quickly past his house from that direction, whom he recognized as the prisoner and two of his sons. He also stated that on the following morning he saw the prisoner walking along the railway and stopping near where the body was afterwards found, his manner being strange and excited. At the coroner's inquest, held six months before, this witness had declared himself unable to identify the persons seen by him, and had not mentioned seeing the prisoner on Saturday. On motion for a new trial, on the ground, among others, of surprise at these discrepancies, the Court refused to interfere. Regina v. Hamilton, 16 U.C.C.P. 340.

EVIDENCE MATERIAL TO ENQUIRY NOT ADMITTED; CONVICTION OF PRISONER.

Prisoner being indicted for the murder of one H., the principal witness for the Crown stated that the crime was committed on the 1st of December, 1859, on a bridge over the river Don, and that the prisoner and one S. (who had been previously tried and acquitted) threw H. over the parapet of the bridge into the river. The counsel for the prisoner then proposed to prove by one D. that S. was at his place, fifty miles off, on that evening, but the learned Judge rejected the evidence, saying that S. might be called, and, if contradicted might be confirmed by other testimony. S. was called, and swore that he was not present at the time, but, he not being contradicted, D. was not examined:—Held, that the presence of S. was a fact material to the enquiry, and that D. therefore should have been admitted when tendered; and the prisoner having been found guilty, a new trial was ordered. Regina v. James Brown (1861), 21 U.C.Q.B. 330.

EVIDENCE TO IMPEACH A WITNESS.

The discovery of evidence to impeach the testimony of a witness examined at the trial is not a ground for a new trial. Regina v. Hamilton, 16 C.P. 340.

GRANTING NEW TRIAL; WHEN IMPERATIVE OR DISCRETIONARY.

The provisions of sec. 746 of the Crim. Code respecting the granting of a new trial, when it is imperative, and when discretionary, explained. Regina v. Earl (1894), 10 Man. R. 303.

GROUNDS FOR; MISAPPREHENSION BY WITNESS OF QUESTION PUT TO HIM.

In a criminal case, the Court refused, on a motion for a new trial, to receive an affidavit of a witness that he had misapprehended a question put to him. R. v. Crozier, 17 U.C.Q.B. 275.

NEWLY DISCOVERED EVIDENCE; REFUSAL TO RECALL JURY.

When new facts of an essential nature have been discovered by the defence in a criminal trial before verdict rendered, even after the Judge has charged the jury and the jury has retired to deliberate, the jury should be recalled to hear this additional evidence, and a new trial will be granted where the jury has not been allowed to hear

such additional evidence. The King v. Manconi, 20 Can. Cr. Cas. 81, 3 D.L.R. 112.

CONVICTION OF ONE OF TWO DEFENDANTS AGAINST WEIGHT OF EVIDENCE; JOINT CONVICTION.

That the conviction of one of two defendants tried jointly for burglary and theft was against the weight of evidence is no reason for granting a new trial to both under sec. 1021 of the Criminal Code; but the rule is otherwise if the defendants have been jointly convicted of conspiracy, or if a new trial will tend to the administration of justice. [R. v. Fellowes, 19 U.C.Q.B. 48, distinguished.] The King v. Murray and Fairbairn, 20 Can. Cr. Cas. 197, 3 D.L.R. 208.

CONVICTION BY JURY AGAINST RECOMMENDATION OF JUSTICE.

In this case being an indictment for soliciting P. and S. to steal money of the Gore Bank, the jury were told that the testimony of the accomplices was not sufficiently corroborated to warrant a conviction, whereupon they came into Court stating that they thought the prisoner guilty, but that he ought not to be convicted on the evidence. They were then told that they ought to acquit; but after a short interval they returned a verdict of guilty. Before recording their finding, the presiding Judge recommended them not to convict on the evidence, saying, however, that they could do so if they thought proper; they nevertheless adhered to their verdict:—Held, no ground for a new trial. Reg. v. Seddons (1866), 16 U.C.C.P. 389.

MISTRIAL; FOREIGN JUROR; CHALLENGE FOR IGNORANCE OF ENGLISH.

The fact that one of the jury sworn to try the prisoner did not thoroughly understand the English language is no ground after trial and conviction, for holding that there has been a mistrial, or for granting a new trial. It is too late to challenge a juror after he was sworn, even if the ground for challenge was not known at the time. Ignorance of the English language would not in this province be a ground of challenge of a juror. Regina v. Earl (1894), 10 Man. L.R. 303.

NEW EVIDENCE; MISCONDUCT OF JURY.

The Court was not authorized to grant a new trial on the discovery of new evidence, or for the misconduct of the jury. Reg. v. Oxentine, 17 U.C.Q.B. 295.

SEVERAL DEFENDANTS; VERDICT NOT UNANIMOUS.

Upon an indictment for conspiracy to procure by fraud the return of one F. as a member for the Legislative Assembly:—Held, that affidavits made by some of the jurors that the jury were not unanimous, but believed that the verdict of a majority was sufficient, could not be received as ground for a new trial. Where several defendants have been convicted, a new trial if granted must go to all. R. v. Fellowes (1859), 19 U.C.Q.B. 48.

SURPRISE; SUFFICIENCY OF EVIDENCE.

As has been laid down in several previous cases, it is not the duty of the Court, under the statute respecting new trials in criminal cases, to scan the evidence with a view to saying whether the jury might, or might not, fairly considering it, have acquitted the prisoner; it is sufficient for the Court to say that there was evidence to warrant a conviction. It is no ground of surprise that a prisoner "had no knowledge of the evidence to be produced against him;" for no one is obliged, by pleading or otherwise, to disclose the evidence by which his case is to be supported; it is sufficient that the party is fully apprised of the case or charge proposed to be proved against him, which he must, being so informed, prepare himself to repel. Regina v. Finkle, 15 C.P. 453, followed as to the inexpediency of granting rules nisi for new trials in criminal cases, where there is no probability of their being made absolute. Regina v. Slavin (1866), 17 U.C.C.P. 205.

VERDICT OF ACQUITTAL; CASE OF MISDEMEANOUR; VERDICT AGAINST EVIDENCE.

In no case of misdemeanour, after verdict of acquittal, will a new trial be granted, on the ground that the verdict is against evidence or the weight of evidence. In cases of nonfeasance, such as nonrepair of a highway, a new trial may be ordered on the ground of misdirection, or improper reception or rejection of evidence; but in cases of misfeasance, such as obstruction of a highway, it is doubtful if a new trial should be granted in any case. Where the defendants were indicted for obstructing a navigable river by the erection of a wharf, and there was no evidence that the part covered by the wharf had ever been navigated by vessels of any size, but it was shewn only that the prosecutor was prevented by it from landing there with his skiff, and the wharf was proved not to interfere with the navigation:—Held, that the jury were rightly directed that on this evidence the only verdict which could be rendered was not guilty. Such a direction is not so much a direction on the law as a strong observance on the evidence, which may properly be made in a proper case without being open to the charge of misdirection. The Queen v. Port Perry and Port Whitby R. Co. 38 U.C.Q.B. 431.

ORDER BY MINISTER OF JUSTICE.

A new trial granted by the Minister of Justice under Code, sec. 748, on the discovery of new evidence. R. v. Sternaman, 1 Can. Cr. Cas. 1.

JUDGE'S CHARGE; AMBIGUITY IN.

A new trial should be ordered, if the Judge's charge was so ambiguous that the jury may have been misled into thinking that a material issue of fact was withdrawn from their consideration as being a matter of law. R. v. Collins, 1 Can. Cr. Cas. 48.

APPLICATION BY CROWN.

There is no provision in the Code authorizing the granting of a new trial to the Crown on the ground that the verdict of acquittal is against the weight of evidence. The King v. Phinney (No. 2), 7 Can. Cr. Cas. 280.

[Referred to in R. v. Slaughenwhite, 9 Can. Cr. Cas. 89, 37 N.S.R. 424.]

NEW TRIAL; JURISDICTION.

A motion for a new trial on the facts can only be made before the Court of Appeal, upon leave therefor granted by the Court before which the trial has taken place. The King v. Fouquet, 10 Can. Cr. Cas. 255.

CRIMINAL LIBEL; JURY TRIAL; WEIGHT OF EVIDENCE.

(1) Leave to apply to the Court of Appeal for a new trial in a criminal case under the revised Cr. Code, sec. 1021 (former sec. 747) on the ground that the verdict is against the weight of evidence, should only be granted when the verdict is so clearly against the evidence as to amount to a denial of justice. (2) A new trial should not be granted merely because the jury has disregarded the uncorroborated testimony of the accused as to alleged facts which might relieve him from liability. The King v. Molleur (No. 2), 12 Can. Cr. Cas. 16.

MISTAKE OF TRIAL JUDGE; DIRECTING VERDICT OF NOT GUILTY.

Where the trial Judge has erred in withdrawing the case from the jury and directing a verdict of not guilty, a new trial may be ordered on a case reserved on the Crown's application. The King v. Duggan, 12 Can. Cr. Cas. 147.

UNQUALIFIED JUROR NOT ON JURY LIST SUMMONED IN MISTAKE; GROUND FOR.

(1) A person of the same or a similar name to that of a qualified juror and who is served in mistake for the qualified juror, but who is not himself upon the list of persons from which alone jurors may properly be summoned, is not a qualified juror under the Criminal Code (revised sec. 921, former sec. 662) and his acting as such is a good ground for ordering a new trial. (2) Such defect in the qualification of a juror goes to the jurisdiction of the tribunal and is not cured by sec. 1010 of the revised Criminal Code (former sec. 734). The King v. McCraw, 12 Can. Cr. Cas. 253.

[Distinguished in Trepanier v. The King, 19 Can. Cr. Cas. 291, 18 Rev. De Jur. 177.]

CIRCUMSTANTIAL EVIDENCE; MISDIRECTION AS ROOM FOR DOUBT.

(1) On a trial for murder where the evidence is circumstantial, it is for the jury alone to pronounce on the question of the truth of the alleged circumstances deposed to, and also as to what inferences which the facts would warrant shall be drawn from the circumstantial evidence. (2) It is error and ground for a new trial for the trial Judge to instruct the jury that they cannot doubt that certain inferences are to be drawn on points material to the issue. The King v. Collins, 12 Can. Cr. Cas. 402.

MURDER; DYING DECLARATION; EVIDENCE IMPROPERLY ADMITTED; "NO SUBSTANTIAL WRONG."

A conviction on indictment is not to be set aside or a new trial ordered by reason of certain evidence being improperly admitted, unless the Appellate Court on considering the probable effect of such evidence upon the jury is of opinion that a substantial wrong or miscarriage was thereby occasioned. The King v. Sunfield, 13 Can. Cr. Cas. 1.

[Referred to in Allen v. The King, 18 Can. Cr. Cas. 17.]

FALSE BANK RETURN; INSTRUCTION TO JURY.

It is a ground for a new trial of a charge under the Bank Act for wilfully making a false bank return, that evidence of other returns both before and after that in question was admitted and no instruction was given to the jury as to the limited purpose for which such other returns were admissible in evidence. The King v. Lovitt, 13 Can. Cr. Cas. 15.

[In appeal Oldstadt v. Lineham, 1 A.L.R. 423; discussed in R. v. Browne, 14 Can. Cr. Cas. 250.]

MOTION FOR NEW TRIAL; SAME RULE AS IN CIVIL CASE.

On a motion for a new trial in a criminal case made to the Court of Appeal under Code, sec. 1021 by leave of the trial Judge, the same rule applies as in civil cases, namely, that a new trial will not be granted on the ground that the verdict is against the weight of evidence if the Appellate Court is of opinion that the verdict is one which a jury might reasonably find. The King v. Jenkins, 14 Can. Cr. Cas. 221.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 53.]

PREJUDICE BY WRONGFUL ADMISSION OF EVIDENCE; NEW TRIAL ORDERED.

A new trial will be ordered on the ground of the wrongful admission of evidence of an alleged prior similar offence. The King v. Pollard, 15 Can. Cr. Cas. 74.

MURDER; GROUNDS FOR NEW TRIAL.

(1) Where the Crown counsel in opening a prosecution for murder pointed to blood-stained clothing in the Court room and told

the jury that it was human blood and the clothes belonged to the accused, but the wife of the accused on being called for the Crown to support such statements was held to be an incompetent witness, and no evidence was given in support of such statement nor was anything said to the jury to counteract the impression which such statement would make upon them, an order should be made for a new trial. (2) If an interpreter is found by the trial Judge not to be correctly interpreting the evidence either from incapacity or dishonesty the Judge may discharge the jury and postpone the trial so that another interpreter may be procured, but where no such facts are shewn, although the interpreter was considered by the Judge to be inapt, there is no substantial wrong entitling the accused to a new trial. The King v. Walker, 16 Can. Cr. Cas. 77.

[Discussed in R. v. Sylvester, 19 Can. Cr. Cas. 314, 1 D.L.R. 186.]

ROBBERY; THEFT FROM THE PERSON; PREJUDICE TO ACCUSED; NEW TRIAL ORDERED.

On the trial of an indictment charging robbery with violence and stealing from the person if there is evidence on which the jury might find simple theft, a new trial must be ordered if the trial Judge in effect directed the jury that the accused must be acquitted unless they found not only that the accused stole the money, but that he stole it from the person of the prosecutor. The King v. Daley, 16 Can. Cr. Cas. 168.

MURDER; EVIDENCE; PREJUDICE TO ACCUSED.

Where, upon a material question in a murder trial as to whether there were two or three Italians present at the time of the quarrel, a witness stated on examination-in-chief that there were only two, but on cross-examination on behalf of the accused said there were three, and the trial Judge in his charge to the jury erroneously represented that the first statement was of three and that this was varied to two on cross-examination, the jury may have assumed from this error in reversing the order of the depositions that the statement as to the presence of three Italians, which was the more favourable to the accused, had been withdrawn by the witness, and such irregularity constitutes error, entitling the accused to a new trial. The King v. De Marco, 17 Can. Cr. Cas. 497.

MURDER; SUBSTANTIAL WRONG OR MISCARRIAGE.

Where evidence has been improperly admitted or something not according to law has been done at the trial which may have operated prejudicially to the accused upon a material issue, although it has not been and cannot be shewn that it did, in fact, so operate, and although the evidence which was properly admitted at the trial warranted the conviction, the Court of Appeal may order a new trial. Allen v. The King, 18 Can. Cr. Cas. 1.

[Referred to in Hoo Sam, 19 Can. Cr. Cas. 272, 1 D.L.R. 569; The King v. Lew, 1 D.L.R. 105.]

WITNESS NOT SWORN GIVING EVIDENCE; MISTRIAL.

Where a witness upon a material fact has been permitted without legal sanction to testify on affirmation instead of upon oath, the result is a mistrial and a new trial should be ordered under Cr. Code, sec. 1018. The King v. Deakin, 19 Can. Cr. Cas. 62.

[See R. v. Curry, 21 Can. Cr. Cas. 273, 12 D.L.R. 137.]

IMPROPER REFERENCE BY COUNSEL TO MONEY PAID INTO COURT.

Where counsel for the plaintiff improperly refers in his opening to the jury to the fact that money has been paid into Court, and counsel for the defendant objects, a new trial will be ordered, though counsel for the plaintiff apologizes for his statement and withdraws it and counsel for the defendant does not ask to have the jury discharged. Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.

ERROR OF COURT; WRONG INSTRUCTIONS AS TO NECESSITY OF CORROBORATING TESTIMONY OF AN ACCOMPLICE.

A new trial of a criminal case in which the jury returned a verdict of not guilty will be ordered at the instance of the Crown where the trial Judge upon being asked by the jury after they had been out a while whether he had told them that it was not necessary to have before them evidence corroborative of that of the accused's accomplice, replied that he had not, and then went on to say, among other things, that the law did not require such corroborative evidence to be given though it was usual for judges to advise the jury that they should not convict on the uncorroborated evidence of an accomplice, and where the Judge, after the jury had retired again, refused the request of the counsel for the Crown further to instruct the jury that if they saw fit to believe the evidence of the accomplice and to find a verdict against the accused upon it, they might do so, and such a verdict would be a lawful one, especially where the trial Judge also said to the jury just after his statement above set forth that "of course the jury is generally supposed to pay some attention to what the Judge says upon a legal point." The King v. Betchel, 19 Can. Cr. Cas. 423, 5 D.L.R. 497.

SUBSTANTIAL WRONG; INSTRUCTIONS.

A new trial in a criminal case will not be granted on the ground of misdirection if the general outlines and principles of law which should guide the jury in the particular case have been stated in the charge, although all possible qualifications or differ-

ences as regards the nature of the crime generally may not have been explained, it being essential for the granting of a new trial by an Appellate Court under Cr. Code, sec. 1019 that some substantial wrong or miscarriage should appear to have been occasioned on the trial. (Per Townshend, C. J., Meagher, and Drysdale, JJ., on an equal division of the Court.) The King v. Graves (No. 3), 20 Can. Cr. Cas. 438, 9 D.L.R. 175, reversed in 21 Can. Cr. Cas. 44, 9 D.L.R. 589.

[The majority opinion in Rex v. Graves (No. 2), 20 Can. Cr. Cas. 384, 9 D.L.R. 30, not followed; a new trial was subsequently granted on a further appeal to the Supreme Court of Canada.]

INSTRUCTIONS TO JURY; PREJUDICIAL ERROR; EVIDENCE OF ACCOMPLICE; CORROBORATION.

Where due warning has been given in the judge's charge against crediting the uncorroborated evidence of an accomplice, the fact that further references to the subject in the charge and the refusal of the Crown's request for a specific direction that they might convict if they saw fit upon such evidence may have led the jury to understand that it was not competent for them to find a verdict on such evidence, should not be made a ground for placing the accused twice in jeopardy by ordering a new trial on an appeal by the Crown after his acquittal; such circumstances are insufficient to constitute a "substantial wrong or miscarriage" in the terms of Cr. Code, sec. 1019, limiting the right of an appellate court to grant a new trial. [Rex v. Bechtel (No. 1), 19 Can. Cr. Cas. 423, 5 D.L.R. 497, discussed and doubted.] R. v. Bechtel (No. 2), 21 Can. Cr. Cas. 40, 9 D.L.R. 552.

SUBSTANTIAL WRONG; MISDIRECTION; MURDER.

Where a charge of murder is based upon a fatal gun-shot wound inflicted while the gun was in the hands of the deceased, being used by him as a club to strike one of the accused with the stock, and upon the allegation that the acts of the accused which had led to the deceased clubbing his gun and striking therewith were done with an unlawful object, the jury must be instructed that before convicting of murder they must find not merely that the conduct of the accused had, in fact, led to such act of the deceased, but also that the accused knew or ought to have known that their acts were likely to cause death; and failure to so instruct is a substantial wrong or miscarriage entitling the accused to a new trial after conviction. Where a charge of murder is based first, upon unlawful acts of the accused which the prosecution alleges were the cause of the deceased doing an act that resulted in his inflicting upon himself a gun-shot wound from which he died, and secondly, upon alleged brutal treatment accelerating the death of the deceased after the gun-shot wound, and both aspects of the case were presented to the jury upon the evidence, misdirection as to the essential constituents of the crime of murder upon either aspect of the case will entitle the accused to a new trial, although the case may have been properly presented upon the other aspect, as it is impossible to know upon which of the grounds the verdict was based or whether upon both. Graves v. The King (No. 4), 21 Can. Cr. Cas. 44, 9 D.L.R. 589, reversing 20 Can. Cr. Cas. 438, 9 D.L.R. 175. See also 20 Can. Cr. Cas. 384, 9 D.L.R. 30.

HOMICIDE; INSTRUCTIONS; EVIDENCE OF ACCOMPLICE; CORROBORATION.

A new trial will be granted for the failure of a trial judge to caution the jury, on a trial for murder, against acting on the uncorroborated testimony of an accomplice, who had already been tried and convicted, where there was no corroborating evidence. R. v. Ratz, 21 Can. Cr. Cas. 343, 12 D.L.R. 678.

MISDIRECTION; MURDER; MANSLAUGHTER.

The practical withdrawal from the jury of the question of manslaughter in a murder trial where there was evidence sufficient to go to the jury to reduce the charge, is a ground for a new trial under the Criminal Code (Can.), and it is not obligatory upon the court to discharge the prisoner because of the error. [R. v. Ellson, 28 Times L.R. 1, distinguished; and see R. v. Scherf, 13 Can. Cr. Cas. 382, 13 B.C.R. 407.] R. v. Wilson, 21 Can. Cr. Cas. 448.

INADMISSIBLE TESTIMONY; HUSBAND AND WIFE.

In a criminal case not of the class in which a wife may testify by virtue of the Canada Evidence Act or of the common law against her husband, the wrongful taking of the wife's testimony against her husband is a ground for a new trial under sec. 1019 as a "substantial wrong," if the evidence of the wife is material and of such a character that it may have had an influence with the jury in leading them to find a verdict of guilty. [Makin v. Attorney-General of N.S.W. [1894] A.C. 57, and Allen v. The King, 44 Can. S.C.R. 331, applied.] R. v. Allen, 22 Can. Cr. Cas. 124, 14 D.L.R. 825.

STATEMENT OF COUNSEL; ADVERSE COMMENT TO JURY ON JUDGE'S RULING ON EVIDENCE.

It is error for which a new trial will be granted that the Crown counsel in his address to the jury told them that certain material evidence for the defence which the trial judge had ruled to be admissible should not have been allowed, as the effect

of counsel's statement may have been to induce the jurors to disregard such testimony. R. v. Webb, 22 Can. Cr. Cas. 424, 16 D.L.R. 417.

JOINT TRIAL FOR MURDER; CAUTIONING JURY THAT ADMISSION OF ONE DEFENDANT INADMISSIBLE AGAINST OTHER; SUBSTANTIAL WRONG.

The failure of the trial judge to caution the jury on the trial together of two persons charged with murder, that any admission or confession made by one of the accused not in the presence of the other is only evidence against the one making such confession or admission, will not be a ground for a new trial where the statement was brought out on the Crown's cross-examination of the latter as a witness on his own behalf and the codefendant, now objecting had, by his counsel, dealt with it in cross-examination of such witness, if it be manifest to the appellate court from the evidence (including the objecting defendant's own testimony) that there had been no substantial wrong or miscarriage in the trial by reason of such warning not being given. R. v. Davis, 22 Can. Cr. Cas. 431, 16 D.L.R. 149.

[See as to admissions of one defendant on trial of joint indictment, R. v. Martin, 9 Can. Cr. Cas. 371; R. v. Connors, 5 Can. Cr. Cas. 70, 3 Que. Q.B. 100; R. v. Blais, 10 Can. Cr. Cas. 354, 358.]

STATEMENT OF COUNSEL; MURDER TRIAL; REFERENCE TO POSSIBLE COMMUTATION OF SENTENCE.

It is not error entitling the accused to a new trial that the Crown counsel in addressing the jury in a murder case stated, as was the law, that the Crown through the Department of Justice might reduce a sentence of death, if the accused were convicted, by substituting a term of imprisonment, where such statement was elicited by a reference made by counsel for the accused in his address to the jury to the disgrace which would fall on the family of the accused were he convicted, and where the trial judge afterwards instructed the jury that they should pay no attention to what the punishment should be. R. v. Anderson, 22 Can. Cr. Cas. 445, 16 D.L.R. 203.

MISDIRECTION AS TO REASONABLE DOUBT.

A new trial will be ordered in a criminal case on the ground that the instruction to the jury may have misled them on the question of reasonable doubt and so have led them to apply the rule as to the balancing of mere probabilities as in civil cases. R. v. Schurman, 23 Can. Cr. Cas. 365, 19 D.L.R. 800.

MISDIRECTION; CHATTEL MORTGAGE; FALSE PRETENCE.

Where the trial Judge erred in his charge to the jury as to the validity of a seed grain mortgage in question on a false pretence charge, a new trial should be ordered by the appellate Court if it considers that the jury may have been influenced to convict by that portion of the charge. A valid chattel mortgage can be taken in Saskatchewan for the price of seed grain sold bona fide for seed purposes on any crop to be grown by the mortgagor whether the same be grown from the seed sold or not. R. v. Holderman, 23 Can. Cr. Cas. 369, 19 D.L.R. 748.

ADVERSE WITNESS; CANADA EVIDENCE ACT.

It is ground for ordering a new trial that evidence of a statement made by a Crown witness to the police and taken down in writing on their inquiry into the crime was improperly admitted for the Crown on the witness' failure to identify at the trial as belonging to the accused certain clothing which in his statement to the police he had identified as such, when there had been no finding by the trial Judge, under sec. 9 of the Canada Evidence Act, that the witness was adverse, and that such statement was read by the Crown counsel to the jury and referred to by the trial Judge as being in evidence, although the latter, in his charge, advised the jury not to base a finding on the statement so admitted. [Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, and Ibrahim v. The King, [1914] A.C. 616, 63 L.J.P.C. 185, applied; Greenough v. Eccles, 5 C.B.N.S. 786; R. v. William Smith (1909), 2 Cr. App. R. 86 and 106; Price v. Manning, 42 Ch. D. 372, 58 L.J. Ch. 649; R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, 19 B.C.R. 197; Rice v. Howard, 16 Q.B.D. 681, 55 L.J.Q.B. 311, referred to.] R. v. May, 23 Can. Cr. Cas. 409, 21 D.L.R. 728.

DISCHARGE OF JURY AND EMPANELLING FRESH JURY.

Where, on the trial of a capital charge, the jury were not kept together on an adjournment over night, as directed by Code, sec. 945, whereupon the trial Judge discharged the jury and empanelled a fresh jury, before which the trial was commenced de novo, there is no duty upon the trial Judge, on his own initiative, to exclude all the twelve jurors sworn on the first day from the second jury; and the circumstances that eight of the first jury before which testimony had been given were called and sworn on the second jury without challenge does not raise a presumption of "substantial wrong or miscarriage" to found an order for a new trial. [R. v. Theriault, 2 Can. Cr. Cas. 444; R. v. Sonyer, 2 Can. Cr. Cas. 501; R. v. Long, 5 Can. Cr. Cas. 493; R. v. Long, 5 Can. Cr. Cas. 493; R. v. Lawrence, 25 Times L.R. 374, referred to.] R. v. Luparello, 24 Can. Cr. Cas. 24, 22 D.L.R. 344.

COMMENT ON FAILURE OF PRISONER'S WIFE TO TESTIFY; CANADA EVIDENCE ACT.

It is a ground for granting a new trial on a conviction for murder that the trial Judge commented on the failure of the prisoner's wife to testify for the defence although the Judge before verdict withdrew the comment. [R. v. Corby, 1 Can. Cr. Cas. 457; R. v. Coleman, 2 Can. Cr. Cas. 523; R. v. Hill, 7 Can. Cr. Cas. 38, 33 N.S.R. 253, followed.] It is for the appellant under sec. 1019 of the Cr. Code to establish that there has been a substantial wrong or miscarriage so as to entitle him to relief because of something done at the trial which was not in strict accordance with the law. [Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, referred to; Criminal Appeal Act (Imp.), 1898 distinguished.] R. v. Romano, 24 Can. Cr. Cas. 30, 21 D.L.R. 195.

PREJUDICIAL ERROR IN ADMISSION OF EVIDENCE WITHOUT STRIKING OUT COUNTS TO WHICH IT WAS IRRELEVANT.

Where a count under Code, sec. 303 for unlawfully administering noxious drugs to procure a miscarriage are joined with a count for manslaughter for the death alleged to have been occasioned thereby, such added count should be withdrawn if the prosecution uses the woman's dying declaration as evidence in the manslaughter charge, and a new trial will be ordered where this was refused and the jury found the accused guilty of unlawfully administering but disagreeing on the manslaughter count. R. v. Inkster, 24 Can. Cr. Cas. 294.

CONFESSION IMPROPERLY ADMITTED; QUESTION OF LAW.

Where the whole circumstances negative any reasonable inference that the accused freely and voluntarily made the confession or admission put in evidence against him, the uncontradicted evidence being all one way to shew that the accused was terrorized into making it, a conviction made in reliance upon such confession will be set aside on an appeal by case reserved; no order will be made remitting the case for a new trial if in the opinion of the Court of Appeal the interests of justice do not require it. [R. v. Lai Ping, 8 Can. Cr. Cas. 467, 11 B.C.R. 102; R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, referred to.] R. v. De Mesquito, 24 Can. Cr. Cas. 407, 26 D.L.R. 464.

DIRECTION ON MANSLAUGHTER ON INDICTMENT FOR MURDER.

On a trial for murder, if the circumstances are such that a jury might reasonably infer a case of manslaughter and not murder in the event of their negativing the defence raised, then a direction must be given to the jury as to manslaughter and its omission is a substantial wrong, under Cr. Code, sec. 1019, constituting ground for a new trial. [Eberts v. The King, 20 Can. Cr. Cas. 273, 7 D.L.R. 550, 47 Can. S.C.R. 1, and R. v. Wong On, 8 Can. Cr. Cas. 423, 10 B.C.R. 555 considered; R. v. Hopper, [1915] 2 K.B. 431, 11 Cr. App. R. 136, referred to.] R. v. Jagat Singh, 25 Can. Cr. Cas. 281, 28 D.L.R. 125.

VERDICT AGAINST EVIDENCE.

A new trial will not be granted under Cr. Code, sec. 1021 on the ground that the finding by the Judge trying the case without a jury was against the weight of evidence, if the case is one merely of conflict of testimony upon which the Judge gave credence to the Crown witnesses rather than to those of the defence. (Per Harvey, C.J. and Scott, J. in a divided court.) When the accused applies by leave of the trial judge to the Court of Appeal under Cr. Code, sec. 1021 for a new trial on the ground that the verdict against him was against the weight of evidence, the onus is upon him to show that the verdict is against the weight of evidence, and consequently he has to establish affirmatively his contention of innocence to displace the presumption against him on account of the verdict; nor can the verdict be said to be against the weight of evidence when there was no evidence tending to a contrary result; recourse should be had to Cr. Code, secs. 1014 and 1015 if it be claimed notwithstanding the lack of evidence of innocence, that a case had not been made out by the Crown. (Per Stuart, J.) R. v. O'Neil, 25 Can. Cr. Cas. 323.

COMMENT ON FAILURE OF PRISONER'S WIFE TO TESTIFY; EVIDENCE ACT.

A new trial will be ordered in a prosecution for incest if the Crown counsel in his address to the jury commented on the failure of the prisoner's wife to testify, and such comment may have affected the verdict. R. v. Lindsay, 26 Can. Cr. Cas. 163, 30 D.L.R. 417.

MISDIRECTION; HOMICIDE; EVIDENCE.

When the Judge's charge leaves it, in effect, to the jury to treat as evidence, in proof of the indictment for murder, the depositions of a hostile Crown witness, previously taken before the coroner and the magistrate respectively, which are in contradiction to such witness's testimony at the trial, instead of instructing the jury that the previous statement, although under oath, could be used only to impeach the witness's testimony given at the trial, a new trial will be ordered although no objection to the charge, was made by the accused at the trial. R. v. Duckworth, 26 Can. Cr. Cas. 314, 31 D.L.R. 571.

SEPARATING EVIDENCE ON JOINT TRIAL; NON-DIRECTION.

Nondirection may in some cases amount to misdirection of the jury although no objection was taken to the charge, and such

nondirection constitutes a ground for a new trial if it appears that it operated to the prejudice of the accused and may have affected the verdict against him. [R. v. Blythe, 15 Can. Cr. Cas. 224, 19 O.L.R. 386, and Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, applied; Eberts v. The King, 20 Can. Cr. Cas. 273, 7 D.L.R. 550, 47 Can. S.C.R. 1, distinguished.] R. v. Murray & Mahoney (No. 3), 28 Can. Cr. Cas. 247, 38 D.L.R. 395. See 25 Can. Cr. Cas. 214, 28 D.L.R. 372; 27 Can. Cr. Cas. 247, 33 D.L.R. 702.

ERROR IN INSTRUCTION AS TO CORROBORATION OF ACCOMPLICE.

A new trial will be ordered on the ground of a mistrial where the trial Judge erroneously states to the jury that there was corroboration of the testimony of an accomplice and also fails to direct the jury as to the danger of convicting on an accomplice's evidence unless corroborated. [R. v. Baskerville, [1916] 2 K.B. 658, applied.] R. v. Morrison, 29 Can. Cr. Cas. 6, 38 D.L.R. 568.

ALIBI; CHARGE PREJUDICIAL; OMISSION TO REFER TO CONFIRMATORY EVIDENCE.

If the omission of the judge in his charge to the jury to refer to confirmatory circumstances brought out in evidence upon an alibi claim was such as to seriously prejudice the accused and to make the judge's statement of the evidence misleading to the jury, it is proper to grant a new trial on a case reserved. R. v. Hyder, 29 Can. Cr. Cas. 172.

MISDIRECTION.

If, on a criminal trial, there has been a misdirection as to which the Appellate Court cannot say that there has been no substantial wrong, a new trial should be granted. R. v. Kleparczuk, 29 Can. Cr. Cas. 336, 39 D.L.R. 171.

ERRORS IN CHARGE TO JURY; NO SUBSTANTIAL WRONG.

Although some of the expressions used by the trial judge in his charge to the jury may be open to criticism, a new trial will not be granted under the Criminal Code if there has been no substantial misdirection, and the court is satisfied that there has been no miscarriage of justice. [Re Dodds, 1 Cr. App. R. 68, and Re Martin, 1 Cr. App. R. 52, referred to.] R. v. Letain, 29 Can. Cr. Cas. 389.

MISDIRECTION AS TO ONUS OF PROOF; ALIBI.

A new trial will be ordered if the effect of the Judge's charge to the jury, taken as a whole, was to cause the jury to believe that they would be justified in acquitting on the ground of an alibi raised, only in the event of the accused proving there was no possibility of his being at the place of the alleged offence at the time it is sworn to have taken place. R. v. Akerley, 30 Can. Cr. Cas. 343.

JURISDICTION TO GRANT; TRIAL JUDGE; VERDICT.

The trial judge has no power in a criminal case to himself order a new trial; and leave under Cr. Code, sec. 1021 to move the Court of Appeal for a new trial should not be granted unless the trial judge considers the verdict against the weight of evidence. R. v. Di Francesco, 30 Can. Cr. Cas. 422, 45 D.L.R. 488.

NON-SUPPORT.

See Husband and wife; Necessaries.

NOTICE OF APPEAL.

See Appeal.

NUISANCE.

Obstruction of highway as nuisance, see Highway.

Criminal nuisances; Corporation endangering the public by omission of legal duty. 10 Can. Cr. Cas. 118.

Indictment against railway company for nuisance in obstructing the highway, by improper construction of their road in crossing it; Conviction; Motion for judgment; Practice. R. v. The Grand Trunk Railway Company, 17 U.C.Q.B. 165.

CONSUMPTIVE SANITARIUM.

The keeping of a house or private hospital for the treatment of consumptive patients is not a business ejusdem generis with bone boiling, soap boiling, oil refining, gas manufacturing, or the storing of hides, so as to constitute an "other noxious or offensive trade or business," made an offence against the Public Health Act (Ont.) where done without the consent of the municipality, and this notwithstanding the magistrate's finding that the place is not a sanitarium or hospital in the true sense, but a place of business, and that by reason of the failure to take proper precautions the business had become offensive. R. v. Playter, 4 Can. Cr. Cas. 338.

RUNNING STREET CARS WITHOUT PROPER FENDERS.

The omission of an electric railway company operating their cars upon a highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of legal duty constituting a common nuisance under the Cr. Code, secs. 191 and 213, for which an indictment will lie. R. v. Toronto Railway Company, 4 Can. Cr. Cas. 4.

[Referred to in R. v. Toronto R. Co., 10 Can. Cr. Cas. 106, 114, 10 O.L.R. 26.]

INDICTABLE NUISANCE; STREET RAILWAY; OPERATING ELECTRIC CARS REVERSELY WITHOUT FENDERS OR SIGNALLING APPLIANCES AT REAR; ENDANGERING PUBLIC SAFETY; FORM OF INDICTMENT.

(1) A street railway company commits a common nuisance by systematically moving electric cars reversely on a public street without fenders and gongs or other signalling appliances being placed at the rear of the cars while being so operated, and thereby endangering the lives and safety of the public. (2) A nuisance indictable under Code, secs. 191, 192 and 213 may consist in the mode of using or controlling anything, and it is not essential to the offence that there should be anything dangerous in the thing itself. The King v. Toronto Railway Co., 10 Can. Cr. Cas. 106.

[Referred to in R. v. Toronto R. Co. (No. 1), 18 Can. Cr. Cas. 428, 25 Can. Cr. Cas. 183, 25 D.L.R. 586.]

NONREPAIR OF HIGHWAY; JUDGMENT ORDERING ABATEMENT; DEFAULT.

If a municipality found guilty of maintaining a nuisance by not repairing a highway, makes default under the judgment ordering abatement thereof, but repairs the highway pending a motion for a writ of de nocumento, the Court may in its discretion order the costs of the motion to be paid by the defendant. The King v. Portage la Prairie, 10 Can. Cr. Cas. 125.

RAILWAY NUISANCE; INFORMATION BY ATTORNEY-GENERAL.

The Attorney-General of the province is the officer of the Crown who is considered as present in the Courts of the province, to assert the rights of the Crown, and of those who are under its protection. The Provincial Attorney-General, and not the Attorney-General of the Dominion, is the proper party to file an information, when the complaint is not of an injury to property vested in the Crown as representing the Government of the Dominion, but of a violation of the rights of the public of Ontario. The Provincial Attorney-General is the proper person to file an information in respect of a nuisance, caused by interference with a railway. The respective legislature of the State of New York and Canada incorporated certain parties for the purpose of constructing a suspension bridge across the Niagara River, for railroad and other purposes, with power to take lands, charge tolls, etc., and the two companies joined in conveying to one railway company the exclusive use of the railway portion of their structure, with power to make arrangements with other railway companies:—Held, that such assignment was ultra vires and void. The Attorney-General v. The Niagara Falls International Bridge Company, 20 Grant 34.

[See Attorney-General v. International Bridge Co., 22 Gr. 298; Attorney-General v. International Bridge Co., 27 Gr. 37.

RAILWAY NUISANCE; RAILWAY SUSPENSION BRIDGE; INFORMATION BY ATTORNEY-GENERAL.

By Acts of the Legislature of Canada and the State of New York respectively, a company was incorporated in either country for the purpose of constructing a suspension bridge across the River Niagara, with compulsory powers as to the taking of lands, etc., and having the right to impose tolls for the user of the bridge. The two companies so incorporated joined in a lease of the upper or railway floor of the bridge for the term of their charters, to a railway company, to be for their exclusive use, and the use of such other railway companies as the lessees might arrange with. The Erie and Niagara Railway Company had by statute, authority to arrange for the passage over such bridge from Canada into the United States; but it was alleged that the lessees refused them permission to cross the bridge. Thereupon an information by the Attorney-General of Ontario, at the relation of the Erie and Niagara Company, and a bill by that company, was filed against the two bridge companies and their lessees, complaining of such refusal; and praying for a declaration. (1) That the lease of the bridge was ultra vires. (2) That the Erie and Niagara Company were entitled to the use of the bridge on paying reasonable tolls; and for an injunction restraining the defendants from preventing the Erie and Niagara Company using the bridge. The evidence shewed that the Erie and Niagara Company had not effected any actual connection with the bridge, and that it was not clear they could do so without passing over lands of the lessees; and that by their charter the American Bridge Company had the power of making a lease to one railway company exclusively. Under these circumstances, as the damage, if any, to the Erie and Niagara Company was only prospective, and they could not be said to have sustained any actual damage by the refusal of the defendants to recognize their right to use the bridge, the Court, at the hearing, dismissed their bill as against all the defendants; and also dismissed the information as against the American Bridge Company with costs; declared the lease of the bridge, as regarded the Canadian Bridge Company void, and restrained them from further acting thereunder; and, semble, that even if the Erie and Niagara Company had established a complete title to relief as against the Canadian Bridge Company, still as this Court had no authority to interfere with the American Bridge Company, and could only have compelled the other defendants

to permit the cars of the Erie and Niagara Company to cross as far as the Canadian Bridge Company's charter extended, i.e., to the center of the bridge, and was thus unable to afford any effectual assistance the Court on this ground also would have refused to interfere. Where a party succeeds in establishing the illegality of an instrument he will not be allowed to enforce any stipulation that may be contained therein for his benefit. The Attorney-General v. The Niagara Falls International Bridge Company, 20 Grant 490.

NUISANCE BY MUNICIPALITY; NONREPAIR OF STREET; PROCEEDINGS BY INDICTMENT; PRELIMINARY ENQUIRY.

A prosecution of a municipal corporation for a nuisance in not keeping a public street in repair can only be by indictment (under par. 641 (2) of the Criminal Code). A preliminary enquiry cannot be taken before a magistrate for the purpose of subsec. 2. Regina v. City of London (1900), 37 C.L.J. 74.

MAINTAINING COMMON NUISANCE; OMISSION OF LEGAL DUTY ENDANGERING PUBLIC HEALTH AND SAFETY; PERMITTING OVERCROWDING OF CARS.

(1) The overcrowding of street cars permitted by the operating company to an extent which endangers the lives, safety, property, health or comfort of the public may constitute a common nuisance for which the company are liable upon indictment under Code, sec. 222. (2) It is the duty of all carriers of passengers to make and enforce reasonable rules and regulations for the safety and comfort of their passengers, and where the neglect of that duty causes a common nuisance endangering public safety or comfort, the carrier is guilty of a criminal offence under Code, sec. 222. (3) If an act done injures any right of the public it is unlawful, notwithstanding that benefits may arise to the public in another right from the same act; no balancing of benefit to one public right against injury to another public right is permissible. (4) It was open to the jury to find that the defendants operating an electric railway were guilty of an omission to take reasonable care and precautions, because of their not supplying trailer cars with fenders. The King v. Toronto Railway Co. (No. 1), 18 Can. Cr. Cas. 417, affirmed in 25 Can. Cr. Cas. 183, 25 D.L.R. 586; reversed in 29 Can. Cr. Cas. 29.

SMOKE REGULATIONS; GOVERNMENT BUILDINGS.

As neither the Crown nor its servants are bound by a statute of a criminal nature unless expressly mentioned therein, an engineer in charge of the engines and boilers of a Government customs house is not within a provincial Act (1 Geo. V. ch. 44 (Man.)) declaring the emission of dense, black smoke from chimneys to be a nuisance. [Cooper v. Hawkins, [1904] 2 K.B. 164, and Gorton Local Board v. Prison Commissioners, [1904] 2 K.B. 165 (3), followed.] R. v. Clark, 21 Can. Cr. Cas. 208.

ENDANGERING PUBLIC COMFORT; OVERCROWDED STREET CAR; INDICTMENT; ABATEMENT.

The intention of sec. 223 of the Cr. Code, 1906 (Cr. Code, 1892, sec. 193), which was taken from sec. 152 of the English draft Criminal Code, is to leave untouched the common law right to proceed by indictment or information as a remedy for a public nuisance not involving public safety or public health or occasioning injury to the person of an individual (Cr. Code, sec. 222), but which merely endangers the property or comfort of the public (Cr. Code, sec. 221); the latter remains a crime, but the remedy is now restricted by Cr. Code, sec. 223, to that of abatement.

A nuisance maintained by a company which operates a street railway on city streets by the systematic and continued overcrowding of cars through failure to put on a proper equipment is none the less a public or common nuisance and indictable as such, although only a portion of the general public who used the cars had their comfort or property endangered by the overcrowding. [Macdonald v. Hamilton, etc., Road Co., 3 U.C.C.P. 402, referred to.] Judgment for the abatement of it, on a conviction for a public nuisance, cannot be given unless the nuisance continues at the time of the indictment. R. v. Toronto Railway Co. (No. 2), 25 Can. Cr. Cas. 183, 25 D.L.R. 586, affirming 18 Can. Cr. Cas. 417, 23 D.L.R. 186. (Reversed in 29 Can. Cr. Cas. 29.)

INDICTMENT FOR: CR. CODE, SEC. 223; OVERCROWDED STREET CAR.

The effect of sec. 223 of the Criminal Code is to leave indictment as a method of procedure for trying the general question whether a common nuisance to the detriment of the property or comfort of the public generally, though not affecting life, safety or health, has been committed; but where life, safety or health is not involved (Cr. Code, sec. 222), the conviction on such indictment is not for a crime but for a civil wrong only and the consequential proceedings to which sec. 223 refers are not for the punishment of the person convicted but for the abatement or remedy of the mischief done. The franchise granted to a street railway company by agreement between it and the municipality, confirmed by the Provincial Legislature, to operate street cars on the public streets does not make the overcrowding of the street cars a public nuisance within Cr. Code, sec. 223, where the lives, safety or health of the public are not endangered and where no

injury is occasioned to the person of any individual (Cr. Code, sec. 222); and a demurrer to an indictment in so far as it charged same should have been allowed. Toronto Ry. Co. v. The King, 29 Can. Cr. Cas. 29, 38 D.L.R. 537, reversing 25 Can. Cr. Cas. 183, 25 D.L.R. 586, 18 Can. Cr. Cas. 417, 23 O.L.R. 186.

OATH.

See also Perjury.

Authority to administer extra-judicial oaths: 26 Can. Cr. Cas. 35.

FORM OF ADMINISTERING OATH TO FOREIGN WITNESS.

Held, a witness, at the trial, who professes the Jewish religion, but is sworn on the Evangelists and without placing his hand on his head, will be sworn anew by order of the Court when his religious belief has been ascertained, notwithstanding the fact that the witness declares himself bound by the oath already taken. Sessenwein v. Palmer, 3 Que. P.R. 110.

FORM OF OATH FOR CHINESE WITNESS.

For taking the evidence of a Canton Chinaman not a believer in Christianity, the oath known as the "chicken oath" should be administered instead of the less solemn "paper oath," if the trial is for a capital offence. The King v. Ah Wooey, 8 Can. Cr. Cas. 25.

[Referred to in Re Collins (No. 2), 10 Can. Cr. Cas. 77.]

FORM OF ADMINISTERING OATH TO FOREIGN WITNESS; CHINESE "PAPER OATH."

(1) When a witness, without objection, takes the oath in the form ordinarily administered to persons of his race or belief, he commits perjury if he knowingly gives false evidence intended to mislead the Court. (2) The administration of the Chinese "paper oath" to a Chinese witness at his own suggestion obligates him to give his evidence truthfully, under the like penalty for perjury as if the witness had affirmed or had been sworn according to a form of oath recognized by Chinamen as more binding upon the conscience. The King v. Lai Ping, 8 Can. Cr. Cas. 467.

ADMINISTERING TO WITNESS; CLERK OF COURT; IRREGULAR APPOINTMENT.

As every court or judge has power, under sec. 13 of the Evidence Act, R.S.C. 1906, ch. 145, to administer oaths, the question of the regularity of the appointment of the person acting as clerk as affecting his power to administer the oath in open court to a witness in a proceeding in court before a judge, is immaterial, as in such case the oath may be said to have been administered by the court itself. [The Queen v. Tew, 24 L.J.M.C. 62, referred to.] A presumption of regular appointment arises from a person acting as the clerk of a court. R. v. Wilson, 22 Can. Cr. Cas. 161, 15 D.L.R. 168.

FORM OF OATH; UPLIFTED HAND.

A witness who testifies to what he knows to be false is guilty of perjury, although, without being asked if he had any objection to being sworn in the usual manner, but without objecting to the form used, he was directed to take the oath by raising his right hand instead of kissing the Bible. Curry v. The King, 22 Can. Cr. Cas. 191, 15 D.L.R. 347, affirming 21 Can. Cr. Cas. 273, 12 D.L.R. 13, 47 N.S.R. 176.

FORM CUSTOMARY WITH WITNESS' RACE OR BELIEF.

When a witness without objection takes the oath in the form ordinarily administered to persons of his race or belief, he is under obligation to speak the truth under penalty of punishment for perjury, although there may not have been an invocation of a deity or any express admission by the witness that his conscience was bound. [R. v. Lai Ping, 8 Can. Cr. Cas. 467, 11 B.C.R. 102, and Curry v. The King, 22 Can. Cr. Cas. 191, 48 Can. S.C.R. 532, 15 D.L.R. 347, applied.] R. v. Shajoo Ram, 23 Can. Cr. Cas. 334, 19 D.L.R. 313.

DECLARATION REQUIRED BY LAW.

Where the law makes the taking of a statutory declaration or other solemn declaration a condition to the recovery of a demand or to the exercise of a legal right, the declaration so taken is one "required by law" within Cr. Code, sec. 175 (false extra-judicial declarations). (Per Stuart, J.) R. v. Nier, 25 Can. Cr. Cas. 241, 28 D.L.R. 373.

OBSCENITY.

Obscene publications; What constitutes criminal obscenity. 9 Can. Cr. Cas. 424.

PUBLISHING OBSCENE MATTER; CIRCULATING LIBELLOUS PAMPHLET; PROVING KNOWLEDGE OF CONTENTS.

(1) To constitute a book or printed matter "obscene" within the meaning of Code, sec. 179, it must express unchaste or lustful ideas, and tend to corrupt those whose minds are open to such immoral influences and into whose hands the publication may fall. (2) The offence declared by sec. 179 of the Criminal Code being that a person "knowingly" without lawful justification or excuse sells or distributes the obscene publication, it is obligatory upon the prosecution to prove knowledge of the contents on the part of the accused. The King v. Beaver, 9 Can. Cr. Cas. 415.

[Relied on in R. v. Macdougall, 15 Can. Cr. Cas. 482, 39 N.B.R. 402; referred to in R. v. Graf, 15 Can. Cr. Cas. 200; R. v. Britnell, 20 Can. Cr. Cas. 84, 4 D.L.R. 56.]

PICTURE TENDING TO CORRUPT MORALS; PURCHASE BY ACCUSED FOR ANOTHER PARTY; HAVING IN POSSESSION "FOR CIRCULATION;" PICTURE NOT EXHIBITED BY ACCUSED.

A person who knowingly purchases an obscene picture for another and has possession of the same for the purpose of delivering it to such other person is guilty of having in his possession for circulation a picture tending to corrupt morals, although he did not exhibit the picture to any person. The King v. McCutcheon, 15 Can. Cr. Cas. 362.

INDICTMENT FOR PUBLISHING OBSCENE MATTER; CIRCUMSTANCES ATTENDING PUBLICATION CONSIDERED IN DETERMINING OBSCENITY.

(1) An indictment for wilfully publishing obscene matter contrary to Code, sec. 207, is sufficient if the publication is of such a nature as a jury can reasonably say upon the evidence that it is obscene under the circumstances attending its publication, although the words may not be obscene under all circumstances. (2) Upon a charge of publishing obscene matter the trial Judge may withdraw the case from the jury if there be nothing in the evidence to shew that in the subject-matter and its treatment there was something to deprave and corrupt. (3) In determining whether published matter is obscene or not, and whether the public good could be served by the publication, the jury may consider not only the words themselves, but the fact that the publication was in a paper which was not a newspaper in the ordinary sense, that such paper was refused transmission by mail and that the editor and proprietor published it under an assumed name. (4) Accusations of adultery against unnamed parties may constitute obscene matter under Code, sec. 207 where published for gain by a paper in an offensive and indecent way and to such a degree as to tend to corrupt morals. (5) The onus is upon the Crown to shew that the accused as editor and proprietor of a paper had "knowingly" published the obscene matter, but knowledge may be inferred, in the absence of evidence to the contrary, from proof that he had full control as to what should be published or not published, and that he published the paper under an assumed name. The King v. Macdougall, 15 Can. Cr. Cas. 466.

SELLING OR EXPOSING FOR SALE OBSCENE BOOKS; KNOWLEDGE OF ACCUSED.

(1) In order to warrant a conviction under sec. 207 of Criminal Code, R.S.C. 1906, ch. 146, as amended by 8 and 9 Edw. VII. ch. 9, for selling or exposing for sale an obscene book, it must be proved that the accused was aware of its obscene character and that it was sold or exposed for sale with his knowledge. [Rex v. Beaver, 9 O.L.R. 418, 9 Can. Cr. Cas. 415, referred to.] (2) In an information for exposing for sale and selling obscene books under sec. 207 of Cr. Code (1906), as amended by 8 and 9 Edw. VII. ch. 9, it is necessary to allege that it was knowingly done, and an allegation that it was done "contrary to law" and "contrary to the form of the statutes," is not sufficient. (3) The owner of a book store containing thousands of books cannot be convicted of knowingly exposing for sale an obscene book under sec. 207 of the Criminal Code where a few copies which had been purchased by a clerk without the defendant's knowledge were found in a cellar where stock was kept, and to which the public was not admitted. The King v. Britnell, 20 Can. Cr. Cas. 85, 4 D.L.R. 56.

CIRCULATING OBSCENE PRINTED MATTER; PUBLIC WELFARE; BURDEN OF PROOF.

To have in possession and to circulate among the clergymen of a city, as well as four laymen, printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, is a violation of sec. 207 of the Criminal Code, as amended, relating to the possession and circulation of printed matter tending to corrupt public morals. No public good, sufficient to absolve a person from liability under sec. 207 of the Criminal Code as amended, for circulating obscene printed matter tending to corrupt public morals, is shewn from the facts that the purpose of the circulation among the clergymen of a city of printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, was to arouse public sentiment leading to the suppression of performances of such character. Even if the circulation among the clergymen of a city of printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, was to serve the public good by arousing public sentiment leading to the suppression of performances of such character, the person who circulates it will be liable to prosecution under the Criminal Code for any excess in the publication beyond what the public welfare demanded. The onus of shewing that the circulation of a grossly disgusting description of an obscene nature describing a theatrical performance, was for the public welfare, rests on the person circulating it. R. v. St. Clair, 21 Can. Cr. Cas. 350, 12 D.L.R. 710.

OBSCENE LANGUAGE; MUNICIPAL BY-LAW PROHIBITING.

Obscenity of language is such indecency as tends to violation of law and to the corruption of morals; both of these elements are essential to a conviction under a municipal by-law for using obscene language. R. v. Ballentine, 22 Can. Cr. Cas. 385.

OBSTRUCTING DISTRESS.

RESISTING OR WILFULLY OBSTRUCTING A LAWFUL DISTRESS; PROOF THAT RENT DUE; ONUS.

(1) It is necessary for the prosecution to prove that rent was due and in arrear before a conviction can be made under Code, sec. 144 for the offence of wilfully obstructing a lawful distress. (2) On such a charge evidence is admissible for the defence in proof that no rent was due. (3) Until goods wrongfully distrained before any rent was due are impounded, the tenant may lawfully rescue them; but when the goods are impounded they are in the custody of the law, and the tenant cannot lawfully break the pound and remove them, although the distress was illegal. The King v. Harron, 7 Can. Cr. Cas. 543.

[Referred to in R. v. M'Donald, 18 Can. Cr. Cas. 252.]

OBSTRUCTING PERSON MAKING "LAWFUL DISTRESS OR SEIZURE;" RIGHT TO RE-TAKE CHATTEL.

The re-taking of possession by the vendor under a contract for the conditional sale of chattels is not within the term "lawful distress or seizure" as used in Code, sec. 144 (2), and an obstruction of the vendor's bailiff in regaining possession is not an offence under that section. The King v. Shand, 8 Can. Cr. Cas. 45.

[Compared in R. v. Battista, 21 Can. Cr. Cas. 1, 9 D.L.R. 138.]

OBSTRUCTING JUSTICE.

CORRUPTING JURYMEN; EMBRACERY.

It is essential that there should be a judicial proceeding pending at the time of the commission of the alleged offence; and the existence of such proceeding must be alleged in the indictment. R. v. Leblanc, 16 Mont. L.N. 187.

OBSTRUCTING PEACE OFFICER.

Summary trial or summary conviction; Note on procedure. 7 Can. Cr. Cas. 168.

ERRONEOUS STATEMENT OF DATE OF JUDGMENT IN THE WRIT.

The prisoner was convicted under an indictment charging him with unlawfully and wilfully obstructing a sheriff's officer in the execution of three writs of fi. fa. It was stated in each of the writs that the judgment upon which it was issued had been entered up on 25th February, 1892. The judgments were in fact entered up on 3rd February, 1887. Upon this point the trial Judge reserved a case for the opinion of the Court of Queen's Bench:—Held, that the error was merely an irregularity which might be amended and that the prisoner was rightly convicted. Regina v. Monkman, 8 Man. L.R. 509.

CONSENT OF ACCUSED NECESSARY TO SUMMARY ADJUDICATION.

The provisions of Cr. Code, sec. 144, fixing the punishment for which anyone guilty of obstructing a peace officer shall be liable "on summary conviction," are controlled by Code, secs. 783 and 786, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with sec. 786. R. v. Crossen, 3 Can. Cr. Cas. 152.

[Applicable in Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 19 Can. Cr. Cas. 228, 19 Que. K.B. 241; disapproved in R. v. Nelson, 4 Can. Cr. Cas. 461, 8 B.C.R. 110, 112; followed in R. v. Carmichael and McDougall, 17 Can. Cr. Cas. 168.]

"SUMMARY CONVICTION" OR "SUMMARY TRIAL."

The provisions of Cr. Code, sec. 144 fixing the punishment for which anyone guilty of obstructing a police officer shall be liable "on summary conviction" is not controlled by Code, secs. 783 and 786 as to "summary trial," and the charge may be summarily adjudicated upon by a magistrate without the consent of the accused. R. v. Nelson, 4 Can. Cr. Cas. 461.

[See Ex parte Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 19 K.B. 241.]

ENFORCING VOID CIVIL PROCESS.

Where the process of an Inferior Court is void by reason of its containing a direction to a peace officer to seize certain goods at a place outside of the territorial jurisdiction of the Court, such process is insufficient upon which to base a conviction for resisting the officer in its execution. R. v. Finlay, 4 Can. Cr. Cas. 539.

JURISDICTION OF TWO JUSTICES.

(1) The offence of obstructing a peace officer in the performance of his duty, where an assault upon the officer is not also charged, may be summarily tried by two justices of the peace or a police magistrate (sec. 541) under Summary Convictions part of the Code (LVIII.) by virtue of sec. 144; and the latter section is not controlled by the provisions of secs. 783 and 788 as to the summary trial of the like offence before a magistrate with the consent of the accused. (2) In such case the punishment is limited to that specified in sec. 144 and sec. 788 providing a different punishment on a trial before a magistrate with the consent of the accused does not apply. (3) The consent of the accused is not necessary to the jurisdiction of two justices to try the offence under sec. 144. (4) Semble, if the charge were for an assault of the officer in performance of his duty, secs. 783 and 788 would then apply, and not sec. 144. (5) In the Province of British Co-

lumbia the magistrate has absolute jurisdiction to proceed under the Summary Trials part (LV.) by sec. 784 (3) without the consent of the accused, and to award both fine and imprisonment under sec. 788. The King v. Jack (No. 2), 5 Can. Cr. Cas. 304.

[Explained in Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 19 Que. K.B. 241.]

TRIAL BY POLICE OR STIPENDIARY MAGISTRATE.

(1) When a charge of resisting a police officer is brought before a magistrate having the powers of two justices, such magistrate can try the charge only under Part LV. relating to "summary trials" and not under Part LVIII. relating to "summary convictions." (2) In the Province of Nova Scotia, such magistrate may try the charge only upon the accused electing that mode of trial under Code, sec. 786. The King v. Carmichael and McDonald, 7 Can. Cr. Cas. 167.

[Applicable in Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 19 Que. K.B. 241.]

OBSTRUCTING PEACE OFFICER; COMMENT BY BYSTANDER WHEN ARREST IS BEING MADE; JUSTIFICATION; ATTEMPTED ARREST OF BYSTANDER.

(1) Where a bystander states to other bystanders, in the hearing of a police officer making an arrest for drunkenness, that the person being arrested is not drunk, such does not constitute the offence of obstructing a peace officer, if the statement was made bona fide and in the belief of its truth. (2) If, in an unwarranted attempt of the police to arrest the bystander, the latter strikes a policeman, he is not guilty of assault upon a peace officer in the execution of his duty, for the policeman had no duty to arrest him. The King v. Cook, 11 Can. Cr. Cas. 32.

INCITING A MOB AND FOLLOWING THE OFFICER AND HIS PRISONER WITH MENACES; OFFENCE COMPLETE WITHOUT PHYSICAL CONFLICT.

(1) A charge of wilfully obstructing a police officer in the execution of his duty may be shewn by proof of incitement of a mob to rescue a prisoner and following the officer and his prisoner in a menacing attitude, although without actual physical conflict. (2) On a charge of wilfully obstructing a police officer, the evidence of the officer that he was at the time of the offence engaged in taking to the police station a man whom he had arrested, raises a presumption that the arrest was legally made; and where such presumption is not rebutted a conviction will not be set aside for want of evidence to prove that the officer was justified in making the arrest and was therefore acting in the execution of his duty. The King v. McDonald, 18 Can. Cr. Cas. 251.

REFUSING SEARCH OF PREMISES UNDER LIQUOR ACT.

The refusal of permission to a liquor license inspector to search a house for liquor supposed to be kept in violation of law, although unaccompanied with threats or physical violence, is, under ch. 22, sec. 114, (2) of the Liquor License Act, C.S.N.B. 1903, an unlawful obstruction of an officer in the discharge of his duty. [Rex v. Leclaire (1906), 12 Can. Cr. Cas. 332, and Bastable v. Little, [1907] 1 K. B. 59, specially referred to.] R. v. Matheson; Ex parte Guimond, 21 Can. Cr. Cas. 312, 12 D.L.R. 480.

PERSON EMPLOYED BY BAILIFF TO LEVY UNDER EXECUTION.

Where the officer charged with the execution of process of a civil court has power to employ a deputy or subordinate officer to act for him in making a seizure of goods, such deputy or subordinate officer is within the protection of Cr. Code, sec. 169, sub-sec. (*a*), making it an offence to resist or wilfully obstruct him in the execution of his duty, the person so employed being within the statutory definition of "peace officer" given by Cr. Code, sec. 3, sub-sec. (26), as well as a person acting "in the lawful execution of process" within Code, sec. 169, sub-sec. (*b*). R. v. Polsky, 27 Can. Cr. Cas. 319, 31 D.L.R. 294.

INVALIDITY OF SEARCH WARRANT.

A conviction is not justified under Cr. Code, sec. 169, for obstructing a peace officer in the "execution of his duty," if the search warrant being executed is defective on its face because it does not state any offence (Code, form 2). R. v. La Vesque, 30 Can. Cr. Cas. 190, 42 D.L.R. 120.

ONUS.

See Evidence.

OPIUM.

See also Drugs.

SELLING CRUDE OPIUM FOR OTHER THAN MEDICINAL PURPOSES.

Where a drug clerk, contrary to instructions from the proprietor and without his knowledge, sold crude opium for other than medicinal purposes, the proprietor is not liable to be convicted of the offence under 7-8 Edw. VII. (Can.) ch. 50, sec. 1. The King v. A. & N., 16 Can. Cr. Cas. 381.

[See repealing statute 1-2 Geo. V. (Can.) ch. 17, sec. 15.]

PARDONS.

Note on pardons and commutations. 5 Can. Cr. Cas. 354.

PARDONING POWER OF LIEUTENANT-GOVERNORS.

The local legislatures have the right and power to impose punishments by fines and imprisonment as sanction for laws which they have power to enact. B.N.A. Act, sec. 92, sec. 15. The Lieutenant-Governor of a province is as much the representative of Her Majesty the Queen for all purposes of provincial government as the Governor-General himself is for all purposes of the Dominion Government. Inasmuch as the Act 51 Vict. ch. 5 (O.) declares that in matters within the jurisdiction of the legislature of the province all powers, etc., which were vested in or exercisable by the Governors or Lieutenant-Governors of the several provinces before Confederation shall be vested in and exercisable by the Lieutenant-Governor of this province; if there is no proceeding in dispute which has been attempt to be justified under 51 Vict. ch. 5 (O.), it is impossible to say that the powers to be exercised by the said act of the Lieutenant-Governor are unconstitutional. Quære, is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning in the Imperial Parliament only or, if not, in what legislature does it reside? Gwynne, J., dissenting, was of opinion that 51 Vict. ch. 5 (O.), is ultra vires of the Provincial Legislature. See 19 Ont. App. 31. Attorney-General (Can.) v. Attorney-General (Ont.) (1892), 23 Can. S.C.R. 458.

PARDONING POWER; IMPRISONMENT IN DEFAULT OF PAYING FINE UNDER PROVINCIAL STATUTE; REMISSION.

Fines imposed under the Montreal City Charter belong to the Crown as represented by the Government of the Province of Quebec, and not to the City of Montreal, and the city has no power to remit the same. The royal prerogatives cannot be diminished or abrogated by a statute unless they are expressly mentioned therein, but they may be extended by a statute in general terms. Semble, the pardoning power is an exercise of the royal prerogative, and unless a statute expressly limits such prerogative, the same is to be exercised by the Sovereign or by his representative (in Canada by the Governor-General) acting under a special delegation of power from the Sovereign, and the remission of a penalty under a provincial statute for default in payment whereof the accused is undergoing imprisonment is an exercise of the pardoning power. Semble, the Provincial Legislature of Quebec has no constitutional power to remit a fine imposed under the Montreal City Charter, for default in payment of which the accused has been sentenced to imprisonment, nor could it remit or authorize the city to remit the fine in such a case were it payable to the city. Ex parte John Armitage, 5 Can. Cr. Cas. 345.

PARTICULARS.

Of the acts charged, see Indictment.

Stealing under power of attorney; Order for particulars. 5 Can. Cr. Cas. 36.

THEFT; PARTICULARS OF INDICTMENT; ORDER FOR, DISCRETIONARY; RAILWAY STATION-MASTER'S ACCOUNTS; WRONG BALANCES ON OFFICIAL RETURNS.

(1) The ordering of particulars to be furnished to the accused by the Crown in respect of an indictment for theft is a matter of judicial discretion. (2) Where the Crown is unable to specify in detail the several sums alleged to have been received and misappropriated by a Government employee and the prosecution is laid for theft of a sum aggregating the deficit appearing upon the employee's books and returns, particulars should be ordered against the Crown only with regard to the direct proof of details so as not to exclude general evidence based upon the balances returned from time to time. (3) With the consent of the Crown, an order may be made for the delivery of particulars shewing what statements of account made by the accused are proposed to be put in evidence for the prosecution, and what sums are alleged to have been wrongfully omitted therefrom or wrongfully inserted therein. The King v. Stevens, 8 Can. Cr. Can. 387.

CONSPIRACY; CHARGE; REVISED CRIMINAL CODE, SEC. 859.

Particulars furnished under sec. 859 of the Revised Code (former sec. 616) have not the effect of amending or extending the scope of the original indictment or charge, and the inclusion of a separate and distinct offence as a particular under a charge of conspiracy will not authorize a conviction which would otherwise not be within the scope of the indictment. The King v. Sinclair, 12 Can. Cr. Cas. 20.

PARTNERSHIP.

REGISTRATION OF PARTNERSHIPS; PENALTY FOR DEFAULT; REAL ESTATE AGENTS.

A provincial law imposing a penalty for failure to register partnerships of persons associated for "trading, manufacturing or mining purposes" does not apply to compel registration of a partnership between real estate agents. Paisley v. Nelmes, 9 Can. Cr. Cas. 413.

PARTY.

See Accessory.

PAWNBROKER.

SALE WITH AGREEMENT FOR REPURCHASE.

(1) A transfer of both the possession and the right of property in goods under an agreement with the buyer to purchase them back from him at an increased price within a limited time, is not a transaction of "Pawn, pledge or exchange for the repayment of money lent," and is not subject to the provisions of the Pawnbrokers Act of Ontario. (2) A person making a business of purchasing goods under a contract whereby he gives to the seller a right of re-purchase at an increased price, does not thereby exercise the trade of a pawnbroker. R. v. Munson, 4 Can. Cr. Cas. 351.

PEDDLER.

See also Municipal by-law.

SELLING BY SAMPLE; "HAWKING" AND "PEDDLING" DEFINED.

(1) A sewing machine agent who, in addition to keeping a shop, goes about from house to house with a sample machine, soliciting orders to be afterwards filled, is not thereby guilty of "hawking" or "peddling." (2) Proof of only one sale is insufficient to establish "hawking" or "peddling" upon a prosecution under a licensing law. The Queen v. Phillips, 7 Can. Cr. Cas. 131.

BY-LAW REGULATING HAWKERS AND PEDLARS; TAKING ORDERS.

Where there is no sale by sample nor delivery from a tank car, the mere taking of orders directed to a foreign corporation for the shipment by it of a quantity of coal oil, c.o.d., is not a "sale" within the meaning of sec. 416 of the Municipal Act, R.S.O. 1914, ch. 192, relating to hawkers and pedlars. [R. v. St. Pierre, 5 Can. Cr. Cas. 365, 4 O.L.R. 76, and R. v. Pember, 20 Can. Cr. Cas. 60, 3 D.L.R. 347, followed.] Re Garnham; Re Richards, 26 Can. Cr. Cas. 114.

Licensing; petty trading; where mere incident to religious work; Bible Society.

City of Duncan v. Gairns, 27 Can. Cr. Cas. 440.

PENALTY.

See also Sentence; Costs; Fine.

IMPRISONMENT IN DEFAULT OF PAYING FINE; RELEASE FROM.

Release from imprisonment in default of payment of a fine imposed on conviction for an offence against The Fires Prevention Act, R.S.M. ch. 60, may be a good consideration for a promissory note to secure payment of the fine and costs, given to the parties interested in the penalty. Proctor v. Parker, 3 Can. Cr. Cas. 374.

CONTEXT LIMITING TO PECUNIARY PENALTY.

The word "penalty" in Code, secs. 869 and 870, is restricted to a pecuniary penalty because of its association with the terms "paid" and "recovered." The King v. Johnston (No. 1), 11 Can. Cr. Cas. 6.

CANADA TEMPERANCE ACT; LIMIT OF; "NOT LESS THAN $50."

Under Part II. of the Canada Temperance Act which enacts that a fine may be imposed of "not less than $50" for a first offence and of "not less than $100" for a second offence, the magistrate cannot impose a fine of more than $50 for a first offence. Re Placide Richard, 12 Can. Cr. Cas. 204.

LIQUOR LICENSE LAW; PENALTY IMPOSED LESS THAN MINIMUM.

(1) Under the New Brunswick Liquor License Act, the minimum penalty for selling by a license after hours must be imposed although the conviction is founded upon the statutory presumption of sale because of a light in the bar-room. (2) A summary conviction for a penalty less than the statutory minimum will be set aside on appeal under the New Brunswick liquor law. The King v. McIntyre, 14 Can. Cr. Cas. 43.

DISORDERLY HOUSES; SUMMARY TRIAL; CONSENT; FINE.

Where a police magistrate proceeds with a charge of keeping a disorderly house or common betting house (Code, sec. 228, as amended 1909 and 1913) without taking the defendant's election, it is to be assumed that the magistrate is proceeding under Code, secs. 773(*f*), 774 and 781 under which the defendant's election is not required on a summary trial for keeping a disorderly house, but the amount of the fine must not exceed, with the costs of the case, $200, by virtue of Code, sec. 781 as amended 1913. [R. v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276, 26 O.L.R. 484, and R. v. Helliwell, 30 O.L.R. 594, 18 D.L.R. 550, considered.] R. v. Booth, 23 Can. Cr. Cas. 224.

PERJURY.

See also Oath.

Evidence to prove. 4 Can. Cr. Cas. 334.

Indictment for perjury; Stating the offence. 6 Can. Cr. Cas. 397.

Proof in perjury cases. 8 Can. Cr. Cas. 199, 204.

NONPRODUCTION BY PROSECUTION OF PLEADING OF ACTION WHERE PERJURY IS ALLEGED; MATERIALITY; PROOF BY SECONDARY EVIDENCE.

The nonproduction by the prosecution, on a trial for perjury, of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material where the assignment of perjury has no reference to the pleadings; but the defendant, if he wishes, may, in case the plea be not produced, prove its contents by secondary evidence. It is not essential to prove that the facts sworn to by the defendant, as alleged in the indictment, were material to the issue in the cause in which the defendant was examined. The Queen v. Ross (1884), 1 Mont. L.R. (Q.B.) 227, 28 L.C.J. 261.

PERSONATION AT ELECTION; AUTHORITY TO ADMINISTER OATH.

The prisoner was convicted on an indictment for perjury, in having sworn before the deputy returning officer at an election for member of the House of Commons for the city of Winnipeg, that he was the person whom he represented himself to be, named on the list of electors for the polling subdivision. He was not an elector, or entitled to vote in the constituency. At the trial, prisoner's counsel contended that there was no authority for the deputy returning officer, under sec. 45 of the Dominion Elections Act, R.S.C. ch. 8, to administer an oath to any person but an elector, and the Judge reserved a case for the opinion of the Court as to whether the prisoner had been properly convicted:—Held, that the statute must receive a reasonable construction, that authority was intended to be conferred upon the officer to administer the oath to any person presenting himself and claiming to be an elector entitled to vote, and that under sec. 148 of the Criminal Code, 1892, prisoner had been properly convicted of perjury. Tribunals of limited jurisdiction have implied authority to receive proof of the facts on which their right to exercise their jurisdiction depends. [Regina v. Proud, L.R. 1 C.C. 71, followed.] Regina v. Chamberlain, 10 Man. L.R. 261.

ABSENCE OF VENUE IN JURAT; PRESUMPTION AS TO PLACE WHERE AFFIDAVIT SWORN.

A joint affidavit made by the defendant and one D. stated . . . "Each for himself maketh oath and saith, that, etc.; and that he this deponent is not aware of any adverse claim to or occupation of said lot." The defendant having been convicted of perjury on this latter allegation:—Held, that there was neither ambiguity nor doubt in what each defendant said, but that each in substance stated that he was not aware of any adverse claim to or occupation of said lot. To sustain a conviction for perjury it is not necessary that the jurat of the affidavit, upon which the perjury is assigned, should contain the place at which the affidavit was sworn, for the perjury is committed by the taking of the oath, and the jurat, so far as that is concerned, is not material. In the affidavit in question here there was no statement as to where it had been sworn, either in the jurat or elsewhere, except the marginal venue, "Canada, County of Grey, to wit;" but the contents shewed that it related to lands in the County of Grey, and it was proved that defendant subscribed the affidavit that the party before whom it purported to have been sworn, was a justice of the peace for that county, and had resided there for some years, that the affidavit had been received through the postoffice by the agent of the Crown lands there by whom it was forwarded to the Commissioner of Crown Lands, and that subsequently a patent for the lot issued to the party on whose behalf the affidavit had been made:—Held, evidence from which it was to be inferred that the affidavit was sworn in the County of Grey, and that the jury had properly so inferred. Held, also, that if the affidavit was sworn in the County of Grey, the proof of the swearing by the justice of the peace, and the taking of the oath by the defendant, were made out by proving their signatures. The provision of the 23 Vict. ch. 2, sec. 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 in which he acts as such justice. The same interpretation of the Act applies to commissioners for taking affidavits mentioned therein. Regina v. Atkinson (1866), 17 U.C.C.P. 295.

NEGATIVE AVERMENTS; PROOF TO ESTABLISH FALSITY; ADMISSIBILITY.

D. in answering to faits et articles on the contestation of a saisie arrêt, or attachment, stated among other things: "1st, that he (D.) owed nothing for his board; 2nd, that he (D.), from about the beginning of 1880 to towards the end of the year 1881, had paid the board of one F., the rent of his room, and furnished him all the necessaries of life with scarcely any exception; 3rd, that he (F.) during all that time, 1880 and 1881, had no means of support whatever." D. being charged with perjury, in the assignments of perjury and in the negative averments the facts sworn to by D. in his answers were distinctly negatived, in the terms in which they were made:—Held, that under the general terms of the negative averments it was competent for the prosecution to prove special facts to establish the falsity of the answers given by D. in his answers on faits et articles, and the conviction could not be set aside because of the admission of such

proof. Even if the evidence was inadmissible there being other charges in the same count which were pleaded to, a judgment given on a general verdict of guilty on that count would be sustained. Downie v. The Queen (1888), 15 Can. S.C.R. 358.

TWO FALSE STATEMENTS IN ONE DEPOSITION; OMITTING THE WORD "KNOWINGLY" FROM INDICTMENT; VENUE OF OFFENCE.

Including two charges of perjury in the same indictment would not be ground for quashing the indictment. The Queen v. Bain, 23 L.C. Jur. 327; Ramsay's App. Cases (Que.) 192.

ALLEGATION OF AUTHORITY OF MAGISTRATE TO ADMINISTER THE OATH.

Where it appears on the face of an indictment for perjury, that the statement complained of was made before a justice of the peace in preferring a charge of larceny committed within his jurisdiction, it is unnecessary to allege expressly that he had authority to administer the oath. The Queen v. Callaghan (1860), 19 U.C.Q.B. 364.

CONVICTION FOR PERJURY COMMITTED OUT OF THE JURISDICTION OF JUSTICES.

The prisoner being indicted for perjury in giving evidence, upon a charge of felony against one E. G., it appeared that the felony, if committed at all, was committed in the county of Middlesex. The justices before whom the examination took place entertained the charge and examined the witnesses within the city of London. The defendant's counsel objected at the trial that the justices being justices of the county of Middlesex, had no jurisdiction, sitting in London, to examine into an offence committed outside of the limits of that city. The learned Judge overruled the objection, reserving the case under ch. 112 of Con. Stat. of U.C. Upon motion:—Held, that the conviction was illegal. It was therefore reversed. Held, also, that Imperial Stat. 28 Geo. III. ch. 49, sec. 1, it is local in its character, and is not in force in Ontario. Regina v. Row, 14 U.C.C.P. 307.

INDICTMENT FOR NOT SHEWING JURISDICTION; REVIEW BY WRIT OF ERROR.

Upon an indictment for perjury committed upon the hearing of a complaint before a magistrate, the information having been proved:—Held, upon a case reserved, that it was unnecessary to prove any summons issued, or any step taken to bring the person complained of before the magistrate; for so long as he was present, the manner of his getting there was immaterial. The indictment was defective for not shewing the jurisdiction over the offence, by alleging where the liquor was sold, the sale of which without license was the complaint; but as judgment had been pronounced, this could be taken advantage of only by writ of error. Quære, whether it was not defective also, for not shewing that the person complained against was present, or that a summons issued, and that the magistrate was authorized to proceed ex parte. Regina v. Mason (1860), 29 U.C.Q.B. 431.

PROSECUTION DIRECTED BY COURT; BAIL.

A committal of a witness under R.S.C. 1886, ch. 154, sec. 4, pursuant to the Judge's direction that he be held and prosecuted for perjury does not prevent the same Judge from making an order for bail under that Act, and the Judge is not functus officio by reason of the first order. Re Ruthven, 2 Can. Cr. Cas. 39.

ADMINISTERING OATH TO WITNESS; PERSON ACTING FOR COURT OFFICER.

Perjury may be assigned in respect of statements given in evidence in open Court, although the oath was administered to the witness by a person temporarily acting in the place of the proper officer at such officer's request. R. v. Coleman, 2 Can. Cr. Cas. 523.

FALSE STATUTORY DECLARATION BY SEVERAL DECLARANTS.

(1) On a charge under Code, sec. 147, of making a false statutory declaration, it is not necessary to allege in the indictment that the false statement was made with intent to mislead. (2) The permission granted by the Canada Evidence Act, to certain officials to "receive" the solemn declarations of persons voluntarily making the same in the statutory form includes an authorization to the declarant to make the same, and constitutes him a person "authorized by law to make a solemn declaration" (Code, sec. 147). (3) A statutory declaration jointly made by several persons and stating the matter declared in the following form, i.e.:—"We know that, etc." is to be construed as a statement by each of the declarants severally, that he knows the matters alleged. R. v. Skelton, 4 Can. Cr. Cas. 467.

[Followed in R. v. Sinclair, 12 Can. Cr. Cas. 27; R. v. Dewar, 2 N.W.T. 194; referred to in R. v. Phillips, 14 Can. Cr. Cas. 242.]

JURISDICTION TO TRY SUMMARILY.

A police magistrate in Ontario has jurisdiction with the consent of the accused to try the offence of perjury. R. v. Burns (No. 2), 4 Can. Cr. Cas. 330.

MISDESCRIPTION OF TRIBUNAL BEFORE WHICH COMMITTED.

A count charging the accused with having committed perjury at an inquest before a coroner is not invalid by reason of the fact that the tribunal was a coroner and a jury, and the act charged was sufficiently identified in the count, without mention of the jury, to cure the defect under Code, sec. 611. R. v. Thompson, 4 Can. Cr. Cas. 265.

INCITING TO GIVE FALSE EVIDENCE; SUBORNATION OF PERJURY; COMMON LAW OFFENCES.

(1) Counselling a person to commit perjury is not subornation of perjury unless the perjury is actually committed, but it is punishable as an incitement to give false evidence which is an offence at common law. (2) It is an offence at common law to offer money to a witness to testify regardless of its truth or falsehood, to certain allegations which are false, although not shewn to be false to the knowledge of the accused, and although the proposed testimony was not in fact given. (3) The common law jurisdiction as to crime is still operative notwithstanding the Criminal Code, but subject to the latter prevailing where there is a repugnancy between the common law and the Code. (4) Where the charge in respect of which the accused person has been committed for trial is an offence at common law not provided for by the Code and formerly a misdemeanour, one justice of the peace may commit for trial and admit to bail as at common law. The King v. Cole, 5 Can. Cr. Cas. 330.

[Relied on in R. v. Walkem, 14 Can. Cr. Cas. 122, 128, 14 B.C.R. 7.]

FALSE OATH MADE BEFORE DE FACTO LEGAL TRIBUNAL; MAGISTRATE INCOMPETENT UNDER SPECIAL STATUTE UNDER WHICH CHARGE IS LAID.

It is perjury under sec. 145 of the Criminal Code to give false testimony before a justice of the peace holding a judgment proceeding under a provincial law, although the justice was by the terms of that law disqualified from hearing the charge because he was not a resident of the county in which the alleged offence took place. Drew v. The King (No. 2), 6 Can. Cr. Cas. 424, affirming 6 Can. Cr. Cas. 241 (Que.)

[Referred to in Kokoliades v. Kennedy, 18 Can. Cr. Cas. 502; R. v. Hawley, 10 Can. Cr. Cas. 38; followed in R. v. Mitchell, 21 Can. Cr. Cas. 193, 10 D.L.R. 746.]

PERJURY IN AFFIDAVIT USED IN CIVIL ACTION; SEVERAL CHARGES ON ONE AFFIDAVIT; AFFIDAVIT AN ENTIRE STATEMENT NOT SEVERABLE; POSTPONING PERJURY TRIAL PENDING CIVIL ACTION.

(1) A charge of perjury is defective as not disclosing a crime, if it does not allege that the statement was sworn to knowing the same to be false, or if such is not the necessary inference from what is alleged, apart from the declaration in the charge that the accused "thereby committed wilful and corrupt perjury." (2) Upon a "speedy trial" upon several charges of perjury in respect of one affidavit, the trial Judge is bound to regard the whole affidavit as the sworn statement in respect of each charge, and should not treat each paragraph of the affidavit as an entire statement independently of the other paragraphs. (3) Semble, where the charge of perjury is brought on for trial during the pendency of the civil action in which it is alleged to have been committed and where the question of fact on which the perjury is alleged is the same as that involved in the civil action, the Criminal Court should exercise its discretion to postpone the criminal trial until after judgment in the civil action. The King v. Cohon, 6 Can. Cr. Cas. 386.

[Discussed in R. v. Lee Chu, 14 Can. Cr. Cas. 326.]

PERJURY COMMITTED IN CIVIL ACTION; ADMISSIBILITY FOR DEFENCE OF DEFENDANT'S OTHER DEPOSITIONS TAKEN IN CIVIL ACTION.

(1) A person charged with perjury committed in a civil action is entitled to have put in evidence those parts of his testimony in the civil action which may explain or qualify the statements in respect of which the perjury is charged. (2) The refusal to admit such testimony is a "substantial wrong" under Code, sec. 746. (3) Where the statutory form of indictment is not followed but the indictment contains all the averments which the statute requires, the addition of other unnecessary averments does not invalidate the indictment although it might not be sufficient at common law. The King v. Coote, 8 Can. Cr. Cas. 199.

AFFIDAVIT BEFORE NOTARY; MANNER OF ADMINISTERING OATH; WORDS OF OBLIGATION SAID ONLY BY DEPONENT; REGULARITY.

It is not essential to the offence of perjury that the notary or other official should have uttered the words of obligation in administering the oath; such words used by the deponent and accompanied by a request that the affidavit already signed by the deponent should be certified as sworn will be sufficient. Re Collins (No. 2), 10 Can. Cr. Cas. 73.

FORMER CONVICTION FOR RELATED OFFENCE: PERSONATION OF ELECTOR AND PERJURY.

(1) A plea of autrefois acquit to a charge of perjury in taking the oath of identity at a polling booth is not supported by a record of acquittal on a charge of personating an elector at the same time and place, although the oath of identity and the alleged personation were in regard to the same elector. (2) A verdict for personation could not have been received under an indictment for perjury in taking the oath of identity, although the facts constituting personation must necessarily be shewn in order to prove the perjury. The King v. Quinn, 10 Can. Cr. Cas. 412.

PROOF OF FORMER TRIAL; MATTER OF RECORD; TESTIMONY OF CLERK OF ASSIZE AND COURT STENOGRAPHER; ESSENTIAL PART OF CRIME NOT LEGALLY PROVED.

(1) On a charge of perjury committed at the trial of an indictment, such trial and the indictment, verdict and judgment therein must be proved as matters of record. (2) Such proof may be given either by the production of the original record or of an exemplification thereof, or by a certificate under Code, sec. 691, of the substance and effect of the indictment and trial. (3) The viva voce testimony of the clerk of Assize and of the official stenographer with the production of the official book of entry in which the clerk recorded his memoranda of the proceedings and of the stenographer's notes of the evidence, are insufficient as legal proof of the fact of the former trial. (4) Where a conviction has been made without the legal proof required by law of an essential part of the crime, such defect is a "substantial wrong or miscarriage at the trial" within Code, sec. 746, and the conviction must be set aside. The King v. Drummond, 10 Can. Cr. Cas. 340.

[Followed in R. v. Farrell, 15 Can. Cr. Cas. 284, 20 O.L.R. 182; R. v. Legros, 14 Can. Cr. Cas. 161; distinguished in R. v. Yaldon, 13 Can. Cr. Cas. 493; referred to in R. v. Lew, 1 D.L.R. 103; R. v. Finnessey, 10 Can. Cr. Cas. 353; R. v. Yaldon, 10 Can. Cr. Cas. 493, 17 O.L.R. 179; R. v. Sunfield, 13 Can. Cr. Cas. 8; R. v. Graves (No. 2), 16 Can. Cr. Cas. 336.]

EXAMINATION FOR DISCOVERY IN A CIVIL SUIT.

(1) Perjury may be assigned in respect of an examination for discovery in a civil action, although the presiding officer has no powers of adjudication. (2) An examination for discovery is a "judicial proceeding" as defined by Code, sec. 145 (3). (3) The Court has a discretion to refuse to hear a charge of perjury alleged in respect of civil proceedings while such proceedings are pending. The King v. Thickens, 11 Can. Cr. Cas. 274.

[Referred to in R. v. Howley, 20 Can. Cr. Cas. 37.]

CHILD BETWEEN SEVEN AND FOURTEEN; PERJURY; MENS REA; COMMON LAW PRESUMPTION; EVIDENCE OF APPRECIATION OF WRONG.

(1) A charge of perjury cannot be sustained against a boy under fourteen without proof of guilty knowledge of wrong doing. (2) Code, sec. 10, has not changed the common law which presumed against guilty knowledge where the accused was under the age of fourteen. The King v. Carvery, 11 Can. Cr. Cas. 331.

INDICTMENT; KNOWLEDGE OF FALSITY.

(1) An indictment or charge for perjury in which it is alleged that the accused committed perjury by falsely, wilfully and with intent to mislead the magistrate, swearing to a certain statement, involves a charge that the accused knew such statement to be false and will not be quashed for failure to more specifically charge such knowledge. (2) Upon a charge of perjury in respect of evidence taken by a magistrate on requiring sureties to keep the peace (Revised Code, sec. 748 (2)), the false statement may be proved by oral testimony, although not recorded in the minutes of evidence then made by the magistrate. The King v. Doyle, 12 Can. Cr. Cas. 69.

MARRIAGE LAWS; MARRIAGE WITH GIRL UNDER AGE; CONSENT OF FATHER.

Perjury is not proved in respect of a solemn declaration that there was no lawful hindrance to deponent's proposed marriage by shewing that the deponent knew the girl to be under twenty-one and that her parent's consent had not been obtained as required by the provincial law, if the marriage was valid notwithstanding the absence of such consent. The King v. Moras, 12 Can. Cr. Cas. 145.

INDICTMENT; CHARGING WITH INTENT TO DECEIVE.

(1) An indictment for perjury is not bad by reason of the omission to allege therein that the perjury was committed with intent to deceive or mislead. (2) Sec. 3 of the Lord's Day Act of Upper Canada C.S.U.C. ch. 104, prohibiting gambling with dice on Sunday, is in force in Ontario. (3) Where a person accused is brought before a magistrate having jurisdiction to try the charge then and there made against him and raises no objection to the want of an information or the regularity of the process by means of which his attendance was compelled, his evidence given on the hearing of the charge is evidence in a "judicial proceeding" within Code, sec. 171, as to perjury, notwithstanding the lack of an information and the irregularity of his arrest. (4) On a charge of perjury committed in summary proceedings before a police magistrate, the fact of the trial in which the perjury was alleged to have been committed and the proceedings had thereon may, if no formal record was made up, be proved by the oral testimony of the magistrate and the production of the notes of the evidence. The King v. Yaldon, 13 Can. Cr. Cas. 489.

[Followed in R. v. Legros, 14 Can. Cr. Cas. 164; R. v. Farrell, 15 Can. Cr. Cas. 288; distinguished in R. v. Graves (No. 2), 16 Can. Cr. Cas. 337.]

STATING THE OFFENCE; PERJURY COMMITTED BEFORE SAME TRIBUNAL.

(1) It is not essential that an information for perjury should set out the exact words of the false statement in testimony taken viva voce; the charge may be properly stated by summarizing what was in

effect the false evidence specifying the tribunal and the time and place at which the same was given and charging that thereby the accused "unlawfully committed perjury." (2) Where perjury is charged as having been committed on a summary trial for an indictable offence under the Code, the formal record of such summary trial must be proved in the perjury case, although the latter is tried summarily by the same magistrate. (3) A magistrate holding a summary trial for perjury alleged to have been committed in a prior trial before himself, must not import into the perjury trial his recollection of the demeanour of the accused and other witnesses at the former trial; he must be guided solely by the evidence at the perjury trial considered in view of the demeanour of the witnesses thereat. (4) Perjury being an offence punishable with imprisonment for more than five years, there is no jurisdiction to impose as the punishment therefor, a fine in lieu of imprisonment (Code, sec. 1035), but both imprisonment and fine may be awarded. The King v. Legros, 14 Can. Cr. Cas. 161.

[Followed in The King v. Drummond (1905), 10 Can. Cr. Cas. 340; R. v. Graf, 15 Can. Cr. Cas. 200; Rex v. Farrell, 20 O.L.R. 182, 15 Can. Cr. Cas. 287; referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 336.]

MAKING FALSE STATUTORY DECLARATION; QUESTION OF OFFICIAL AND ANSWER AS TO TRUTH OF CONTENTS INSUFFICIENT TO CONSTITUTE A "SOLEMN DECLARATION."

(1) Sec. 1002 of the Criminal Code, 1906, which requires corroboration in certain cases and specially includes the offence of perjury under Code, sec. 174, does not apply to the analogous offence of making a false statutory declaration under sec. 175. (2) A person is "authorized by law" to make a statutory declaration if the declaration is such as can legally be made under the Canada Evidence Act. (3) On a charge of making a false statutory declaration, it must be shewn that when the declaration was made the officer receiving the same or the declarant made use of words to the effect that the declaration was in the nature of an oath. (4) Where a form of statutory declaration was made up by a magistrate from information given by the accused, and after the latter's signature had been obtained the magistrate addressed the accused with the words: "Do you declare it is true?" to which the accused replied "I do," the declaration has not been legally made in the terms of the Canada Evidence Act and a conviction is not authorized under Code, sec. 175, although the allegations in the document are shewn to be wilfully false. The King v. Phillips, 14 Can. Cr. Cas. 239.

DEPOSITION IN A "JUDICIAL PROCEEDING;" EXAMINATION IN CIVIL CASE, FALSE STATEMENT IN EXAMINER'S ABSENCE.

(1) An examination ordered by a Judge to be taken before the registrar of the Court in a civil proceeding ceases to be a "judicial proceeding" under the Criminal Code, secs. 170 and 171, as to the offence of perjury, when the examiner after swearing the witness leaves the room in which the examination is being held, although the official stenographer took the depositions in presence of counsel for the parties. (2) A false statement under oath so made in the absence of the official examiner cannot be made the foundation of a perjury charge. The King v. Rulofson, 14 Can. Cr. Cas. 253.

[Distinguished in R. v. Howley, 20 Can. Cr. Cas. 37.]

WARRANT OF ARREST; STATING THE OFFENCE.

A warrant of arrest for perjury is sufficient under Code, sec. 1152, if it charges that the accused committed perjury by swearing that he did not do a particular act specified, without alleging therein that the statement was sworn with intent to mislead the Court. The King v. Lee Chu, 14 Can. Cr. Cas. 322.

FALSE EVIDENCE ON PRELIMINARY ENQUIRY; PROOF OF JUDICIAL PROCEEDING.

(1) On a trial for perjury in respect of evidence taken by a magistrate upon a preliminary enquiry based upon a sworn information, the information itself must be produced to establish that the justice had power to hold the enquiry and that the enquiry was, in consequence, a "judicial proceeding" under Code, secs. 170 and 171. (2) In the absence of proof that the original information had been lost or destroyed so as to admit secondary evidence thereof, the oral testimony of the magistrate as to the nature of the proceedings before him, although received without objection, is insufficient to prove that the enquiry in which the alleged perjury was committed was held in respect of an indictable offence and was a "judicial proceeding." The King v. Farrell, 15 Can. Cr. Cas. 283.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 336.]

PERJURY ON PRELIMINARY ENQUIRY; INCOMPLETE DEPOSITIONS.

On a trial for perjury in giving false evidence in a preliminary enquiry before a magistrate, if it appears that the magistrate did not take down all the evidence given by the accused, the prosecution may supplement the proof of the written depositions by oral testimony of other statements then sworn to by the accused which were not taken down in writing. The King v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139.

[Referred to in Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.]

SUFFICIENCY OF MODE OF ADMINISTERING OATH; FUNCTION OF JUDGE TRYING CHARGE.

(1) Notwithstanding the method of administering an oath to a witness lies within the control of the trial Judge, upon a subsequent prosecution for perjury the sufficiency of the manner of administering the oath on the trial in which the perjury is alleged to have been committed, is to be decided by the Judge presiding at the perjury trial. (2) A Chinaman cannot be convicted of perjury where, when presented as a witness in the case in which the false testimony was alleged to have been given, in response to a question from the clerk of the Court, the accused stated that he was a Christian and that he desired to be sworn upon the Bible, but, under the directions of the trial Judge, without further enquiry or any assent on the part of the Chinaman, the clerk administered the Chinese oath by burning paper, as under such circumstances no binding oath was administered. [The Queen's case, 2 Br. & B. 284, referred to.] The King v. Lee Tuck, 19 Can. Cr. Cas. 471, 5 D.L.R. 629.

EXAMINATION OF DISCOVERY; DISPOSITION IN ABSENCE OF OFFICIAL.

(1) A person who makes a statement on oath knowing it to be false, upon examination on discovery under article 286 of the Code of Civil Procedure (Quebec) is guilty of perjury. (2) The fact that the witness, although sworn by the prothonotary, was actually examined in the robing-room and not in the presence of the prothonotary or a Judge, is immaterial when neither party raised any objection to the mode of examination at the time. The King v. Howley, 20 Can. Cr. Cas. 36.

FORM OF OATH; UPLIFTED HAND; ASSENT; ESTOPPEL.

Where a man presents himself as a witness before a duly constituted judicial tribunal, holds up his hand by way of assenting to the terms of an oath administered to him in the usual solemn formula concluding with the actual test words "so help me God" as binding on his conscience, and then proceeds with deliberate knowledge and for the purpose of deceiving the court to make a series of false statements by which the tribunal is materially misled and a serious miscarriage of justice is caused; this man is estopped, on a subsequent assignment of perjury against him (under sec. 170 of the Criminal Code 1906), based upon such false statements, from denying that he assented to the oath so administered, and a conviction of perjury on the evidence so given will not be disturbed. (Per Russell and Drysdale, JJ.) [The judgment below stood on an equal division of opinion upon the appeal; Omychund v. Barker, 1 Atk. 21, specially referred to; see as to testimony without legal sanction, The King v. Deakin, 19 Can. Cr. Cas. 62; The King v. Lee Tuck, 19 Can. Cr. Cas. 471, 5 D.L.R. 629; The King v. Deakin (No. 2), 2 D.L.R. 282, 19 Can. Cr. Cas. 274.] R. v. Curry, 21 Can. Cr. Cas. 273, 12 D.L.R. 13, 47 N.S.R. 176, affirmed in 22 Can. Cr. Cas. 191, 15 D.L.R. 347.

AUTHORITY TO ADMINISTER OATH; REGISTRATION OF VOTERS; "JUDICIAL PROCEEDINGS."

Where a person acted de facto as a registrar under the Manhood Suffrage Act, 7 Edw. VII. (Ont.) ch. 5, without objection and under colour of right as having been appointed by the only statutory member of the Board of Registrars then officially acting, the administration of the qualification oath by the registrar so appointed to an applicant applying to be registered as a voter takes place in "judicial proceedings" within the meaning of sec. 171 of the Criminal Code, 1906, so as to found a charge of perjury in respect of wilfully false and misleading statements sworn to by the applicant, whether or not such de facto registrar had been regularly appointed. [Drew v. The King, 6 Can. Cr. Cas. 424, 33 Can. S.C.R. 228, followed.] R. v. Mitchell and West, 21 Can. Cr. Cas. 193, 10 D.L.R. 717.

EVIDENCE THROUGH INTERPRETER; SUBSTANCE OF ANSWERS TRANSCRIBED.

On a charge of perjury against a witness speaking in a foreign tongue, it is not essential that the prosecution should prove that every word uttered by the witness in the witness-box had been translated by the interpreter and repeated by him in English so as to be placed upon the official stenographer's notes; it is enough that the court is satisfied on the interpreter's testimony in the perjury trial that he repeated in English all that was material of what the accused had said in a foreign language. R. v. Bogh Singh, 21 Can. Cr. Cas. 323, 12 D.L.R. 626.

ELEMENTS OF OFFENCE; KNOWLEDGE OF FALSITY.

A conviction for perjury that follows the precedent of form 64 (e) of the Schedule to the Criminal Code need not allege that the defendant had knowledge of the falsity of the testimony on which the charge is founded. A conviction for perjury which shews but one conviction on a charge of making several false statements in the course of a trial, will be construed and treated as a charge and conviction for a single offence only, notwithstanding that each false statement might have been charged as a distinct offence. R. v. Yee Mock, 21 Can. Cr. Cas. 400, 13 D.L.R. 220.

[Referred to in R. v. Morrison, 26 Can. Cr. Cas. 26, 28 D.L.R. 113.]

EXAMINATION ON DISCOVERY.

A person who makes a statement on oath, knowing it to be false, upon examination for discovery under article 286 C.P. (Que.) is guilty of perjury. R. v. Howley, 22 Can. Cr. Cas. 108, 8 D.L.R. 1025, affirming 20 Can. Cr. Cas. 36.

CORROBORATION; "MATERIAL PARTICULAR;" KNOWLEDGE OF FALSITY.

The corroboration required on a charge of perjury need only be as to the falsity of the previous deposition, although the circumstances may be such that to prove guilt a further element must be shewn such as the knowledge of the accused that the party with whom he claimed he had entered into a contract on behalf of another had in fact no authority to do so. R. v. Nash, 23 Can. Cr. Cas. 38, 17 D.L.R. 725.

ON INVESTIGATION BEFORE COMMISSIONER; PROOF OF PROCEEDINGS; NEW TRIAL.

It is error constituting ground for setting aside the acquittal of the accused and for ordering a new trial upon a charge of perjury before a statutory commissioner that the judge trying the case without a jury (speedy trials clauses) declined to take cognizance of the original record of a superior court produced by its officer for inspection unless the latter would deliver the same up to be filed, where such record was material to prove the proceedings in which the perjury was charged to have been committed and the prosecutor tendered a copy for filing. R. v. Michael, Judge, 24 Can. Cr. Cas. 354.

PROOF OF FALSE DEPOSITION BY PRODUCTION OF RECORD.

Where the deposition containing the false statement charged as perjury forms part of the record of a superior court of record, and is certified and attested by the official stenographer, it is proved by the production of such record; the additional oral testimony of a witness that he had heard the accused make, under oath, the statements charged to be false, is not made necessary by Cr. Code, sec. 1002. Spires v. The King, 25 Can. Cr. Cas. 172, 28 D.L.R. 146.

FALSE STATUTORY DECLARATION ON INSURANCE PROOF OF LOSS.

A statutory declaration, made in the form provided by the Canada Evidence Act, by the assured, wherein he states the loss by fire, of the goods insured under a fire insurance policy and assigns a value to same is a "solemn declaration," which the assured is "required or authorized by law" to make, within the terms of Cr. Code, sec. 175, and the declarant is liable to conviction under sec. 175, if statements therein contained would amount to perjury if made in a judicial proceeding, the same being known by him to be false and being intended by him to mislead the insurance company or its adjuster. (Per Harvey, C.J., and Scott, J.) R. v. Nier, 25 Can. Cr. Cas. 241, 28 D.L.R. 373.

KNOWLEDGE OF FALSITY; WILFULNESS; OATH; ELECTION; DE FACTO OFFICER.

When an indictment or a charge under the Speedy Trials clauses alleges perjury in that the accused had previously voted on an election day and with intent to vote again on that day had sworn that he had not already voted, there is implied in such allegation that he is charged with making the false oath "wilfully and corruptly" or "knowingly," and the form of the charge will be sufficient under such circumstances as the charge contains in substance a "statement that the accused has committed some indictable offence therein specified" (Cr. Code, sec. 852), although it does not in terms state the offence as done "wilfully and corruptly" (Cr. Code, sec. 172) or "with knowledge of the falsity of the assertion" (Cr. Code, sec. 170). [R. v. Cohon or Cohn, 6 Can. Cr. Cas. 386, 36 N.S.R. 240, and R. v. Yee Mock, 21 Can. Cr. Cas. 400, 13 D.L.R. 220, referred to.] A charge of perjury in taking a false oath, at a municipal election held under the Towns Incorporation Act, R.S.N.S. ch. 71, that the deponent had not previously voted at the election, will not be quashed because it does not specifically set out the appointment by the municipality of the election officer which it names as the "presiding officer" for the polling subdivision before whom the alleged false oath was taken: Cr. Code, sec. 862 makes it unnecessary to state the nature of the authority of the tribunal before which the oath was taken and the charge sufficiently indicated that the person described as "presiding officer" was acting as such under an appointment made in pursuance of the Towns Incorporation Act. [See Annotation on "Authority to administer extra-judicial oaths" at end of this case.] R. v. Morrison, 26 Can. Cr. Cas. 26, 28 D.L.R. 113.

CORROBORATION AS TO FALSITY.

On a charge of perjury the material particular for which corroboration is required is not the fact that the accused had sworn to the statement but that the statement itself was false. [R. v. Daun, 11 Can. Cr. Cas. 244, 12 O.L.R. 227, referred to.] R. v. Peterson, 27 Can. Cr. Cas. 3, 32 D.L.R. 295, affirmed in 28 Can. Cr. Cas. 332, 32 D.L.R. 298, 55 Can. S.C.R. 115.

OFFICIAL STATEMENT MADE UNDER OATH OF OFFICE.

Perjury is not chargeable in respect of a Court bailiff's certificate purporting to be made under his "oath of office" previously administered on his appointment; ex. gr. in Quebec a procès-verbal of service certifying the distance travelled in order to

serve Court process. R. v. Tremblay, 28 Can. Cr. Cas. 21, 35 D.L.R. 209.

CHARGE OF MAKING FALSE DECLARATION; CONSOLIDATION OF SCHOOL DISTRICTS.

The franchise provided for districts already established is to prevail upon the vote taken for consolidation of school districts under the School Ordinance (Alta.). R. v. Gainor, 30 Can. Cr. Cas. 357.

FALSE STATEMENT UNDER LIQUOR ACT; "JUDICIAL PROCEEDINGS."

The obligation imposed on a person found with liquor in his possession to disclose on oath or affirmation the source from which he obtained it (Intoxicating Liquors Act, 1916, N.B. sec. 179) does not arise unless such person admits having drunk liquor on the same day. Where there has been no such admission the magistrate has no authority to require the disclosure under sec. 179 of that Act and perjury cannot be assigned under Code, sec. 172 (*a*) for false statements in a solemn declaration purporting to be made under that Act, and semble, not under Code, secs. 170 and 171 as the proceeding was not a "judicial proceeding" within the Code definition. Ex parte Lindsay, 30 Can. Cr. Cas. 387.

PERSONATION.

PROCURING PERSONATION BY ELECTOR; PERSON HAVING NO "RIGHT TO VOTE."

A person who procures another to personate a voter at the polls is guilty of a corrupt practice under the Ontario Election Act, R.S.O. 1897, ch. 9, sec. 168, making it an offence to procure another to vote "knowing that the other has no right to vote," notwithstanding that the personator was himself entitled to vote. The King v. Coulter, 7 Can. Cr. Cas. 288.

Res judicata; Former conviction for related offence; Personation of elector; Oath of identity. The King v. Quinn, 10 Can. Cr. Cas. 412.

Personation of a voter is not an offence at common law. The King v. Sinclair, 12 Can. Cr. Cas. 20.

CIVIL SERVICE EXAMINATION; PERSONATION; PROSECUTION.

Personation at a Dominion civil service examination may be prosecuted either under the special provision contained in the Civil Service Act, Can., or under sec. 409 of the Criminal Code. R. v. Lartie, 25 Can. Cr. Cas. 300.

PHYSICIANS AND SURGEONS.

See Medical Acts.

PIRACY.

See also Admiralty; Shipping; Seamen.

PIRATICAL ACT; REVOLT IN BRITISH SHIP; CHARGE AGAINST SEAMAN NOT A BRITISH SUBJECT; CONSENT OF GOVERNOR-GENERAL TO LAYING INFORMATION.

A charge against a seaman not a British subject on a British ship for inciting a revolt upon the ship while on the high seas cannot, if taken only under Code, sec. 128, be made without the consent of the Governor-General under sec. 542 obtained prior to the laying of the information. (Per Ritchie, J., and Weatherbe, J.) If the proceedings for the offence are taken under the Merchant Shipping Act, 1894 (Imp.), sec. 686, the consent of the Governor-General is not required and Code, sec. 542 would not apply. (Per Ritchie, J.) Code, sec. 542 applies to the procedure in Canadian Courts in respect of offences committed within the Admiralty jurisdiction whether the proceedings are taken under the Criminal Code or the Imperial Merchants Shipping Act or the Admiralty Offence Act, 1849 (Imp.). (Per Weatherbe, J.) The King v. Heckman, 5 Can. Cr. Cas. 242.

PLEA.

See also Defence; Trial; Procedure.
Note in pleas in bar. 7 Can. Cr. Cas. 43.

PLEA OF GUILTY; UNAUTHORIZED PLEA; PLEA BY ATTORNEY.

An attorney, who appeared for the defendant in a Scott Act case and pleaded guilty, afterwards made affidavit that the defendant had given him no authority to plead guilty, but had instructed him to fight the case out. Several contradictory affidavits were read tending to show that the defendant had authorized the attorney to plead guilty:—Held, that the magistrate could not receive a plea of guilty from any person but the defendant himself. Ex parte Gale (1899), 35 C.L.J. 464.

INADVERTENT PLEA.

Consent given by the Crown to the withdrawal of plea to the indictment, upon a statement by counsel for the accused that the plea was made inadvertently. R. v. Lawrence, 1 Can. Cr. Cas. 295.

[Disapproved in R. v. Smith, 3 Can. Cr. Cas. 469.]

IRREGULARITY.

A plea irregular and illegal as containing matters of mere comment and argument should be rejected from the record, or the illegal averment should be struck out and the defendant allowed to plead anew. R. v. Grenier, 1 Can. Cr. Cas. 55.

PLEA TO INDICTMENT: WAIVER OF RIGHT TO ELECT FOR SPEEDY TRIAL.

(1) In order to waive a trial by jury and to elect to be tried by a Judge of Sessions, an information must have been laid before a justice of the peace and a preliminary en-

quiry had thereon and the accused must have been committed for trial. (2) If an accused party neglects to take the necessary steps to elect in favour of a "speedy trial" without a jury in the special Court for speedy trials, before he has pleaded to an indictment preferred by leave of the Judge of a jury Court his plea to such indictment will conclude him from electing against a jury trial. The King v. Werner, 6 Can. Cr. Cas. 406.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 289; followed in R. v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.]

TRIAL OF INDICTMENT; DISAGREEMENT AND DISCHARGE OF JURY; RETRIAL AT SAME SITTINGS.

(1) Upon the discharge of a jury for disagreement, the Crown may either traverse the case to the next sittings for the second trial or may have a new jury sworn from the same panel as the first jury and proceed with the second trial at the same sittings. (2) Upon such second trial at the same sittings it is not necessary to ask the accused to plead again to the indictment or to again read the indictment to him. The King v. Gaffin, 8 Can. Cr. Cas. 194.

Alibi set up in defence; Onus of proof. 8 Can. Cr. Cas. 474, 476.

INDICTMENT FOR MURDER; ENTRY OF PLEA ON PRISONER'S REFUSAL TO PLEAD.

On the prisoner, through his counsel, refusing to plead to the new indictment, the trial Judge may direct a plea of "not guilty" to be entered under Code, sec. 900. The King v. McAuliffe, 17 Can. Cr. Cas. 495.

SUMMARY CONVICTION; CHARGE NOT DISCLOSING OFFENCE—PLEA NEGLECT OF WIFE.

A plea of guilty to a charge intended to be framed under sec. 242A of the Criminal Code (amendment of 1913), but not specifically referring to that section, will not support a summary conviction thereunder where the information upon which the plea was taken did not sufficiently disclose an offence, the form of same being that the defendant did "neglect his wife." [See also R. v. Oberlander, 16 Can. Cr. Cas. 244; R. v. Armstrong, 18 Can. Cr. Cas. 72; R. v. Fitzgerald, 19 Can. Cr. Cas. 39; R. v. Toy Moon, 19 Can. Cr. Cas. 33.] R. v. Chitnita, 22 Can. Cr. Cas. 344, 16 D.L.R. 241.

SUMMARY CONVICTION; PLEA OF GUILTY; EVIDENCE; DISORDERLY HOUSE.

The answer of the accused on a charge of frequenting a disorderly house contrary to sec. 238 of the Criminal Code, sub-section (*k*) that he "was there if that made him guilty," is not equivalent to a plea of guilty. [See also the new sec. 229 of the Criminal Code as amended 1913, making it an offence to be found in a disorderly house without lawful excuse.] On a habeas corpus motion attacking a summary conviction as upon a plea of guilty for a vagrancy offence, the defendant's affidavit is admissible to shew that he did not plead guilty but had admitted only one of the essential circumstances which must concur to constitute an offence. R. v. Swett, 23 Can. Cr. Cas. 272, 19 D.L.R. 694.

PLEA OF GUILTY AS ESTOPPEL TO CONTEST FACTS ON APPEAL.

A plea of guilty operates as an estoppel against the accused from calling upon the prosecution to produce evidence to establish that he is guilty, and qua the facts alleged in the information or indictment, he is barred from a trial de novo which in certain cases is available on an appeal from two justices holding a summary trial on notice of appeal being given by a person aggrieved (Code, secs. 748 and 797, as amended in 1913); any objection to be taken must then be to the form of the conviction. [R. v. Bowman, 2 Can. Cr. Cas. 89; R. v. Baird, 13 Can. Cr. Cas. 240, and Upton v. Brown, 21 Can. Cr. Cas. 190, considered.] R. v. Gillis, 23 Can. Cr. Cas. 160, 18 D.L.R. 461.

POCKET-PICKING.

MATERIAL INGREDIENTS OF OFFENCE TO BE PROVED.

Where in a charge of pocket picking the evidence in the opinion of a Court of Appeal goes no further than to support a reasonable surmise or suspicion that the accused was guilty of the offence and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal under Cr. Code, secs. 744 and 746. R. v. Winslow, 3 Can. Cr. Cas. 215.

[Referred to in R. v. Brindamour, 11 Can. Cr. Cas. 382; applicable in R. v. Law, 16 Can. Cr. Cas. 388.]

POLICE COURT.

See also Police Magistrate; Justice of the Peace; Jurisdiction; County Judge.

WHETHER A "COURT OF JUSTICE."

Held, that the Police Court of the city of Toronto is a "Court of justice" within 32 and 33 Vict. ch. 21, sec. 18, and that the prisoner was properly convicted of stealing an information laid in Court. Whether the Police Court is a Court of justice within 32 and 33 Vict. ch. 21 sec. 18, or not, is a question of law which may be reserved by the Judge at the trial, under Consol. Stat. U.C. ch. 112, sec. 1, and where it does not appear by the record in error that the Judge refused to reserve such question, it cannot

be considered upon a writ of error. Regina v. Mason (1872), 22 U.C.C.P. 246.

POLICE MAGISTRATE.

See also Jurisdiction; Justice of the Peace; County Judge's Criminal Court; Disqualification of Magistrate; Summary Trial; Speedy Trial.

JURISDICTION; TITLE TO LAND; BOUNDARIES; THEFT OF TREES; CRIMINAL INTENT.

Defendant was convicted before a stipendiary magistrate under sec. 337 of the Criminal Code, of stealing seven trees the property of the plaintiff. The parties owned and occupied adjoining farms in the rear of which the lands were covered with wood and the dividing line was not distinct. Defendant, while cutting wood on his own lot, cut seven trees over the line claimed by the plaintiff but within a line which he (defendant) alleged to be the dividing line, and hauled them away. The magistrate found that the criminal intent was proved and that the title to land did not bona fide arise. Defendant appealed under sec. 900 of the Criminal Code:—Held, that the conviction could be attacked on appeal as "erroneous in point of law," that the title to land was bona fide in issue and the magistrate ousted of jurisdiction, and that under the circumstances no criminal intent was proved. (Per Tuck, C.J., Barker and Hanington, J.J.) Robichaud v. Le Blanc (1898), 34 C.L.J. 334.

DECIDING VALIDITY OF STATUTES OR BY-LAWS.

A by-law that is not just and equal in its operation, or which is unreasonable, or permits favouritism, is void. A magistrate is bound to decide all questions raised before him as to the validity of statutes or by-laws. [Jonas v. Gilbert, 5 Can. S.C.R. 356; Re Nash and McCracken, 33 U.C.Q.B. 181, and Regina v. Johnston, 38 U.C.Q.B. 549, followed.] Regina v. Russell, 1 B.C.R. 256.

DISQUALIFICATION; PECUNIARY INTEREST IN FINES; SALARIED MAGISTRATES.

Section 419 (a) of the Municipal Act, 1892, which provides that a magistrate shall not be disqualified from acting as such by reason of the fine or penalty, or part thereof, on conviction going to the municipality of which he is a ratepayer, includes a police magistrate. Where a police magistrate appointed under R.S.O. ch. 72 is paid a salary by the municipality instead of by fees, such salary being in no way dependent on any fines which he may impose, he has no pecuniary interest in the fines, and so is not thereby disqualified. Semble, that in such a case there would have been no qualification at common law. Regina v. Fleming, 27 O. R. 122.

JUSTICE OF THE PEACE IN PLACE OF.

(1) A justice of the peace acting in the illness or absence, or at the request of a police magistrate, should be designated as so acting, in warrants or other process; otherwise, the latter will be invalid. (2) A warrant issued by a justice of the peace so acting, in which he is described as "police magistrate," is void. R. v. Lyons, 2 Can. Cr. Cas. 218.

[Commented on in R. v. Ackers, 16 Can. Cr. Cas. 226, 21 O.L.R. 187.]

SESSION IN CITY HAVING A SEPARATE MAGISTRATE.

A town police magistrate in Ontario may, in respect of an offence under a provincial statute committed in part of the same county for which there is no police magistrate, take the information at a city or town (within the county) having a separate police magistrate; and may there try the case as an ex-officio justice of the peace, having the powers of two justices of the peace under the Ontario Police Magistrates' Act. R. v. McLean, 3 Can. Cr. Cas. 323.

[Referred to in R. v. Holmes, 17 O.L.R. 124.]

STIPENDIARY MAGISTRATES; STATUS; RELATIONS TO MUNICIPALITY.

The stipendiary magistrate of an incorporated town in Nova Scotia is an independent judicial officer appointed by the Lieutenant-Governor-in-Council and in no wise subject to the control or direction of the town council, the only relation of which body towards the magistrate is that it is required to fix his salary. Re Pelton, 20 Can. Cr. Cas. 299, 7 D.L.R. 465.

DUTIES; FINDING GUILT OF ACCUSED; GATHERING FACTS SURROUNDING CRIMINAL ACT TO FIX PENALTY; MISCONDUCT.

(1) The duty of a magistrate who undertakes to dispose of a matter brought before him are twofold; first, to find if the party is guilty or not guilty of the charge; and secondly, to gather the facts and circumstances surrounding the criminal act, so that he may judicially find what penalty should be imposed. (Per Howell, C.J.M.) (2) A magistrate before exercising his discretion as to the extent of the penalty to be imposed, within the limits provided by law, even where the accused pleads guilty to the crime charged, has no right to hear evidence in mitigation of the punishment without giving the private prosecutor having charge of the prosecution an opportunity to hear that evidence and cross-examine the parties giving it, and, if necessary, meet it with evidence on his own part in aggravation of the offence, or in contradiction of the alleged mitigating circumstances. (Per Richards, J.A.) (3) Though a magistrate acts beyond his jurisdiction in bringing a case on before the hour fixed, such action will not be taken as indicative of a corrupt motive if it appears that the magis-

trate did not know the hour for which the trial of the case had been fixed and had taken the case at the earliest hour for the convenience of counsel for the accused, where the magistrate erroneously supposed that it was not necessary to have the prosecutor represented at the hearing as defendant's counsel had informed the magistrate that the accused person would plead guilty and the accused did so plead at the hearing. Re McMicken, 20 Can. Cr. Cas. 334, 8 D.L.R. 550

JURISDICTION OF POLICE MAGISTRATE; PRELIMINARY ENQUIRY.

Every police magistrate is ex officio a justice of the peace for the whole county or district for which, or for a part of which, he is appointed, and such a justice of the peace need not hear both sides on the preliminary hearing, before committing the accused for trial before another magistrate. It is the duty of the magistrate to proceed with the trial of the accused when the accused is before him, when the accused has been committed for trial before him by another magistrate who is an ex officio justice of the peace for the same county; and this is so, even if the complainant does not appear at the trial, but has due notice of the time and place. Re Holman and Rea (No. 1), 21 Can. Cr. Cas. 7, 7 D.L.R. 481, reversed in 21 Can. Cr. Cas. 12, 9 D.L.R. 234.

APPOINTMENT AND OFFICIAL TITLE; EX OFFICIO JUSTICES.

Statutory proceedings authorized to be taken before a justice of the peace will not be set aside because of failure to describe the magistrate in the record of proceedings by the words "justice of the peace," if he is designated therein as stipendiary magistrate for the county and consequently is an ex officio justice of the peace by virtue of a provincial statute. Ex parte Seriesky, 21 Can. Cr. Cas. 140, 10 D.L.R. 612.

DISQUALIFICATION; PECUNIARY INTEREST IN IMPOSING FINE.

That a stipendiary magistrate may be interested in imposing a fine for a violation of the Canada Temperance Act in order to swell the fund from which his fees are paid is too remote an interest to disqualify him from entertaining a complaint for a violation of the Act. [Ex parte McCoy, 33 N.B.R. 605, followed.] R. v. Holyoke; Ex parte McIntyre, 21 Can. Cr. Cas. 422, 13 D.L.R. 225.

JURISDICTION OF MAGISTRATES; SUMMARY TRIAL.

The extended jurisdiction given by Cr. Code, sec. 777 (2) to "police and stipendiary magistrates of cities and incorporated towns" to try, with the consent of the accused under the Summary Trials clauses, indictable offences other than those triable by a "magistrate" under Cr. Code, sec. 773 is intended to apply only to a special kind of police or stipendiary magistrates whose official capacity is designated in terms conforming to the statute, and not to magistrates for a whole province or judicial district with merely consequent jurisdiction for a city or incorporated town within the territorial limits. R. v. Alexander and Shouldice, 21 Can. Cr. Cas. 473, 13 D.L.R. 385.

[Referred to in R. v. Bloom, 22 Can. Cr. Cas. 205, 15 D.L.R. 484; followed in R. v. Kolember, 22 Can. Cr. Cas. 341, 16 D.L.R. 146.]

JURISDICTION OF POLICE MAGISTRATE; BIGAMY; SUMMARY TRIAL.

As bigamy is one of the offences that may, under secs. 822–842 of the Criminal Code relating to speedy trials, be tried by a Court of General Sessions of the Peace, a police magistrate of a city having not less than 2,500 population may also, under sec. 777 of the Criminal Code, with the consent of an accused person, try him summarily for such offence. R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612.

[Followed in R. v. James, 31 Can. Cr. Cas. 4.]

POLICE COMMISSIONER; JURISDICTION; BAWDY HOUSE.

A commissioner of police appointed under R.S.C. ch. 92, and thereby invested with the like powers of summary trial as a city police magistrate in the province to which he is appointed, has in Alberta, under sec. 771 and 777 of the Cr. Code, 1906 (Can.), as amended 1909, and the Alberta Act respecting police magistrates, absolute jurisdiction to hear and determine an information for keeping a common bawdy house in contravention of sec. 228 of the Code [Rex v. Alexander, 13 D.L.R. 385, 21 Can. Cr. Cas. 473, referred to.] The Alberta statute, ch. 13, of 1906, respecting magistrates, as amended by sec. 9 of ch. 5 of 1907, which vests exclusive jurisdiction in the justices first having cognizance of the fact in criminal cases triable by them, applies to an officer (for example, a commissioner of police) exercising the jurisdiction of two justices of the peace. Where a joint information for keeping a house of ill fame is laid before a police commissioner in Alberta whose jurisdiction under the Alberta statutes of 1907, ch. 5, is subject to the limitation that the first tribunal of justices having cognizance of the fact in any particular case shall have exclusive jurisdiction, the jurisdiction of the commissioner is ousted as to one of the two parties, from the fact that a prosecution is pending before a police magistrate having jurisdiction over the offence upon a prior information which included the same offence, the trial of which had been adjourned by the police magistrate; and the

charge on the joint information before the commissioner must fall as to both because of such want of jurisdiction. R. v. Bloom, 22 Can. Cr. Cas. 205, 15 D.L.R. 484.

SUMMARY TRIAL; JURISDICTION OF CITY AND TOWN MAGISTRATES.

Sub-section 2 of Cr. Code, sec. 777 as enacted by the Criminal Code Amendment Act, 1909, giving the extended power of summary trial to police magistrates, has equal application to police and stipendiary magistrates of cities and incorporated towns of at least 2,500 population throughout Canada; the words "in the Province of Quebec" as used in the sub-section qualify only the words "district magistrates and judges of the sessions" and not the phrase "police and stipendiary magistrates" which follows. [R. v. Rahamat Ali, 16 Can. Cr. Cas. 193, approved.] R. v. Spates, 22 Can. Cr. Cas. 269, 15 D.L.R. 828.

SUMMARY TRIAL BY JUSTICES; ASSAULT.

Two justices in Saskatchewan have absolute sumary jurisdiction under Cr. Code, sec. 776 to try the offence of assault occasioning actual bodily harm (Cr. Code, 1906, sec. 295) without the consent of the accused to summary trial under Part 16 of the Code. [R. v. Hostetter, 7 Can. Cr. Cas. 221, 5 Terr. L.R. 363; R. v. Zyla, 17 W.L.R. 258; followed; and see R. v. Taylor, 12 Can. Cr. Cas. 244.] R. v. Martiniuik, 22 Can. Cr. Cas. 275, 17 D.L.R. 304.

SUMMARY TRIAL; POWERS OF TWO JUSTICES; THEFT UNDER $10.

The theft of a bundle of tied letters by one act is a single offence, and where it appears by the evidence on the summary trial before two justices exercising the limited jurisdiction of sec. 773 of the Criminal Code, 1906, as to theft not exceeding $10, that the cheque for $10, as to which alone the charge was laid before the magistrates, was the enclosure in one letter of the bundle stolen by the one act and that the value of the enclosure in the entire bundle of registered letters was more than $10, the justices have no jurisdiction to proceed further with a summary trial, but should proceed only with a preliminary inquiry and committal of the accused for trial before a court of competent jurisdiction. R. v. Pope, 22 Can. Cr. Cas. 327, 15 D.L.R. 664.

JURISDICTION; SITTING AT REQUEST OF ANOTHER JUSTICE.

The exclusive jurisdiction which by Alberta Statutes 1907, ch. 5, is to attach to the first justice of the peace taking cognizance of the case is sufficiently displaced within the exception authorizing another justice to act on request, where the justice taking the information did so at the request of the trial justice accompanied by the latter's intimation that he himself would conduct the trial; acquiescence in such proposition is equivalent to a counter-request by the justice taking the information that the other justice should take the trial. R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536.

JURISDICTION; SUMMARY CONVICTION OR SUMMARY TRIAL PROCEDURE; DISORDERLY HOUSE; VAGRANCY; APPEAL.

Where trials for keeping a disorderly house and for frequenting a common bawdy house are held before a magistrate having jurisdiction to proceed to a summary conviction under the vagrancy clauses (Cr. Code, sec. 228) or to a summary trial without consent under Code, sec. 774 (amendment of 1909), it will be taken in the absence of any express statement in the record of proceedings to indicate which procedure was being followed, that the magistrate acted under the power of summary conviction from which an appeal would lie rather than that he acted under the powers of Code, sec. 774 upon summary trial from which there would be no appeal. R. v. Belmont, 23 Can. Cr. Cas. 89, 18 D.L.R. 53.

SUMMARY TRIAL; JURISDICTION.

Two justices have absolute jurisdiction in Saskatchewan under Cr. Code, sec. 776, to summarily try a charge of inflicting grievous bodily harm. [R. v. Hostetter, 7 Can. Cr. Cas. 221, 5 Terr. L.R. 363, followed.] R. v. Morton, 23 Can. Cr. Cas. 172, 18 D.L.R. 553.

APPOINTMENT; TERRITORIAL JURISDICTION.

Although the authority of county justices of the peace is confined to the limits of the county for which they are named, it does not necessarily extend to all places within the county, if there be any district therein which possess a separate and exclusive jurisdiction; and if concurrent jurisdiction is to be exercised by the county judges in such separate jurisdiction the commission should so state in express words such as the phrase "as well within liberties as without." [Paley on Convictions, 7th ed., 34, referred to.] R. v. Cody, 23 Can. Cr. Cas. 211, 18 D.L.R. 773.

JURISDICTION; N.S. TEMPERANCE ACT.

Two justices of the peace appointed for the entire county and holding a session at the police office established in an incorporated town within the county under the Towns Incorporation Act, N.S., have concurrent jurisdiction with the stipendiary magistrate of the town to try a charge of selling intoxicating liquor in contravention of the Nova Scotia Temperance Act, 1910, [R. v. Giovanetti, 5 Can. Cr. Cas. 157, 34 N.S.R. 505, referred to.] R. v. Coady, 23 Can. Cr. Cas. 434, 23 D.L.R. 278.

SUMMARY CONVICTION; TERRITORIAL JURISDICTION OF MAGISTRATE; INCONVENIENT PLACE OF TRIAL.

Where, as in Alberta, justices of the

peace are appointed with territorial jurisdiction extending over the entire province, an objection that the charge was not laid before the nearest justice will not be a ground for quashing the summary conviction unless there has been a gross abuse of authority in compelling the attendance of the accused at a far-distant and inconvenient place of trial, notwithstanding the availability of a justice at a convenient place of trial, under circumstances amounting to a denial of the right of the accused to make his "full answer and defence" (Cr. Code, sec. 715). [R. v. Farrell, 15 Can. Cr. Cas. 100, referred to.] Under a statutory provision limiting a justice's jurisdiction in any particular case to the first justice having possession and cognizance of the fact but with a proviso that at such justice's request any other justice may at the first justice's request "take part in" the case, a request to the second justice may be implied from the conduct of the justice who received the information, and in view of Cr. Code, sec. 1120, such request will be implied and the conviction upheld where both the justice receiving the information and another sat at the hearing, but because of objection raised by the family of the accused to the first justice acting, he voluntarily refrained from trying the case. [R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536, followed; R. v. Ackers (No. 3), 16 Can. Cr. Cas. 222, and R. v. McGregor, 2 Can. Cr. Cas. 410, referred to.] R. v. Tally, 23 Can. Cr. Cas. 449, 21 D.L.R. 651.

TERRITORIAL JURISDICTION OF MAGISTRATES; CASES NEAR BOUNDARY.

Where an offence has been committed within 500 yards of the boundary between two magisterial jurisdictions, Cr. Code, sec. 584 (*b*), will not enable the prosecutor to lay it in one jurisdiction and try it in another; he may both lay and try the offence in either jurisdiction. [R. v. Mitchell, 2 Q.B. 638, 2 G. & D. 274, followed.] R. v. Jack, 24 Can. Cr. Cas. 385, 25 D.L.R. 700.

MINISTERIAL AND JUDICIAL ACTS; WARRANT OF ARREST; SUMMONS.

The issue of a warrant for arrest upon a sworn information, is in itself a ministerial act of the magistrate, but his preliminary decision under Cr. Code, sec. 655 on the question whether a warrant or summons is the more appropriate, or whether in fact any offence is disclosed in the information, is a judicial act. Marsil v. Lanctot, 25 Can. Cr. Cas. 223, 28 D.L.R. 380.

PROTECTION ORDER ON QUASHING CONVICTION.

On quashing a summary conviction to which the Public Authorities Protection Act. R.S.O. 1914, ch. 89, applies the order of protection of the magistrate from civil action may stipulate an exception as to anything done by the magistrate maliciously and without reasonable and probable cause. Re Lascelle and Wholehan, 27 Can. Cr. Cas. 369, 34 D.L.R. 360.

SUMMARY CONVICTION; JURISDICTION OF MAGISTRATE; PRESENCE OF ACCUSED.

A magistrate has jurisdiction to proceed with the hearing of a charge punishable on summary conviction if the accused is in fact present, although he may have been brought there by irregular means, if the magistrate has jurisdiction over the person and offence. [The Queen v. Hughes, 25 Q.B.D. 249, and Ex parte Giberson, 4 Can. Cr. Cas. 537, 34 N.B.R. 538, applied; Re Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25, disapproved.] Ex parte Goguen; R. v. McDougall, 27 Can. Cr. Cas. 423, 35 D.L.R. 269.

EX OFFICIO JUSTICES; MAYOR AND ALDERMEN IN ONTARIO.

The mayor and alderman of a city in Ontario become ex officio justices of the peace on making their declarations of office and qualification under the Ontario Municipal Act, and two of them may as such justices try a charge of keeping liquor for sale in contravention of the Ontario Temperance Act. R v. Lake, 28 Can. Cr. Cas. 138.

JURISDICTION OF ONE JUSTICE; TEMPERANCE ACT.

The power conferred on one justice to try alone a prosecution of a "licensee" under the Ontario Temperance Act applies only to prosecutions of a licensed vendor and not holders of a "standard hotel license"; and, semble, the Act as to the latter contemplated license of the hotel premises rather than of the keeper. R. v. Boileau, 28 Can. Cr. Cas. 144, 36 D.L.R. 781.

JURISDICTION; DOMINION COMMISSIONER OF POLICE.

Although sitting within his territorial jurisdiction a magistrate cannot try an offence which is alleged to have been committed beyond his territorial jurisdiction, except where there is a statutory extension of his power in that respect; sec. 577 of the Criminal Code has not been made applicable to offences under Alberta statutes. A Commissioner of police appointed by the Governor-in-Council under R.S.C. 1906, ch. 92, has no jurisdiction to make a conviction under a provincial Law; his jurisdiction is restricted to the matters set forth in the federal Act and coming within the legislative jurisdiction of the Parliament of Canada. R. v. Coyne, 28 Can. Cr. Cas. 428, 41 D.L.R. 225, affirmed in 29 Can. Cr. Cas. 216.

APPOINTMENT OF WOMAN AS.

A woman is under no legal disqualification in the Province of Alberta from being appointed a justice of the Peace or Police Magistrate. R. v. Cyr, 29 Can. Cr. Cas. 77, 38 D.L.R. 601, affirming 12 A.L.R. 320.

POLICE OFFICER.

Resisting arrest by. 7 Can. Cr. Cas. 167.

As informant in extradition proceedings; Execution of warrant of arrest by. 8 Can. Cr. Cas. 321.

POLICE OFFICER ON DUTY; RESPONSIBILITY OF MUNICIPAL CORPORATIONS.

A municipal corporation in the Province of Quebec is not responsible for the acts of its police officers, unless it has authorized or adopted such acts. Tremblay v. City of Quebec, 7 Can. Cr. Cas. 343.

POLYGAMY.

INDIAN MARRIAGE WITH TWO WOMEN.

An Indian who according to the marriage customs of his tribe takes two women at the same time as his wives, and cohabits with them, is guilty of an offence under sec. 278 of the Criminal Code. R. v. "Bear's Shin Bone," 3 Can. Cr. Cas. 329.

POSSESSION.

See Receiving; Intoxicating Liquors.

POST OFFICE ACT.

Stealing a post letter; Decoy letter irregularly posted. 2 Can. Cr. Cas. 221, 223.

DECOY LETTER TO FICTITIOUS ADDRESS; FAILURE OF CARRIER TO REPORT UNDER POST OFFICE REGULATIONS.

A decoy letter, duly stamped and placed by post office officials amongst the letters at a post office for the purpose of testing the honesty of the letter carrier whose duty it was to deal with the same, is none the less a "post letter" because of its being directed to a fictitious address. If the carrier should fail to report the letter as required by the post office regulations, or to return it within a reasonable time to his superior officer, he would be guilty of unlawfully detaining the letter under sec. 89 of the Post Office Act (R.S.C. 1886, ch. 35). Where a police officer, acting under the instructions of the Post Office Department in investigating the alleged theft of letters by letter carriers, believed that the carrier had stolen the letter and detained and searched him, an action for false arrest does not lie in the absence of malice. Mayer v. Vaughan, 5 Can. Cr. Cas. 392, affirmed in 6 Can. Cr. Cas. 68.

POST LETTER; DETENTION AND SEARCH OF LETTER CARRIER BY DETECTIVE OFFICER; RIGHT OF SEARCH.

Where a letter carrier violates the rules of the Post Office Department by failing to enter a letter bearing a nonexistent address in the book provided for that purpose, or to return the letter to the Post Office, there is reasonable and probable cause for detaining and searching him, and an action for damages against the peace officer who effected the arrest is not maintainable in the absence of evidence that the officer had made an improper and illegal use of his authority in the manner in which he effected such detention and search. A letter is a post letter although directed to a fictitious or nonexistent address. Mayer v. Vaughan (No. 2), 6 Can. Cr. Cas. 68.

STEALING LETTERS; DECOY LETTER; CONFESSION OF LETTER CARRIER TO POST OFFICE INSPECTOR.

(1) A decoy letter upon which postage has been paid, written by a post office inspector and delivered by him to the proper sorting officer for distribution, is a "post letter" within the meaning of Cr. Code, secs. 326 and 327, and of the Post Office Act as amended by 1 Edw. VII. (Can.) ch. 19, sec. 1. (2) Evidence is admissible of a confession made by the accused in answer to questions put to him prior to the laying of the charge by a person in authority over him, if it be proved affirmatively that no threat was made nor inducement held out in respect thereof. (3) On a Crown witness being interrogated as to an alleged confession made by the accused, and the defendant objecting to its being received, counsel for the defendant may be allowed to intervene on the examination to cross-examine on the question of the confession being a voluntary one, with a view of excluding evidence thereof. The King v. Ryan, 9 Can. Cr. Cas. 347.

[Referred to in R. v. White, 15 Can. Cr. Cas. 34, 18 O.L.R. 640.]

ILLEGAL CONTRACT TO TRANSMIT MAIL MATTER OTHERWISE THAN BY POST.

(1) A contract to distribute circulars to the public by mailing them separately addressed at the various post offices from which they would be distributed and forwarding them in parcels by express to be there posted and to thereby secure the lower drop-letter rate is an infringement of the postal law and the contractor for such distribution is properly convicted under sec. 136. (2) The word "sends" in sec. 136 of the Post Office Act, as applying to prohibited competition with the postal service, is not limited to cases in which the ultimate delivery to the addressee is intended to be made otherwise than through the postal service. The King v. Baxter, 18 Can. Cr. Cas. 340.

OFFENCES; MAILING INDECENT MATTER.

In the interpretation of sub-sec. (a) of Cr. Code, sec. 209 as to mailing indecent prints, etc., the words "or other publication" are to be construed as referring to matters ejusdem generis with the books, pamphlets, etc., which are previously mentioned in the sub-section and do not include indecent matter written in a private letter sent sealed;

the sending of such a letter would, however, be an offence under Cr. Code, secs. 317 and 318 (defamatory libel) if sent without the permission of, and if designed to insult, the the addressee; the words "matter or thing" which follow the word "publication" in sec. 209 (a) refer to some other object such as a statute or carving R. v. Goyer, 27 Can. Cr. Cas. 10, 32 D.L.R. 244.

PRELIMINARY ENQUIRY.

CONTINUING ENQUIRY BEFORE ANOTHER MAGISTRATE; RESIGNATION OR ABSENCE OF FIRST MAGISTRATE; PROCEEDINGS DE NOVO; CERTIORARI.

A preliminary hearing in a criminal case commenced before one magistrate cannot be continued before another. But if the magistrate who had begun the hearing dies, is dismissed, resigns his office or withdraws from the hearing, then another competent magistrate, may take it up, but he should begin the hearing de novo before himself; he cannot merely continue that previously begun. The Judge of the sessions of the peace who had begun the preliminary hearing having obtained leave of absence, and, without concluding it, started for a voyage to Europe, is deemed to be withdrawn from the proceeding; and in such case, with the consent of the Crown, the party prevented from proceeding was entitled to obtain from the magistrate, Angers, who replaced him, an order for beginning de novo the hearing in order to dispose of the matter. A writ of certiorari will not, in such case, be granted to prevent the magistrate Angers from taking up the case and beginning it again. Bertrant v. Angers, 21 Que. S.C. 213.

REOPENING; DISCRETION OF MAGISTRATE.

In a criminal case the preliminary hearing before the magistrate of an offence punishable on indictment, is not properly speaking, the enquête of the informant, but that of the magistrate. On the preliminary hearing, after the enquête on the information has been declared closed, and no evidence has been offered on the part of the accused, and even after, argument on question of law arising from the evidence given, the magistrate may, in his discretion allow the informant to reopen the enquête and give further evidence. Belanger v. Mulvena Q. R. 22 S.C. 37 (Supt. Ct.).

SUBSTITUTED CHARGE AFTER CONCLUSION OF HEARING; CONVICTION FOR LESSER OFFENCE WITHIN JUSTICE'S JURISDICTION.

Magistrates conducting a preliminary enquiry in respect of an indictable offence may not on its conclusion convict of a lesser offence, over which they have summary jurisdiction, although proved by the evidence adduced, if no complaint was laid before them, nor the accused called upon to defend in respect of such lesser offence. The Queen v. Mines, 1 Can. Cr. Cas. 217.

WAIVER OF; EFFECT ON CLAIM TO A SPEEDY TRIAL.

Semble, an accused person may, upon a preliminary enquiry, waive the preliminary examination into the charge and consent to be committed for trial without any depositions being taken; but as the "charge" in the County Judge's Criminal Court must be prepared from the depositions (Cr. Code, sec. 767), the accused committed without depoositions having been taken, has no right to elect to be tried at the County Judge's Criminal Court. R. v. James Gibson, 3 Can. Cr. Cas 451.

[Referred to in R. v. Wenee, 6 Can. Cr. Cas. 406, 12 Que. K.B. 320; R. v. Doherty, 3 Can. Cr. Cas. 506, 29 N.S.R. 4; R. v. Hebert, 10 Can. Cr. Cas. 289; R. v. Doherty, 32 N.S.R. 236; relied on in R. v. Poirier, 31 Que. S.C. 71; followed in R. v. Smith, 3 Can. Cr. Cas. 467, 31 N.S.R. 415; discussed in R. v. McDougall, 8 O.L.R. 30.]

BEFORE TWO JUSTICES; DISAGREEMENT.

A Superior Court should not make an order under Cr. Code, sec. 641, that an indictment be preferred against a party accused of an offence if the two justices before whom the preliminary investigation was held signed a declaration to the effect that they were unable to agree. Ex parte Hanning, 4 Can. Cr. Cas. 203.

INDICTMENT QUASHED FOR INVALIDITY OF DEPOSITIONS.

Where on a preliminary enquiry before a magistrate the witnesses were sworn by him and were then taken into another room and their evidence in chief taken by a stenographer and not in presence of the magistrate, such depositions are illegally taken, although the prisoner's counsel had the opportunity of afterwards cross-examining the witness before the magistrate. The objection to the irregularity is not waived by the cross-examination of the witnesses on the prisoner's behalf on their return to the magistrate's presence, if the objection is taken by the prisoner's counsel before he proceeds to cross-examine. Both the commitment for trial and the indictment founded on such illegal depositions are invalid and should be set aside. R. v. Traynor, 4 Can. Cr. Cas. 410.

[Distinguished in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 234; R. v. Prasoliski (No. 2), 16 Can. Cr. Cas. 148; referred to in R. v. L'Heureux, 14 Can. Cr. Cas. 103; R. v. Janneau, 12 Can. Cr. Cas. 360; R. v. Poirier, 31 Que. S.C. 69; R. v. Weir, 8 Que. P.R. 401; relied on in R. v. Hannay, 11 Can. Cr. Cas. 24; specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483; questioned in R. v. Jodney, 9 Can. Cr. Cas. 477, 481, 38 N.S.R. 142, 25 C.L.J. 109.]

REMAND FOR MORE THAN THREE DAYS.

Where on a preliminary enquiry a remand is desired for a time exceeding three clear days (Code, sec. 486 (c)), the justice may remand only by warrant (Code form P), declaring that it appears to be necessary to remand the accused; and an informal remand endorsed upon the warrant is insufficient. An information and warrant of arrest thereunder, charging the accused as an accessory to the violation of a statute named without specifying the fact as to which he is alleged to be an accessory is void for uncertainty. Such a warrant charges no offence, and neither it nor a remand thereon is validated by Code, sec. 578, which provides that no irregularity or defect in the substance or form of the warrant shall affect the validity of any proceeding at or subsequent to the preliminary enquiry before the justice. R. v. Holley, 4 Can. Cr. Cas. 510.

[Referred to in R. v. Goulet, 20 Can. Cr. Cas. 191.]

OFFENCE COMMITTED IN ANOTHER COUNTY OF SAME PROVINCE; JURISDICTION OF MAGISTRATE.

The power conferred on a magistrate under Code, sec. 557 of ordering the accused person brought before him, charged with an offence committed out of his territorial jurisdiction, to be taken before some justice having jurisdiction in the place where the offence was committed, is permissive only. A magistrate may hold a preliminary enquiry in respect of an indictable offence committed in the same province outside of his territorial jurisdiction, if the accused is, or is suspected to be, within the limits over which such magistrate has jurisdiction, or resides or is suspected to reside within such limits. Re The Queen v. Burke, 5 Can. Cr. Cas. 29.

[Relied on in R. v. Seeley, 14 Can. Cr. Cas. 277, 41 Can. S.C.R. 9; referred to in R. v. Lynn, 19 Can. Cr. Cas. 129.]

CHANGING PRELIMINARY ENQUIRY INTO A SUMMARY PROCEEDING.

It is not competent for magistrates where an information charges an offence which they have no jurisdiction to try summarily, to convert the charge into one which they have jurisdiction to try summarily, and to so try it on the original information. The King v. Dungey, 5 Can. Cr. Cas. 38.

STATUTORY PROHIBITION OF CERTAIN ACTS; PUBLIC POLICY; REMEDY BY INDICTMENT.

(1) Where the doing of a particular act is prohibited by statute on public grounds, and the statute does not declare a mode of enforcing the prohibition, the offence is indictable. (2) A person who without lawful excuse wilfully and corruptly votes more than once at a municipal election for city aldermen by general vote under sec. 158 (a) of the Ontario Municipal Act is guilty of an indictable offence by virtue of sec. 138 of the Criminal Code (disobedience of statutes). (3) Wrongfully voting twice at an election would not be indictable at common law unless prohibited by statute, and, semble, every contempt of a statute is indictable at common law where no other mode of punishment is provided. (4) Where a magistrate is applied to for process in respect of an indictable offence which cannot be dealt with summarily, no fees can be demanded by him therefor. (5) The Court will not grant to the prosecutor a mandamus to compel a rehearing by the magistrate of an application for process in respect of an indictable offence, if the magistrate had exercised his discretion (although erroneously) in refusing the process after being put in possession of the facts on which he can exercise discretion. (6) If the magistrate on an application for process erroneously holds that the offence is not indictable and that he therefore has no jurisdiction to hold a preliminary enquiry in respect thereof, a mandamus will lie to compel him to do so. The King v. Meehan (No. 2), 5 Can. Cr. Cas. 312.

[Referred to in Re Brown, 18 Can. Cr. Cas. 255.]

ASSAULT CAUSES BODILY HARM; CONVICTION FOR COMMON ASSAULT AFTER PRELIMINARY ENQUIRY; JURISDICTION.

(1) A magistrate holding a preliminary enquiry for an indictable offence may not proceed to summarily convict on the evidence given therein for both the accused and the prosecutor for a lesser offence included in the offence charged, although such lesser offence, if originally charged, would have been within his jurisdiction for trial. (2) A conviction made by a magistrate after proceeding upon a preliminary enquiry under Part XLV. is invalid and will be quashed although neither the accused nor his counsel made objection before the magistrate. Ex parte Duffy, 8 Can. Cr. Cas. 277.

PROCEEDINGS ON A SUNDAY; COMMITTAL FOR TRIAL AND RECOGNIZANCE TO APPEAR; VALIDITY.

(1) Where a person has been arrested and committed for trial upon a charge of an indictable offence, and has given a recognizance for his appearance for trial, all these proceedings taking place upon a Sunday, the validity of the order of committal and of the recognizance cannot be enquired into by process of certiorari. (2) (Per Hanington, J.) The proceedings before the justice were regular. Ex parte Garland, 8 Can. Cr. Cas. 385.

REMAND FOR MORE THAN THREE DAYS; SUGGESTION OF INSANITY OF ACCUSED; PERSONAL PRESENCE BEFORE THE MAGISTRATE.

(1) A remand by a magistrate in a pre-

liminary enquiry must be by warrant if made for more than three clear days, and it is essential that the accused should be personally present before the magistrate. (2) A remand for eight days for the purpose of a medical examination of the accused as to sanity cannot be made on the mere suggestion of the police officer without bringing the accused personally before the magistrate. Re Sarault, 9 Can. Cr. Cas. 448.

[Distinguished in R. v. Bouchard, 20 Can. Cr. Cas. 95, 4 D.L.R. 317; referred to in R. v. Goulet, 20 Can. Cr. Cas. 191.]

STATEMENT OF THE ACCUSED; ANSWER THAT HE HAS "NOTHING TO SAY."

(1) Upon a preliminary enquiry it is proper for the magistrate to ask the accused to sign the statement of the accused made under Code, sec. 591, even where the prisoner's answer to the statutory question is, "I have nothing to say." (2) The signature of the accused to such statement may be afterwards used against him upon the charage of forgery upon which he was committed, for purposes of comparison of the handwriting with the alleged forgery. The King v. Golden, 10 Can. Cr. Cas. 278.

COMMITMENT ON OTHER CHARGES.

The magistrate who holds the preliminary investigation on a charge preferred against an accused person, may commit him on any other one or more charges disclosed by the evidence. The King v. Mooney, 11 Can. Cr. Cas. 333.

CONSPIRACY TO DEFRAUD THE PUBLIC; GENERALTY OF INFORMATION; REFUSAL OF PARTICULARS; JURISDICTION OF MAGISTRATE TO HOLD PRELIMINARY ENQUIRY.

(1) The refusal of a magistrate holding a preliminary enquiry to order particulars in a general charge of "conspiracy to defraud the public" is not a ground for prohibition. (2) An information laid in general terms charging that the accused did in specified years "conspire with others, whose names are unknown, by deceit, falsehood and other fraudulent means to defraud the public," sufficiently states an offence under Code, sec. 394 to give jurisdiction to a magistrate to hold a preliminary enquiry. The King v. Phillips, 11 Can. Cr. Cas. 89.

SECOND PRELIMINARY ENQUIRY; FRESH INFORMATION OF SAME CHARGE; DISCHARGE ON FIRST AND COMMITTAL ON SECOND ENQUIRY; TRANSMISSION OF SECOND DEPOSITIONS ONLY.

(1) A person discharged by a justice on a preliminary enquiry for an indictable offence may be summoned again before the same or another justice on a fresh information for the same offence. (2) If the accused is committed for trial on the second preliminary enquiry, the depositions on the first, when he was discharged, need not be transmitted to the trial Court under Code, sec. 600. The King v. Heanay, 11 Can. Cr. Cas. 23.

PRIMA FACIE CASE FOR COMMITTAL ADMITTED.

(1) A Superior Court will not on the application of the accused order a magistrate holding a preliminary enquiry to forthwith commit for trial, although a prima facie case is admitted by the accused and committals had been made by the same magistrate of others charged with the same offence on similar evidence. (2) A Superior Court will not interfere with the magistrate's discretion as to adjourning the enquiry when the discretion is exercised in good faith and he must be allowed a reasonable time after the close of the evidence to reach a decision. Re Ying Foy, 15 Can. Cr. Cas. 14.

DISAGREEMENT OF JUSTICES; CALLING IN OTHER JUSTICES; DISAGREEMENT WITHOUT FURTHER PROSECUTION NOT A DISMISSAL.

(1) On a preliminary enquiry before two justices if one decides in favour of committal and the other to dismiss, the preferable course is to adjourn the enquiry to be heard de novo after calling in other justices. (2) The disagreement of two justices holding preliminary enquiry is not equivalent to a dismissal of the charge although no adjournment is made and nothing further is done in the prosecution. (3) Semble, the justices might have been compelled by mandamus to make an order whereby the preliminary enquiry would be terminated either by a dismissal of the charge or the committal of the accused for trial. Durrand v. Forrester, 15 Can. Cr. Cas. 125.

ADMISSION OF FACT TO MAGISTRATE; SUMMONS WITHOUT WRITTEN INFORMATION; ATTENDANCE OF ACCUSED; VALIDITY OF PRELIMINARY ENQUIRY AND COMMITMENT FOR TRIAL.

(1) A written information on a preliminary enquiry is for the protection of the accused so that he may know the charge laid against him, but if the magistrate on being verbally informed of the offence by the accused himself issues a summons and the accused attends on its return a committal for trial may be made on the depositions taken upon the preliminary enquiry, without an information in writing. (2) The committing justices had jurisdiction over the accused on his attending in answer to the summons although objection was taken to the want of an information. (3) Semble, a warrant to arrest the accused could not have been issued without a sworn information, had he failed to attend on the summons. The King v. Thompson, 15 Can. Cr. Cas. 162.

DEPOSITION OF ONE WITNESS TAKEN IN ABSENCE OF ONE DEFENDANT; REGULARITY OF ENQUIRY AS AGAINST CODEFENDANT.

(1) An indictment will not be quashed

because of an irregularity in the taking of some of the depositions at the preliminary enquiry if the depositions regularly taken thereat are alone sufficient to justify the committal for trial. (2) Where one of two persons accused is absent during a part of the preliminary enquiry when the evidence of one witness was taken for the prosecution, the deposition of that witness may be regularly taken as against the codefendant then present. (3) An indictment not preferred with the consent of the Judge or the direction of the Attorney-General under Code, sec. 873 may be quashed if not founded upon facts disclosed in the depositions taken on the preliminary enquiry. The King v. Eliasoph, 16 Can. Cr. Cas. 131.

PERJURY ON PRELIMINARY ENQUIRY; INCOMPLETE DEPOSITIONS; MAGISTRATE'S DUTY TO TAKE DOWN ALL MATERIAL TESTIMONY.

(1) On a trial for perjury in giving false evidence in a preliminary enquiry before a magistrate, if it appears that the magistrate did not take down all of the evidence given by the accused, the prosecution may supplement the proof of the written depositions by oral testimony of other statements then sworn to by the accused which were not taken down in writing. (2) As it is the statutory duty of the magistrate to take down all of the relevant testimony on a preliminary enquiry, the production of written depositions regular in form raises a presumption that all material testimony is included therein, but this presumption may be rebutted by producing the writing and proving by parol testimony that it is incomplete. The King v. Prasiloski (No. 2), 16 Can. Cr. Cas. 139.

[Referred to in Dickinson v. "The World," 19 Can. Cr. Cas. 380, 5 D.L.R. 148.]

DEPOSITIONS OF WITNESS AT PRELIMINARY ENQUIRY.

(1) If the depositions at a preliminary enquiry are not signed by the presiding magistrate, they are not clothed with the authentic character required by law, and in such case no preliminary enquiry exists on the docket. (2) A motion to quash a commitment based upon such an enquête will be granted. The King v. Robert (No. 1), 17 Can. Cr. Cas. 194.

INDICTMENT; READING DEPOSITIONS.

(1) The provisions of article 684 of the Criminal Code, respecting the second reading of the depositions of witnesses for the prosecution do not apply where the proceedings on the preliminary enquiry before the magistrate are taken down in shorthand, but only where the depositions are transcribed in longhand. (2) When the depositions are authenticated as provided by the Code, it makes no difference whether they were transcribed and certified by the magistrate before or after the accused had been put upon his defence, as the accused is not prejudiced thereby. (3) The accused may waive the reading of depositions at the preliminary enquiry. The King v. Rouleau, 17 Can. Cr. Cas. 281.

INDICTABLE OFFENCE; APPLICATION FOR SUMMONS OR WARRANT; HEARING "COMPLAINANT'S" WITNESSES.

(1) The terms of Code, sec. 655 (as amended in 1909) with reference to the hearing of witnesses for the complainant on the application for process, are directory only and not imperative. (2) The examination of the complainant's witnesses, when he has any, is not a condition precedent upon which the magistrate's right to issue a warrant depends. (3) Semble, the statutory direction to the magistrate to hear the allegations of the "complainant" and the evidence of "his" witnesses, does not apply where an "information" is laid as distinguished from the making of a "complaint," ex. gr., as where the charge is prosecuted by the Crown for a crime against public order in which case the informant himself is merely a Crown witness and the other Crown witnesses cannot be said to be "his" witnesses. The King v. Mercier, 18 Can. Cr. Cas. 363.

CONCURRENT PRELIMINARY HEARINGS BY MAGISTRATE; UNSWORN STENOGRAPHER.

(1) That the magistrate proceeds with the hearing of the evidence on preliminary enquiries for two offences at the same time, against the same accused, is not ground for habeas corpus in respect of his committal for trial. (2) The petitioner's affidavit in support of an application for habeas corpus that the stenographer who transcribed the evidence at the preliminary enquiry had not been sworn will not be credited as against the certificate of oath signed by the magistrate and filed in the record. (3) The delay of eight clear days which must not be exceeded between two remands upon a preliminary enquiry does not apply to the case of an accused who is held on bail. Dick v. The King, 19 Can. Cr. Cas. 44.

JUSTICE OF PEACE (SASK.); COMMITMENT TO CUSTODY.

(1) As a justice of the peace at Saskatchewan is an officer of the whole province he may hold a preliminary examination and commit an accused person for trial, notwithstanding the offence with which he is charged was supposed to have been committed in another judicial district in which there was no gaol to which the accused could be remanded to custody. (2) Where there is no gaol in the judicial district in which an offence was supposed to have been committed, a justice of the peace of another district may, under sec. 577 of

the Criminal Code, commit an accused person to custody for trial in the latter district without an order under sec. 884 of the Criminal Code from a Court or Judge directing trial to be held in such district. [Regina v. Ponton (1898), 2 Can. Cr. Cas. 192; Mallet v. The Queen, 1 B.C.R. (Part II.) 212; Rex v. Smith (1858), 1 F. & F. 56; Rex v. James (1836), 7 C. & P. 553, and Queen v. Burke (1900), 5 Can. C.C. 29; R. v. Stauffer, 19 Can. Cr. Cas. 205, 4 Sask. L.R. 284, referred to.] The King v. Lynn (No. 2), 19 Can. Cr. Cas. 129.

REMAND FOR MORE THAN THREE CLEAR DAYS.

Where a preliminary enquiry is being held and the prisoner is orally remanded for a time exceeding three clear days, the justice exceeds his jurisdiction, as a warrant of remand is required under Criminal Code, sec. 679, where the remand is for more than three days. [The Queen v. Holley, 4 Can. Cr. Cas. 510; Re Sarault, 9 Can. Cr. Cas. 448, referred to.] The King v. Goulet, 20 Can. Cr. Cas. 191.

WHEN EXCLUSIVE JURISDICTION ACQUIRED.

The provision of sub-sec. 3 of sec. 708 of the Criminal Code, 1906, which declares that it shall not be necessary for the justice who acts before the hearing, ex. gr., in issuing the summons or warrant, to be the justice by whom the case is to be heard, applies only to summary conviction proceedings under part XV. of the Criminal Code, 1906, and not to preliminary enquiries for indictable offences When a magistrate has become seized of a case by taking the information for an indictable offence no other magistrate having general concurrent jurisdiction with him can acquire jurisdiction to intervene and preside at a preliminary enquiry, even with the consent of the first magistrate, except in so far as such course is authorized by statute in special circumstances such as illness or absence of the first magistrate. [R. v. McRae, 28 O.R. 569, referred to.] (Per Middleton, J.) Criminal Code, sec. 668 directing the justice to proceed to inquire into the matters charged when a person is before a justice and is accused of an indictable offence is to be limited to cases in which the accused is rightly before such justice. Re Holman and Rea (No. 2), 21 Can. Cr. Cas. 11, 9 D.L.R. 234, reversing 21 Can. Cr. Cas. 7, 7 D.L.R. 481.

PRELIMINARY ENQUIRY; PRIMA FACIE CASE.

The magistrate holding a preliminary enquiry into a charge of an indictable offence has only to find evidence of a probable case of guilt to justify a committal for trial, and has not to deal with the preponderance of testimony. R. v. Odell, 22 Can. Cr. Cas. 39.

SEVERAL CHARGES; ARREST ON ONE ONLY.

Where several informations for various offences are laid against the same person, the magistrate will have jurisdiction under Cr. Code (1906), sec. 668, to proceed with preliminary enquiries as to all of such charges although the accused was arrested and brought before him by virtue of a warrant of arrest issued upon one information only, subject to the right of the accused to a reasonable adjournment. Where a conviction made on summary trial by a magistrate for the principal offence was quashed, but an information was afterwards laid against the same defendant for an attempt to commit the principal offence, and the defendant was brought before the magistrate in pursuance of a warrant of arrest for the attempt, the magistrate's duty was to dismiss the charge for the attempt, but he was not bound to discharge the accused from custody and await his rearrest before proceeding with preliminary enquiries upon charges of other distinct offences for which informations had been laid before him. [Re Baptiste Paul (No. 1), 7 D.L.R. 24, 20 Can. Cr. Cas. 159; Re Baptiste Paul (No. 2), 7 D.L.R. 25, 20 Can. Cr. Cas. 161, and R. v. Davis, 7 D.L.R. 608, 20 Can. Cr. Cas. 293, distinguished.] R. v. Weiss and Williams (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 632. See also 21 Can. Cr. Cas. 438, 13 D.L.R. 166.

OPPORTUNITY OF ACCUSED TO MAKE FORMAL STATEMENT.

The omission of the justice of the peace on a preliminary examination to put the usual question inviting a statement by the accused under sec. 684 of the Cr. Code, 1906, after the depositions have been read over, does not invalidate a commitment for trial. (Dictum) R. v. Lautz, 22 Can. Cr. Cas. 212, 15 D.L.R. 651.

REPLACEMENT OF MAGISTRATE.

The justice of the peace who issues a warrant of arrest to bring the accused in custody for a preliminary enquiry has the right to order him to appear before himself or any other justice or magistrate having jurisdiction in the district, and the enquiry may, therefore, be taken in such case before another magistrate who replaces the first. R. v. Daigle, 23 Can. Cr. Cas. 92, 18 D.L.R. 56.

DEFECTIVE DEPOSITIONS; STENOGRAPHER'S OATH.

The omission to swear the stenographer appointed to take the evidence on a preliminary enquiry before a magistrate, as required by Criminal Code, sec. 683, as amended in 1913, is a matter of jurisdiction and not a mere defect of form, and convictions made by the magistrate on such evidence will be quashed. [The King v. L'Heureux (1908), 14 Can. Cr. Cas. 100; The King v. Johnson, 1 D.L.R. 547, 19 Can. Cr. Cas. 203, followed. See also McDonald v. The King, 26 Can. Cr.

Cas. 175, 30 D.L.R. 738.] R. v. Limerick; Ex parte Dewar, 27 Can. Cr. Cas. 309, 31 D.L.R. 226.

EVIDENCE WARRANTING COMMITTAL FOR TRIAL; HABEAS CORPUS.

A committal for trial may be made by the justice holding a preliminary enquiry if there was some evidence from which the magistrate could infer that probable cause existed for believing the accused guilty of the crime. Only in extreme cases will his decision in that respect be reviewed on habeas corpus. [R. v. Gillespie, 1 Can. Cr. Cas. 551, and R. v. Delisle, 5 Can. Cr. Cas. 223, referred to.] An opportunity must be given to the accused at a preliminary enquiry to call witnesses on his own behalf although when interrogated prior to the statutory warning (Code, sec. 684) the accused told the magistrate he did not wish to call any witnesses. The refusal to hear his witnesses is a denial of the right to make full defence and not a mere irregularity but the court on habeas corpus may exercise its discretion under Code, sec. 1120 by remanding the accused to appear again before the committing magistrate, and giving a direction to the latter to reopen the enquiry, hear the defendant's witnesses and make report to the court after which the habeas corpus motion will be disposed of. [Ex parte Burke, 2 Rev. de Jur. 151 (Que.), overruled.] R. v. Payne, 30 Can. Cr. Cas. 382.

PRESUMPTIONS.

Generally, see Evidence.

Statutory presumption, see Intoxicating Liquors.

As to depositions certified from proper custody. 1 Can. Cr. Cas. 161.

As to persons acting in public capacity. 1 Can. Cr. Cas. 315.

Commitment presumed prima facie to correctly recite conviction. 1 Can. Cr. Cas. 220.

From acts of officer "de facto" with acquiescence. 1 Can. Cr. Cas. 315.

Sentences passed at the one time not presumed to be concurrent. 1 Can. Cr. Cas. 118.

Note on presumption of continuance of life; Absence for less than seven years. 2 Can. Cr. Cas. 132.

From recent possession of goods stolen. 2 Can. Cr. Cas. 291, 295.

Silence as conduct raising a presumption. 7 Can. Cr. Cas. 90.

MINOR UNDER FOURTEEN.

It is to be conclusively presumed that a party is physically incompetent to commit an unnatural offence under Cr. Code, sec. 174, if under the age of fourteen. Such presumption is not affected by the provisions of Cr. Code, sec. 10, and the latter section refers exclusively to mental capacity to distinguish between right and wrong. R. v. Hartlen, 2 Can. Cr. Cas. 12.

PREVIOUS CONVICTION.

Subsequent indictment for same cause after summary proceedings. 2 Can. Cr. Cas. 237.

Note on proof of previous conviction; Canada Temperance Act, sec. 115 (a). 5 Can. Cr. Cas. 189.

Statutory interrogation as to, under Canada Temperance Act; Interrogation of solicitor for accused. 5 Can. Cr. Cas. 187.

Bringing charges for second and third offences; Increased punishment; Note. 7 Can. Cr. Cas. 446.

Increased penalty for subsequent offence: Procedure. 7 Can. Cr. Cas. 459, 485.

Evidence of. 1 Can. Cr. Cas. 13, 513, 514.

A BAR TO SUBSEQUENT CONVICTION FOR THE SAME OFFENCE.

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:—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 the second time could not take advantage thereof. R. v. Bernard, 4 O.R. 603.

MAGISTRATE'S FINDING AS TO PREVIOUS CONVICTION; CONCLUSIVENESS OF.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act it was held that where the information specifically charged that the defendant had been previously convicted under the Act, and the affidavit filed by the defendant did not deny the fact, but only the evidence of it, the question whether the defendant had been previously convicted or not was a matter within the jurisdiction of the magistrate, and his finding as to it was conclusive. Held, also, that the provisions of sec. 115 of the Canada Temperance Act are directory only. Regina v. Brown (1888), 16 O.R. 41.

PROOF OF IDENTITY.

In the absence of an admission by the accused of the fact of previous conviction, it is essential under the Manitoba Liquor Li-

cense Act that evidence apart from a certificate should be given of the identity of the accused with the person formerly convicted; and the magistrate can only act upon evidence adduced and not upon his own personal knowledge as to such identity. R. v. Herreli, 1 Can. Cr. Cas. 510.

[Considered in R. v. Leach et al., 14 Can. Cr. Cas. 375.]

PRELIMINARY ENQUIRY; REDUCING CHARGE FROM "WOUNDING" TO "ASSAULT."

Justices of the peace have no power on a preliminary investigation before them of a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction. A conviction recorded by justices in such a case upon a plea of guilty to the charge as reduced, is not a bar to an indictment for unlawfully wounding, based upon the same state of facts and does not support a plea of autrefois convict. R. v. Lee, 2 Can. Cr. Cas. 233.

CROSS-EXAMINATION OF PRISONER AS TO PREVIOUS CONVICTIONS FOR INDICTABLE OFFENCES.

An accused person examined as a witness on his own behalf, may be cross-examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character had been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. The King v. D'Aoust, 5 Can. Cr. Cas. 407.

[Referred to in R. v. Ridd, 14 Can. Cr. Cas. 333.]

PREVIOUS CONVICTION UPON SUMMARY TRIAL; PRESUMPTION OF IDENTITY.

(1) A conviction upon a summary trial by two justices under Code, secs. 782 and 783 for keeping a disorderly house at a specified address from the 3rd day of May to the 3rd day of November is a bar under a plea of autrefois convict, to a conviction under Code, sec. 198 upon a speedy trial for the like offence charged for the 3rd day of November only. (2) Where the name of the accused, the place of the offence and the character of the offence are the same in the certificate of conviction produced in proof of a plea of autrefois convict and in the charge then being tried, it will be presumed that the accused is the party named in such certificate without parol evidence of identity. The King v. Clark, 9 Can. Cr. Cas. 125.

RES JUDICATA; FORMER CONVICTION FOR DELATED OFFENCE; PERSONATION OF ELECTOR AND PERJURY; OATH OF IDENTITY.

(1) Where a person has been acquitted by a Court of competent jurisdiction, the acquittal is a bar to all further proceedings to punish him for the same matter, although a plea of autrefois acquit may not be allowed because of the different nature of the charges. (2) A plea of autrefois acquit to a charge of perjury in taking the oath of identity at a polling booth is not supported by a record of acquittal on a charge of personating an elector at the same time and place, although the oath of identity and the alleged personation were in regard to the same elector. (3) A verdict for personation could not have been received under an indictment for perjury in taking the oath of identity, although the facts constituting personation must necessarily be shewn in order to prove the perjury. (4) The acquittal on the first charge became res judicata as between the Crown and the accused, and it was not open to the Crown to proceed on the second charge in which a conviction could only be had by the second jury over-ruling the contrary verdict of the first jury. The King v. Quinn, 10 Can. Cr. Cas. 412.

CONVICTION FOR SECOND OFFENCE; PROOF OF PREVIOUS CONVICTION.

A certificate that the defendant had been convicted for keeping intoxicating liquor for sale contrary to the Canada Temperance Act is sufficient proof of a previous offence upon which to base a second conviction for keeping for sale, though it does not appear from the certificate and was not otherwise proved that such previous conviction was for a first offence. Ex parte Batson, 10 Can. Cr. Cas. 240.

[Referred to in Ex parte Le Bel, 16 Can. Cr. Cas. 367.]

RELEASE ON SUSPENDED SENTENCE; PREVIOUS CONVICTION BEFORE SAME MAGISTRATE; POWER OF MAGISTRATE TO MAKE ENQUIRY OF HIS OWN MOTION.

(1) The proper time for taking evidence of a previous conviction to exclude a magistrate's jurisdiction to release on suspended sentence is after the finding of guilty on the present charge and not during the hearing of the charge. (2) If the Crown does not adduce evidence of a previous conviction the magistrate may, on his own initiative, call for the records under his own control and custody and hold an enquiry upon the question whether the defendant had been previously convicted before him and on the questions of identity, age and antecedents of the defendant for the purpose of considering the appropriate punishment or a release on suspended sentence where the latter is permissible. (3) Semble, if the magistrate recollects that the person convicted before him was previously convicted before him, he should proceed with such an enquiry, although the Crown counsel was content to allow the accused to go on suspended sentence. The King v. Bonnevie, 10 Can. Cr. Cas. 376.

PLEA OF AUTREFOIS CONVICT; CONVICTION ON INFORMATION FOR OFFENCE CHARGED IN PREVIOUS INFORMATION STILL PENDING; COLLUSIVE PROSECUTION.

(1) An appeal lies to the Court of King's Bench in Quebec from an order of a justice of the peace, dismissing an information or complaint on a plea of autrefois convict. (2) A conviction by a magistrate or magistrates upon an information or complaint charging an offence for which a previous information against the same defendant has been made before another magistrate, and while such previous information is pending, is null and void, and will not avail in support of a plea of autrefois convict to the first complaint. The King v. Bombardier, 11 Can. Cr. Cas. 216.

CERTIFICATE OF PREVIOUS CONVICTION; PROOF OF IDENTITY; PRESUMPTION FROM SIMILARITY OF NAME.

(1) Under the Ontario Liquor License Act, R.S.O. 1897, ch. 245, sec. 101, the question of the identity of the accused, charged with a second offence, with the person previously convicted is one for the magistrate to determine upon the evidence before him apart from his personal recollection, but a certificate of the previous conviction in the same locality of a person of the same name is some evidence of identity. (2) A certificate under the Liquor License Act of a prior conviction thereunder is not affected by Code, sec. 982, under which evidence of identity apart from and in addition to a certificate of the prior conviction is required on the trial for an indictable offence if a prior conviction of the accused is to be proved. [R. v. Herrell, 1 Can. Cr. Cas. 510, considered.] The King v. Leach et al. 14 Can. Cr. Cas. 375.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 204; R. v. Graves (No. 2), 16 Can. Cr. Cas. 322.]

CANADA TEMPERANCE ACT; SECOND OFFENCE; NECESSITY OF PRIOR CONVICTION.

The information for the second offence must allege the previous conviction. The King v. Jordan, 15 Can. Cr. Cas. 130.

SUMMARY CONVICTION; CERTIFICATE; IDENTITY OF ACCUSED.

The production of a certificate of a summary conviction before the same magistrate giving the name and address of the person convicted similar to the name and address of the defendant now charged with a second offence is some evidence of identity on proving that the accused had been previously convicted, without oral evidence to shew that the same individual was the defendant in both cases. The King v. Atkinson, 18 Can. Cr. Cas. 279.

TWO OFFENCES; BEGGING AND VAGRANCY.

Where the defendant was convicted of begging on a charge brought under a municipal by-law, and on the same day was charged and convicted of vagrancy as being without visible means of maintenance, it will not be assumed that both convictions are for the same offence. The King v. Munroe, 19 Can. Cr. Cas. 86.

PRIOR CONVICTION OF ANOTHER PERSON FOR SAME OFFENCE.

The fact that another person, who had been separately charged with the like offence, in respect of the same house, and at the same time, was convicted thereof, is no defence to an indictment for keeping a disorderly house. The King v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.

ASSAULT; PROSECUTION FOR BREACH OF PEACE.

A conviction under a town by-law for creating a disturbance on a public street based on an assault, will sustain a plea of autrefois convict to a subsequent prosecution for the same assault instituted by the injured person even where such conviction followed a charge laid by the police and although the injured person was not called as a witness because the accused pleaded guilty. [Reg. v. Walker, 2 M. & Rob. 446, referred to.] Secs. 733 and 734 of the Criminal Code do not permit the maintenance of a prosecution at the instance of the person injured by an assault after the conviction of the offender for an offence involving the same element in a prosecution instituted by some other person. [R. v. Erlington, 31 L.J.M.C. 14, referred to.] R. v. McIntyre, 21 Can. Cr. Cas. 216, 10 D.L.R. 816.

DIFFERENT COUNTS.

In a criminal case where the formal charge contains more than one count, the accused who has pleaded not guilty may be refused leave to plead guilty to the count for the minor offence in order to base thereon a plea of autrefois convict as a defence against the other and more serious counts based on the same state of facts. [R. v. Miles, 24 Q.B.D. 423, referred to.] R. v. Lombard, 22 Can. Cr. Cas. 232, 15 D.L.R. 613.

PRIOR CONVICTION WITHOUT JURISDICTION.

A conviction for theft will not be quashed on the ground that a former conviction had been made upon the charge, if the evidence on the later charge proves that the magistrates who had purported to make the former conviction had no jurisdiction in the matter. R. v. Taylor, 22 Can. Cr. Cas. 234, 15 D.L.R. 679.

Upon a plea of autrefois convict or of res judicata, where the previous decision pleaded is that of an inferior court, the burden of proving that that court was a court of competent jurisdiction rests upon the party

pleading the previous decision. (Ibid. Per Harvey, C.J., and Stuart, J.)

[Referred to in R. v. Carver, 29 Can. Cr. Cas. 122.]

VARIOUS OFFENCES FOUNDED ON ONE ACT; AUTREFOIS CONVICT; RES JUDICATA.

A plea of autrefois convict based on a conviction on summary trial by magistrates for theft of a cheque for $10 enclosed in a post letter is not sustainable as against subsequent charges of having stolen other letters which at the time of the taking by the accused mail clerk were tied together and with a "letter bill" comprised the bundle of registered mail which the accused mail clerk had thrown into his own valise with intent to misappropriate the contents. [R. v. Weiss, 13 D.L.R. 166, 21 Can. Cr. Cas. 438; The King v. Quinn, 10 Can. Cr. Cas. 412, and R. v. Miles, 24 Q.B.D. 423, referred to.] (Per Harvey, C.J.) Any question of res judicata under Cr. Code, sec. 15, in favour of the accused, because of a prior conviction and not covered by a plea of autrefois convict will be barred by a plea of guilty entered for the accused after the dismissal of the plea of autrefois convict. R. v. Pope, 22 Can. Cr. Cas. 327, 15 D.L.R. 664.

QUEBEC GAME LAWS; RETROACTIVE OPERATION; CERTIORARI SUBSTITUTED FOR APPEAL.

Where a revised statute declares that a conviction under the prior law shall be considered as a conviction for a similar offence against the revised Act, this implies retroactivity of the new law as to the remedy against a conviction rendered after the revised Act came into effect upon a complaint laid before that time. [Quebec & Lake St. John Ry. v. Vallières, 23 Que. K. B. 127, referred to.] Hudson Bay Co. v. Dion, 28 Can. Cr. Cas. 265, 38 D.L.R. 477.

PRIOR CONVICTION QUASHED ON CERTIORARI; REVIEW ON MERITS.

The burden of establishing a plea of autrefois convict or autrefois acquit is upon the accused; so where the quashing of a prior conviction on certiorari is relied upon as a bar to a new charge, it is error for the Judge to assume in favour of the accused that the conviction had been quashed on any particular ground of those which the motion to quash had been based where the grounds then set up included technical objections the allowance of which would not bar a second prosecution. [R. v. Weiss & Williams (No. 1), 21 Can. Cr. Cas. 438, 13 D.L.R. 166; R. v. Weiss & Williams (No. 2), 22 Can. Cr. Cas. 42, 13 D.L.R. 633; R. v. Young Kee, 28 Can. Cr. Cas. 236, and R. v. Taylor, 22 Can. Cr. Cas. 234, 15 D.L.R. 679, 7 A.L.R. 72, referred to.] R. v. Carver, 29 Can. Cr. Cas. 122.

CERTIFICATE OF DISMISSAL OF SUMMARY CONVICTION CHARGE.

Where a certificate of dismissal has been granted by the Magistrate under Cr. Code. sec. 730, in respect of a summary conviction matter brought before him in good faith and not collusively, the certificate until set aside is an answer to a subsequent charge laid before another Magistrate for the same offence, although no evidence was given for the prosecution on the first charge and an adjournment was refused upon an erroneous view of the magistrate's power to adjourn. R. v. Stokes, 29 Can. Cr. Cas. 144.

PROVINCIAL AND FEDERAL OFFENCE.

The plea of autrefois convict is not a bar to a second prosecution when the parties are not the same and when the law in virtue of which the proceedings were taken was in the first case a provincial law and in the second case a federal law. Forgues v. Gauvin, 30 Can. Cr. Cas. 302.

PRISONS.

See also Jail; Imprisonment; Sentence.

Good Shepherd Reformatory at St. John authorized for certain female offenders. 7 Can. Cr. Cas. 589.

Transfer to Dorchester penitentiary from Boys' Industrial Home, authorized. 7 Can. Cr. Cas. 591.

DOMINION PRISONS; ESTABLISHMENT; CONSTITUTIONAL LAW.

(1) The Dominion Parliament has the constitutional power to establish prisons for the incarceration of offenders against the Dominion laws. (2) The effect of the statute, 56 Vict., (Can.) ch. 33, is to establish the "Boys' Industrial Home" at Saint John, N.B., as a Dominion prison for boys. (3) The direction of said statute (sec. 6) that the jailer having the custody of a boy sentenced to imprisonment in said home shall deliver him to the home upon the warrant of the governing chairman thereof, which by said statute the latter is "authorized" to issue, is imperative as regards the issue of such warrant and is enforceable by mandamus. Re Goodspeed, 7 Can. Cr. Cas. 240.

PENITENTIARY REGULATIONS 1898; PARTIAL REMISSION OF SENTENCE FOR GOOD CONDUCT; HABEAS CORPUS.

Prima facie the warden and officers of a penitentiary are to determine questions of remission of part of sentence under the Penitentiary Regulations of November, 1898, for good conduct of the convict while in the prison, and also questions of the forfeiture of remissions earned, subject to review and sanction by the Minister of Justice under such Regulations; it is not open to the Court on habeas corpus to enquire into the validity of a direction contained

in a report duly approved by the Minister forfeiting on the ground of misconduct the periods of remission previously earned by the convict. R. v. Huckle, 23 Can. Cr. Cas. 73, 19 D.L.R. 359.

PRIVATE HOSPITAL.

NOXIOUS AND OFFENSIVE BUSINESS; EJUSDEM GENERIS RULE.

The keeping of a house or private hospital for the treatment of consumptive patients is not a business ejusdem generis with bone boiling, soap boiling, oil refining, gas manufacturing, or the storing of hides, so as to constitute an "other noxious or offensive trade or business," made an offence against the Public Health Act (Ont.) where done without the consent of the municipality, and this notwithstanding the magistrate's finding that the place is not a sanitarium or hospital in the true sense, but a place of business, and that by reason of the failure to take proper precautions the business had become offensive. R. v. Playter, 4 Can. Cr. Cas. 338.

PRIVATE PROSECUTOR.

Status of, on indictment and trial. 7 Can. Cr. Cas. 219.

Status of, on indictment and trial for criminal libel; Costs. 8 Can. Cr. Cas. 405, 408.

Recognizance to prosecute; Preferring indictment before grand jury. 10 Can. Cr. Cas. 214.

APPLICATION FOR LEAVE TO APPEAL.

Leave to appeal to the Court of Appeal under Cr. Code, sec. 744, as amended in 1900, should not be granted to a private prosecutor except under exceptional circumstances. Leave to appeal will not be granted to a private prosecutor from the decision of a police magistrate holding a summary trial by consent, merely upon the ground that the magistrate erred in rejecting certain evidence which was properly admissible but corroborative only. R. v. Burns (No. 1), 4 Can. Cr. Cas. 323.

[Discussed in R. v. Phinney, 36 N.S.R. 272.]

LOCUS STANDI OF, IN PROCEEDINGS FOR ESTREAT.

(1) Where a convicted person, instead of being sentenced is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated, or judgment moved against him. (2) In Ontario a private prosecutor in a prosecution for defamatory libel has no locus standi to make the application. (3) Where fourteen years had elapsed since the conviction, and the only breaches of recognizance charged were the publication of several newspaper articles alleged to be defamatory of the prosecutor, the latter should be left to his remedy by action or indictment in respect of any fresh libels, even if he had a locus standi to enforce the recognizance. R. v. Young, 4 Can. Cr. Cas. 580.

[Followed in R. v. Liteman, 6 Can. Cr. Cas. 226.]

RECOGNIZANCE TO PREFER INDICTMENT.

(1) The taxation of costs against an unsuccessful private prosecutor who has at his own request been bound over to prefer an indictment, is controlled by Code, sec. 835. (2) The scale of costs in the absence of a tariff for criminal proceedings is the lowest scale in civil suits in the Court in which the indictment is tried. The King v. Gouillioud, 7 Can. Cr. Cas. 432.

LOCUS STANDI OF INFORMANT'S COUNSEL, AUTHORIZATION OF PROSECUTION BY ATTORNEY-GENERAL.

Upon a "speedy trial" for an indictable offence the informant at whose instance the prosecution was begun has no locus standi and is not entitled to prosecute through his counsel unless authorized so to do by the Attorney-General. The King v. Clark, 9 Can. Cr. Cas. 125.

RECOGNIZANCE TO PROSECUTE AFTER CHARGE DISMISSED BY JUSTICE; PREFERRING INDICTMENT; LEAVE TO PROSECUTOR'S COUNSEL TO GO BEFORE GRAND JURY; TIME OF APPLICATION.

(1) A prosecutor bound over at his own request to prefer an indictment after the discharge of the accused on a preliminary enquiry, is only permitted to appear by counsel before the grand jury when the practice of the Court so authorizes; and the practice in the district of Montreal requires a formal application to the Court for permission. (2) The accused may apply for security for costs under Code, sec. 595 (4) at the time of the prosecutor's application for leave to go before the grand jury. The King v. Hoo Yoke, 10 Can. Cr. Cas. 211.

MUNICIPAL CORPORATION; NUISANCE; LEAVE TO PREFER INDICTMENT.

A private prosecutor seeking to criminally charge a municipal corporation with maintaining a nuisance in respect of a part of the municipality's sewage system should ordinary initiate the proceedings before a magistrate and not be granted leave by a superior court to prefer an indictment against the municipal corporation where no preliminary enquiry has been held by a magistrate. [Re Chapman and City of London, 19 O.R. 33, distinguished.] Re Schofield and City of Toronto, 22 Can. Cr. Cas. 93, 14 D.L.R. 232.

PRIVATE PROSECUTOR.

Where a private prosecutor institutes the proceedings on a criminal charge and has himself bound over to prefer an indictment at the Court of General Sessions, the Crown Attorney for the county has the statutory right in Ontario under the Crown Attorney's Act, R.S.O. 1914, ch. 91, sec. 8, to "assume wholly the conduct of the case where justice towards the accused seems to demand his interposition," and upon his taking charge of the prosecution after a true bill has been found, the private prosecutor has no right to take part in the proceedings at the trial, at least where the case does not present more of the features of a private injury than of a public offence. (Crown Attorney's Act, R.S.O. 1914, ch. 91, sec. 8 (c).) R. v. Fraser, 23 Can. Cr. Cas. 140, 19 D.L.R. 470.

CRIMINAL LIBEL; PRIVATE PROSECUTOR; COSTS.

The person who laid the information for defamatory libel, which was followed by a commitment for trial and indictment of the accused, is none the less a "private prosecutor" liable for costs of the defendant under Cr. Code, sec. 1045, on judgment going in the latter's favor, although the Crown counsel took up the proceedings after the preliminary enquiry and conducted them as Crown business. [R. v. Patterson, 36 U.C.R. 129, followed; R. v. St. Louis, 1 Can. Cr. Cas. 141, specially considered; R. v. Blackley, 8 Can. Cr. Cas. 405, 13 Que. K.B. 472, referred to.] R. v. Fournier; Martin v. Fournier, 25 Can. Cr. Cas. 430, 28 D.L.R. 379.

PRIVILEGE.

Of accused not to give evidence; Onus of proof; Failure of accused to give an account of the occurrence; Comment to jury. 8 Can. Cr. Cas. 453.

WITNESS; PROFESSIONAL PRIVILEGE.

An attorney is only held to professional secrecy for the confidential communications that he receives from his client and not as to the proceedings that he has taken on the client's behalf. The King v. Aloff, 16 Can. Cr. Cas. 385.

PRIZE-FIGHT.

Promoting prize fights; Cr. Code, secs. 92-97, 6 Can. Cr. Cas. 450.

Engaging in a "prize fight;" Statutory definition. 8 Can. Cr. Cas. 217.

Prize fighting within definition of secs. 105-108 of Criminal Code. 21 Can. Cr. Cas. 395.

BOXING EXHIBITION; SHAM ENCOUNTER; AIDING AND PROMOTING.

(1) An exhibition of fighting with fists or hands to witness which an admission fee is charged to the public and at which it is announced that the stake money will go to the contestant who knocks out his opponent in a stipulated number of rounds is a "prize fight" within sec. 92 of the Criminal Code. (2) Such an exhibition made for gain must be viewed as it appeared or was intended to appear to the public, and it is no defence that the participants had merely feigned to fight. Steele v. Maber, 6 Can. Cr. Cas. 446.

Distinguished in R. v. Littlejohn, 8 Can. Cr. Cas. 215; referred to in R. v. Fitzgerald, 19 Can. Cr. Cas. 148; R. v. Pelkey, 21 Can. Cr. Cas. 387, 12 D.L.R. 780.

OFFENCE OF ENGAGING IN, AS A PRINCIPAL: "SPARRING" EXHIBITION.

(1) A sparring match with gloves, under Queensberry or similar rules given merely as an exhibition of skill and without any intention to fight until one is incapacitated by injury or exhaustion is not a "prize fight" under Code, sec. 92. (2) To constitute a "prize fight" there must have been a previous arrangement for a "fight" in the ordinary sense of the term, and that involves an intention to continue the encounter until one or the other of the combatants gives in from exhaustion or from injury received. The King v. Littlejohn, 8 Can. Cr. Cas. 212.

[Followed in R. v. Wildfong and Lang, 17 Can. Cr. Cas. 258.]

STATUTORY DEFINITION; BOXING EXHIBITION; CONTRACT.

(1) A boxing exhibition of ten rounds, with six-ounce gloves, in which there is no prize or reward to be contested for, but for which one of the boxers was to receive a fixed sum and the other a fixed percentage of the gate receipts is not necessarily a "prize fight," within Code, secs. 2 and 105. (2) Where the contestants had signed articles for such an exhibition of boxing but were arrested on commencing the bout, it is not to be presumed that they were going to have an encounter or fight as distinguished from an exhibition, and their conviction should be set aside. (3) While there need be no prize to constitute the statutory offence of "prize fighting" as defined by Code, sec. 2, sub-sec. 31, there must be an encounter between two persons, each intending to so injure the other that he cannot or will not continue the contest. The King v. Wildfong and Lang, 17 Can. Cr. Cas. 251.

[Referred to in R. v. Fitzgerald, 19 Can. Cr. Cas. 148; R. v. Pelkey, 21 Can. Cr. Cas. 387, 12 D.L.R. 780.]

"ENCOUNTER" AND "FIGHT," MEANING OF; BOXING MATCH.

(1) In the statutory definition of a prize fight (Cr. Code, 1906, sec. 31) as an "encounter or fight" with fists or hands between two persons who have met for such purpose by previous arrangement, the words "encounter" and "fight" are synonymous. (2) To constitute a "prize fight" under Cr. Code, secs. 31 and 106 (Cr. Code of Canada, 1906), the encounter must be between two persons acting together, with the intention of fighting, whether with or without gloves, till one or the other gives in from exhaustion or from injuries received. (3) A sparring or boxing match for a given number of rounds, which would not ordinarily exhaust either participant, is not a "prize fight," although the boxers were paid fixed sums, not depending upon the result for giving the exhibition. The King v. Fitzgerald, 19 Can. Cr. Cas. 145.

[Referred to in R. v. Pelkey, 21 Can. Cr. Cas. 387, 12 D.L.R. 780.]

WHAT CONSTITUTES; PRIZE OR REWARD.

An encounter of the nature of a fight, with fists or hands, between two persons who have met for such purpose by previous arrangement is a "prize fight" under Cr. Code, 1906, sec. 105, within the statutory definition of the phrase "prize fight" contained in Cr. Code, 1906, sec. 2 (31), if the contest be one in which each strives to overcome or conquer the other, although there is no prize offered to the victor. (Dictum per Harvey, C.J.) [R. v. Wildfong, 17 Can. Cr. Cas. 251; R. v. Fitzgerald, 19 Can. Cr. Cas. 145, and Steele v. Maber, 6 Can. Cr. Cas. 446, referred to.] R. v. Pelkey, 21 Can. Cr. Cas. 387, 12 D.L.R. 780.

INTENT; BOXING MATCH.

To constitute a "prize fight" within the prohibition of Cr. Code, sec. 105, there must have been the intention of fighting until one of the participants shall have become exhausted by blows or fatigue; it is not a "prize fight" merely because the participants were paid for the exhibition. [See Annotation on Prize-fighting offences, 21 Can. Cr. Cas. 395, 12 D.L.R. 786.] R. v. Fleming and Wallace, 26 Can. Cr. Cas. 182, 30 D.L.R. 419.

PRIZE FIGHTING; ASSOCIATION FOR OPERATING; ACTION FOR CONTRIBUTION AND INDEMNITY DISMISSED FOR ILLEGALITY; CR. CODE, SECS. 104, 105.

Bithell v. Butler, 30 Can. Cr. Cas. 275.

PROCEDURE.

See Trial.

CRIMINAL CHARGE; NORTH-WEST TERRITORIES.

In the Territories it is not necessary in order to put an accused upon his trial on a criminal charge that the charge should be based upon either an indictment by a grand jury or a Coroner's inquest. The applicability of the laws of England to the Territories discussed. The Queen v. Connor (1885), 2 Man. R. 225, 1 Terr. L.R. 4.

RIGHT OF COUNSEL FOR CROWN TO REPLY.

A counsel for the Crown in Upper Canada (not being himself the Attorney or Solicitor-General) has no right to reply in an ordinary prosecution for crime where no witnesses are called for the defence. The Queen v. McLellan, 9 U.C.L.J. 75.

CROWN PRACTICE RULES (ONT.); REORGANIZATION OF COURT.

Rules of court regulating procedure in criminal matters and passed by the former Supreme Court of Judicature for Ontario under sec. 576 of the Criminal Code, 1906, remain in effect, so far as they are within the statutory authority, as regards proceedings which may be taken in the Supreme Court of Ontario which was constituted by the Judicature Act, 3-4 Geo. V. (Ont.) ch. 19, with the like powers as the former courts of superior jurisdiction in the province. R. v. Titchmarch, 22 Can. Cr. Cas. 419, 19 D.L.R. 366.

ONTARIO CROWN RULES; NOTICE OF MOTION; NISI.

The criminal rules (Ont. Crown rules 1279-1288) as to certiorari passed in 1908 by the Supreme Court of Judicature for Ontario under the authority of Cr. Code, sec. 576, remain in effect as to the "Supreme Court of Ontario" since the reorganization of the former Court so far as they are applicable, although there is no longer a "Divisional Court" to which by Crown rule 1287 an appeal is given by leave. It is competent for a Court authorized under Cr. Code, sec. 576 to make rules of procedure inter alia as of certiorari, to substitute a practice by notice of motion for the former process by a writ and order nisi. R. v. Titchmarsh, 24 Can. Cr. Cas. 38, 22 D.L.R. 272.

RIGHT OF ATTORNEY-GENERAL TO REPLY; DEFENCE OF INSANITY.

Sec. 944 (3) of the Criminal Code preserves to the Attorney-General the right to reply, and whether he chooses to exercise such right or not he is not bound to sum up for the Crown at the conclusion of the evidence, before the prisoner's counsel addresses the jury. On a defence of insanity, any evidence in possession of the Crown should be placed at the disposal of the prisoner's counsel, to be used by him if he thinks fit. R. v. Keirstead, 30 Can. Cr. Cas. 175, 42 D.L.R. 193.

PROCURING.

ATTEMPT; FALSE PRETENCES.

Notwithstanding the special inclusion of

attempts in the preceding clauses of sec. 216 of the Criminal Code (1906), dealing with offence of procuring, an indictment will lie under Code, sec. 571, dealing generally with attempts to commit indictable offences, for the offence of attempted procuring by false pretences within Cr. Code, sec. 216, clause (j) as re-enacted by the Criminal Code amendment Act, 1913, as to which sec. 216 omits any special mention of attempts; the doctrine of "expressio unius, etc.," does not apply to exclude the attempt of the principal offence as against the express language of sec. 571. R. v. Wing, 22 Can. Cr. Cas. 426, 15 D.L.R. 741.

CAB-DRIVER INTRODUCING PROSTITUTES.

A cab-driver who uses his conveyance to drive prostitutes and men who are mutually desirous of having sexual intercourse, to a place where they can and do have it, is not guilty of "procuring" within the meaning of sec. 216 (1) (a) of the Criminal Code as enacted by 3 and 4 Geo. V. ch. 13, sec. 9, although the cab-driver introduced the prostitutes to the men and received a reward from the prostitutes for so doing. R. v. Quinn, 30 Can. Cr. Cas. 372, 44 D.L.R. 707.

PROFANE LANGUAGE.

BLASPHEMOUS LANGUAGE; OMISSION TO SET OUT WORDS.

A conviction by a magistrate stated that defendant did on etc., being a public highway, use blasphemous language contrary to a certain by-law, which was passed almost in the words of S.C.U.C. ch. 54, sec. 282, sub-sec. 4, but there was no statement of the words used:—Held, bad. Semble, also, that there was nothing in the evidence set out below giving the magistrate jurisdiction to act. Re Donelly, 20 U.C.C.P. 165.

CONVICTION FOR USING; OMISSION TO SET OUT THE WORDS.

A conviction for using profane language on a public street is invalid unless the words complained of are therein set out. R. v. Sarah Smith, 2 Can. Cr. Cas. 485.

PROHIBITION.

No offence charged in information; Prohibition pending magistrate's decision. 8 Can. Cr. Cas. 146.

MAGISTRATE HEARING IN A MATTER WITHIN HIS JURISDICTION; SALE OF LOTTERY TICKETS.

(1) The Superior Court will not interfere by writ of prohibition to prevent a magistrate from hearing and adjudging upon a complaint in a criminal matter within his jurisdiction. (2) Reasons which merely shew that the petitioner for a writ of prohibition may have a good ground of defence to the charge made against him in the proceedings before the magistrate hearing such charge, are insufficient to justify the issue of a writ of prohibition. (3) Letters patent issued by the Lieutenant-Governor-in-Council cannot legalize the sale of lottery tickets for any purpose other than those specified in sub-section (c) of article 205, Criminal Code of Canada. Beaudry v. Lafontaine, 17 Que. S.C. 396.

AGAINST JUSTICE OF THE PEACE EXCEEDING JURISDICTION.

A writ of prohibition may be issued to a justice of the peace to prohibit him from exercising a jurisdiction which he does not possess. Re Chapman, City of London and Water Commissioners, etc. (1890), 19 O.R. 33.

JURISDICTION TO GRANT IN CRIMINAL CASES; COMMON LAW JURISDICTION.

The Judges of the Chancery Division of the High Court of Justice for Ontario have the jurisdiction conferred by common law and par. 2, ch. 18, 28 Vict. (D.), in prohibition in criminal cases notwithstanding that no rules have been made under par. 533 (b) and 754 of the Code. Regina v. City of London (1900), 37 C.L.J. 74.

PROHIBITING CORONER TO PROCEED WITH INQUEST; CORONER ACTING IN PROFESSIONAL ATTENDANCE; DUAL CAPACITY OF CORONER AS JUDGE AND WITNESS.

Application of M. J. Haney, manager of construction of Crow's Nest Railway for a writ of prohibition to prohibit Dr. H. R. Mead, of Pincher Creek, from further proceeding with an inquest in connection with the deaths of two men from diphtheria, employed by a contractor on the said railway. The grounds upon which the application was made were:—(1) That the coroner had no jurisdiction to hold such inquest. (2) That he was a necessary and material witness upon said investigation and inquest. (3) That he was directly and personally interested in said inquest and investigation. The facts as set out in the affidavits read on the application were that the two men in question were brought in the company's ambulance to the end of the track, and Dr. Mead, the said coroner, was immediately called in to attend them. Both men died the night after their arrival while under Mead's care. Mead then proceeded to hold an inquest upon the said deaths although it had been pointed out to him by counsel (C. T. D. Wood) for applicant that having been in professional attendance upon the men at the time of their death, he would be a necessary witness, and it was not proper for him to act in the dual capacity of judge and witness:—Held, that a coroner is a Judge of a Court of Record, and that the same person

cannot be both a witness and a Judge in a cause which is on trial before him; and that in this case the coroner was a necessary witness. In delivering judgment the Judge said: "In this case there is a dangerous precedent to be avoided. A physician, who is at the same time a coroner, in order to avoid prosecution for malpractice, would have only to call a jury and hold an inquest on the body of his victim and the law would be powerless to prevent him." Order granted for writ of prohibition. [Queen v. Farrant, 57 L.J.M.C. 17; Reg. v. Sproule, 14 O.R. 375; Reg. v. Brown, 16 O.R. 41; People v. Miller, 2 Park Crim. Rep. 197; People v. Dohring, 59 N. Y. 374, referred to.] Haney v. Mead (1898), 34 U.L.J. 330.

PROHIBITING APPEAL FROM CONVICTION FOR ASSAULT; NONCOMPLIANCE WITH STATUTE; WAIVER.

The appellant having been convicted of an assault under Consol. Stat. Can. ch. 91, sec. 37, appealed to the Quarter Sessions. On the first day of the Court, after he had proved his notice of appeal, at the respondent's request the cause was postponed until the following day; and the respondent then objected to the jurisdiction, as it was not shewn that the appellant had either remained in custody or entered into a recognizance, as required by sec. 117 of Consol. Stat. Can. ch. 99. The Court held that this objection had been waived by the application to postpone, and they quashed the conviction. On motion for a prohibition to the Quarter Sessions from further proceeding in the matter:—Held, that this was an appeal under sec. 117 above mentioned, not under Consol. Stat. U.C. ch. 114, sec. 1: that it was clearly incumbent on the appellant to shew his right to appeal by proving compliance with that section; and that the necessity for such proof was not waived by the respondent's application for delay. The prohibition was therefore granted. Re Meyers and Wonnacott, 23 U.C.Q.B. 611.

CONSPIRACY TO DEFRAUD THE PUBLIC; GENERALITY OF INFORMATION; REFUSAL OF PARTICULARS; PROHIBITION.

The refusal of a magistrate holding a preliminary enquiry to order particulars in a general charge of "conspiracy to defraud the public" is not a ground for prohibition. The King v. Phillips, 11 Can. Cr. Cas. 89.

ERROR; PROHIBITION NOT APPROPRIATE WHERE ANOTHER MODE OF PROCEDURE AVAILABLE.

A writ of prohibition should not be granted to restrain the inforcement of a summary conviction in a criminal matter if another adequate remedy, ex. gr. an appeal from the conviction or a stated case, is available to the applicant. The King v. Anyot, 11 Can. Cr. Cas. 232.

ARREST ON SUNDAY; PROHIBITION TO QUESTION VALIDITY OF PROCESS.

Prohibition is not the proper procedure by which to raise the question of the validity of the service of the warrant on a Sunday. Re McGillivray, 13 Can. Cr. Cas. 113.

SUMMARY CONVICTION; ADJOURNMENT OF HEARING FOR MORE THAN EIGHT DAYS; COSTS.

(1) Where a summary proceeding before a Recorder's Court was after partial trial adjourned to a legal holiday on which the Court did not sit and in consequence the Recorder on an intervening day and in the absence of the accused ordered the adjournment changed to an earlier day and on that day again adjourned the trial in the absence of the accused to a date more than eight days from the date of the partial trial, such subsequent adjournments are irregular and in contravention of Criminal Code, sec. 722, unless notice is given to the accused of the date of the renewal hearing and the Recorder's Court may be prohibited from proceeding further with the case. (2) Where prohibition is granted because of an adjournment of the trial of a summary matter having been made for more than eight days contrary to sec. 722 of the Criminal Code, and it appears that an adjournment of the hearing was moved by defendant's counsel, costs of the prohibition motion will be refused the defendant petitioning for the prohibition. Donohue v. Recorder's Court of Quebec, 18 Can. Cr. Cas. 182.

PRACTICE; CIVIL OR CRIMINAL PROCEEDINGS.

An application for an order to prohibit a magistrate from hearing a criminal charge on the ground of disqualification through bias is itself a civil and not a criminal proceeding, and the practice to be followed is that laid down in the King's Bench Act, R.S.M. 1902, ch. 40, and the rules thereunder, instead of by rule nisi as in criminal proceedings. The King v. Suck Sin, 18 Can. Cr. Cas. 266.

WHEN WRIT MAY ISSUE; APPLICABILITY WHERE JUDICIAL OFFICER EXERCISES JURISDICTION IN ILLEGAL AND IRREGULAR MANNER.

(1) Prohibition is not ex debito justitia; it is an extreme measure, and is not granted in case of a mere illegality or irregularity not going to the jurisdiction, or where the judicial officer having jurisdiction exercises it in an irregular manner. (2) Where there is doubt in fact or law whether an inferior Court is exceeding its jurisdiction, or is acting without jurisdiction, the Superior Court should exercise its discretion to refuse prohibition. (3) Upon a motion for prohibition where, in a

matter in which it has jurisdiction, an inferior Court has made an order which is incorrect, but which it can easily set right, the proper course is not to grant prohibition, but to enlarge the motion so as to give the inferior Court an opportunity to correct the mistake, and, if it be corrected, to dismiss the motion. Rex v. Hamlink, 19 Can. Cr. Cas. 493, 5 D.L.R. 733.

[See In re Birch, 15 C.B. 743; Re Cummings and County of Carleton, 25 O.R. 607, 26 O.R. 1; Regina v. Mayor of London, 69 L.T.R. 721; Regina v. Justices of Kent, 24 Q.B.D. 181; Worthington v. Jeffries, 10 L.R.C.P. 379.]

JUSTICE OF THE PEACE; PROCEEDINGS AFTER DISMISSAL; PARTIES; STAY.

Prohibition to an inferior Court will not be refused on the ground that the proceedings in that Court are at an end by the dismissal of the case therein, so long as anything remains to be done to complete the proceedings sought to be prohibited, ex. gr., the granting of a statutory certificate of dismissal so as to enable the dismissal to be pleaded in bar to any future proceeding. [Brazill v. Johns, 24 O.R. 209, and Mayor of London v. Cox, L.R. 2 H.L. 239, followed.] It is not essential that the party applying for a prohibition to an inferior Court which is exceeding its jurisdiction shall be a party to the cause; the motion will lie at the instance of a stranger. (Per Middleton, J.) The Court has no power, pending an application for prohibition, to make an interim order staying the proceedings in the inferior Court as to which the prohibition is sought. [Myron v. McCabe, 4 P.R. (Ont.) 171, referred to.] Re Holman and Rea (No. 2), 21 Can. Cr. Cas. 11, 9 D.L.R. 234, reversing 21 Can. Cr. Cas. 7, 7 D.L.R. 481.

FORMER JEOPARDY; IDENTITY OF OFFENCES.

Prohibition will be granted against a magistrate enforcing a summary conviction where the accused had been tried summarily under a previous information and, after all the evidence for the prosecution had been taken and the case closed, the magistrate improperly allowed the prosecutor to withdraw the charge and lay a new information for the same offence, on the hearing of which he convicted the accused of the offence charged upon new evidence. R. v. Chew Del, 21 Can. Cr. Cas. 20, 9 D.L.R. 266.

PROCEEDINGS UNDER MUNICIPAL BY-LAW.

Prohibition will lie against the enforcement of a summary conviction under an invalid municipal by-law, as the magistrate in assuming to find the by-law valid attempted to give himself jurisdiction by an erroneous conclusion of law. R. v. Sparks, 21 Can. Cr. Cas. 184, 10 D.L.R. 616.

POWER OF SUPREME COURT TO ISSUE TO COUNTY JUDGE ACTING AS MASTER; STAY.

Since a judge of a County Court acting as a Master of the Supreme Court of Nova Scotia, is an officer of the latter court, and not an inferior tribunal, the Supreme Court should not issue a writ of prohibition to restrain his proceeding as such without jurisdiction; an order directed to the Master as an officer of the court is sufficient. The Supreme Court of Nova Scotia can stay the action of a judge of a County Court when, acting as a Master of the Supreme Court, in releasing without authority a person from custody under the Liberty of the Subject Act, R.S.N.S. 1900, ch. 181, since a county judge acting as Master of the Supreme Court is an officer thereof, and, under order 54, may be restrained on motion from any unauthorized exercise of power. Re Crouse, 21 Can. Cr. Cas. 231, 11 D.L.R. 749. See also 21 Can. Cr. Cas. 243, 11 D.L.R. 759.

APPEAL FROM SUMMARY TRIAL; JURISDICTION.

Prohibition lies to prevent a County Court entertaining an appeal launched by an informant from the decision of a police magistrate dismissing on summary trial a charge of an indictable offence, on the ground that no appeal lies; and the prohibition motion is properly brought as soon as the notice of the proposed appeal has been filed in the inferior Court to which the appeal is taken. That objections to the jurisdiction of a Court to entertain an appeal may be raised on the hearing will not prevent the granting of a writ of prohibition against such tribunal by a superior Court. [Mayor of London v. Cox, L.R. 2 H.L. 239, followed.] Re Buchanan, 22 Can. Cr. Cas. 199, 15 D.L.R. 232.

RIGHT TO REMEDY; APPEAL; JURISDICTION.

It is not a bar to the granting of prohibition to a magistrate for exceeding his territorial jurisdiction that an alternative remedy of appeal was available to correct the absence or excess of jurisdiction. [Channel Coaling Co. v. Ross, [1907] 1 K.B. 145, referred to.] Where the defect of jurisdiction is clear on the face of the proceedings of an inferior Court, the issue of a prohibition, though not of course, is of right and not discretionary. [Farquharson v. Morgan, [1894] 1 Q.B. 552, applied.] R. v. Jack, 24 Can. Cr. Cas. 385, 25 D.L.R. 700.

NONJURISDICTIONAL ERROR; APPEAL IN SUMMARY PROCEEDINGS.

Error in law upon a question apart from the jurisdiction to try, will not give a right to prohibition, and the forcing of respondent into the witness box, whether justified or not under the provincial statute under which the prosecution was brought, does

not raise the question of jurisdiction of a county judge to hear an appeal from the dismissal of a summary conviction. [Re Royston Park and Steelton, 13 D.L.R. 454, 28 O.L.R. 629, and Re McLeod and Amiro, 8 D.L.R. 726, 27 O.L.R. 232, referred to.] Re Sigurdson (No. 1), 25 Can. Cr. Cas. 291, 28 D.L.R. 375. See also 25 Can. Cr. Cas. 313, 28 D.L.R. 376.

AGAINST SUMMARY CRIMINAL PROCEEDINGS ON DEFECTIVE INFORMATION.

Prohibition may be ordered to restrain a magistrate from proceeding on an information which he had erroneously ruled sufficient to support the charge, whereas in fact it did not disclose a criminal offence; but the prohibition order will not bar proceedings on a fresh information or even upon the same information if properly amended and resworn. [R. v. France, 1 Can. Cr. Cas. 321, applied.] R. v. McAuley, 30 Can. Cr. Cas. 145.

PROSTITUTION.

See Disorderly house; Vagrancy.

Living on avails of prostitution; vagrancy. 26 Can. Cr. Cas. 111.

MEANING OF; PROCURING.

The word "prostitution" in Cr. Code, sec. 216 (amendment of 1913) means promiscuous sexual intercourse with men, and is negatived where the magistrate finds that the intent of the accused man was only that the woman should become his mistress and not to bring about sexual connection between the woman and other men. R. v. Cardell, 23 Can. Cr. Cas. 271, 19 D.L.R. 411.

PROTECTION OF MAGISTRATE.

See Civil action.

PUBLIC MEETING.

Disturbance of, see Disturbance.

PUBLIC OFFICER.

Malfeasance of office; Corrupt motive, see Criminal information.

Extortion and oppression by public officers; Common law offence. 11 Can. Cr. Cas. 344.

MISBEHAVIOUR IN OFFICE; APPLYING PUBLIC FUNDS FOR THE USE OF HIS OWN PROPERTY.

An officer in the public service of Canada having charge of the public dredging and whose duty it was to audit expenditure therefor, used property of his own in connection with the dredging, having first placed it in the name of a third party, in whose name also he made out the accounts. No undue gains were made by him, but as such public officer he certified to the correctness of the accounts respecting the use of his said property as though for services rendered by contractors with the Government, and thereby received for himself a payment for these services:—Held, that he had been guilty of misbehaviour in office, which is an indictable offence at common law, and that to constitute the offence it was not essential that pecuniary damages should have resulted to the public by reason of such irregular conduct, nor that the defendant should have acted from corrupt motives. Regina v. Arnoldi (1893), 23 O.R. 201.

DISQUALIFICATION FROM OFFICE; LIQUOR OFFENCE.

The disqualification of a member of a municipal council under the Liquor License Act, C.S.N.B. 1903, ch. 22, sec. 61, on his conviction for knowingly committing any offence against the Act does not apply where the conviction was not expressed to be for an offence "knowingly" committed and might have been for the illegal sale of liquor by another without his knowledge on premises of which he was the occupant and as to which he might on that account be liable to conviction under the Act apart from any guilty knowledge on his part; the Court hearing a motion to quash the council's resolution on the ground that it was passed on the invalid vote of the convicted member is under no duty to examine the proceedings before the magistrate to ascertain therefrom whether or not the offence was knowingly committed, the duty of finding upon that question being one primarily for the magistrate. [Ex parte O'Shaughnessy (1904), 8 Can. Cr. Cas. 136, cited and see R. v. Graf, 15 Can. Cr. Cas. 290; Sherras v. De Rutzen, [1895] 1 Q.B. 918 referred to.] (Per White, J.) If it be intended to seek the disqualification of the accused as a member of a municipal council because of his illegal sale of intoxicating liquor in contravention of the Liquor License Act, C.S.N.B. 1903, ch. 22, the accused must be both charged with and convicted of having committed the offence knowingly, such being an essential to the disqualification although not in all circumstances necessary to a conviction for the illegal sale. Ex parte Murchie; R. v. Gloucester, 24 Can. Cr. Cas. 228.

RECALL; CITY COMMISSIONER IN CHARGE OF POLICE; GROUNDS FOR RECALL; INTERFERENCE WITH POLICE PROSECUTIONS; N.B. ACTS 1912, CH. 42.

Recall proceedings for the removal from office of a city commissioner in control of the police force may be founded on grounds other than a breach of the specific duties and conditions attached to his office under the statute regulating his election. Such

proceedings may be based upon an alleged interference by the commissioner with the proper discharge of their duties by the police by directing the discontinuance of certain prosecutions brought by them. Ex p. Tobin, 31 Can. Cr. Cas. 68.

PUNISHMENT.

See also Sentence; Imprisonment; Penalty; Fine.

Greater than authorized; Effect of. 1 Can. Cr. Cas. 59, 126.

Note on jurisdiction of magistrate to award hard labour in default of distress. 3 Can. Cr. Cas. 538.

Default of distress or of payment of fine; Hard labour. 3 Can. Cr. Cas. 596.

Effect of part payment of fine upon the alternative punishment. 10 Can. Cr. Cas. 68.

Evidence in mitigation of punishment. 10 Can. Cr. Cas. 381.

GREATER PENALTY THAN PRESCRIBED BY ACT.

When an Act of the Legislature prescribes a definite penalty for an offence, the imposition of a penalty other than the one prescribed is irregular, and the conviction will be set aside. Ex parte Wilson, 1 P. & B. 274.

HARD LABOUR IN ADDITION TO IMPRISONMENT.

The power to imprison only does not include the power to impose hard labour as well; and the Ontario Legislature therefore cannot, under the B.N.A. Act, sec. 92, add hard labour to imprisonment. Reversed on appeal, 7 App. Rep. 246. Regina v. Frawley (1881), 46 U.C.Q.B. 153.

IMPRISONMENT TO ENFORCE PAYMENT OF FINE.

The prisoner was convicted on the 18th of February, 1895, for unlawfully keeping for sale intoxicating liquors in violation of the second part of the Canada Temperance Act, and he was adjudged to pay a fine of $50 and costs, and if not paid and in default of distress, that he should be imprisoned for 80 days. A warrant of commitment was issued on 19th July, 1895. On 17th June, 1895, he was convicted by the same justices for a second offence under the same Act, and fined $100 and costs, and in default of payment to be imprisoned for 80 days. A warrant of commitment was issued on 18th July, 1896. He was arrested on the 29th January, 1896, under the first warrant, and after 80 days' imprisonment was discharged. On 8th September, 1896, he was arrested on the second warrant. An application was now made for his discharge on the ground that as the imprisonments were not expressed to be cumulative, they must be taken to have been concurrent by virtue of sec. 877 of the Criminal Code. Barker, J., in refusing the application, said there was an important distinction between the case of an offence for which the justice awards imprisonment as a punishment and one for which a penalty can only be imposed, and where the imprisonment is merely a means of enforcing payment of the penalty. Under sec. 100 of the C.T. Act any person violating the provisions of the second part of the Act is liable for the first and second offence to a fine, and it is only for the purpose of enforcing payment that imprisonment is awarded. In this respect the case was to be distinguished from Reg. v. Cutbush, L.R. 2 Q.B. 379, and Castro v. The Queen, 6 App. Cas. 229. He referred to sub-secs. 872, 877 and 880 of the Criminal Code as recognizing this distinction. As the prisoner when in custody under the first warrant was not undergoing punishment his imprisonment could not be said to refer to the second offence. In Re Doherty (1896) 32 C.L.J. 595.

KEEPING BAWDY HOUSE.

(1) Cr. Code, sec. 208 only applies to authorize six months' imprisonment when imposed as the substantive punishment for the offence of keeping a bawdy house and not as a means of enforcing payment of a fine. (2) Semble, sec. 788, Cr. Code, only applies to authorize six months' imprisonment in default of payment of a fine when fine and imprisonment are conjointly imposed in the first instance. R. v. Stafford, 1 Can. Cr. Cas. 239.

[Distinguished in R. v. Laura Carter, 5 Can. Cr. Cas. 404; R. v. Sovereen, 20 Can. Cr. Cas. 111, 4 D.L.R. 356; Brunet v. Montreal, 17 Que. S.C. 85; considered in R. v. Ames, 10 Can. Cr. Cas. 57, 5 Terr. L.R. 497.]

IMPRISONMENT.

The word "penalty," although generally applied to pecuniary punishment, as by fine, includes also punishment by imprisonment. R. v. Gavin, 1 Can. Cr. Cas. 59.

[Referred to in Brunet v. Montreal, 17 Que. S.C. 85; R. v. Doherty, 32 N.S.R. 239; distinguished in R. v. Doherty, 3 Can. Cr. Cas. 509.]

"FINE AND IMPRISONMENT;" DISCRETION TO EXEMPT.

Where a statute of Canada imposes a fine and also imprisonment, the punishment is in the discretion of the Court, and the Court is not bound to inflict both, but may inflict either one or the other of the two kinds of punishment by virtue of Cr. Code, sec. 932. R. v. Robidoux, 2 Can. Cr. Cas. 19.

[Followed in Ex parte Kent, 7 Can. Cr. Cas. 449; referred to in Re McMiken, 20 Can. Cr. Cas. 341.]

COMPUTATION OF TERM.

A conviction which declares that the convicted person is condemned to be imprisoned during the space of six months to be computed from the day of her arrival as a prisoner in the common jail of the district is

[Referred to in R. v. Poirier 31 Que. S. C. 68; R. v. Janneau, 12 Can. Cr. Cas. 361; relied on in R. v. Weir, 8 Que. P.R. 400.] sufficient, and the day from which the term of the sentence is to be computed is thereby sufficiently expressed. R. v. Bougie, 3 Can. Cr. Cas. 487.

DEFAULT OF PAYING FINE; HARD LABOUR.

Criminal Code, sec. 872, enacting that in default of payment of a fine the defendant may be imprisoned "in the manner and for the time" mentioned in the Act or law authorizing the conviction, does not authorize an award of imprisonment with hard labour in default of payment of the fine, unless the Act or law under which the conviction is had provides the same in respect of the non-payment of the penalty; and this notwithstanding such Act or law authorizes a punishment in the first instance by imprisonment with hard labour. R. v. Horton, 3 Can. Cr. Cas. 84.

[Followed in R. v. Blank, 10 Can. Cr. Cas. 361; referred to in R. v. Clarke, 12 Can. Cr. Cas. 19. But see amendment of sec. 872 of the Code, 3 Can. Cr. Cas. 596.]

UNAUTHORIZED PENALTY OF HARD LABOUR; AMENDED CONVICTION.

A summary conviction which illegally imposes imprisonment with hard labour in default of payment of the fine, may be amended at any time before it is acted upon, by the return of an amended conviction omitting the words "with hard labour," but in other respects conforming to the adjudication. Such an amended conviction may be returned in answer to certiorari process although the first conviction has been transmitted by the magistrate, pursuant to a statutory requirement, to the Court to which an appeal might be taken therefrom. R. v. McAnn, 3 Can. Cr. Cas. 110.

[Referred to in R. v. Kirwin, 20 Can. Cr. Cas. 181.]

IMPRISONMENT; DEFAULT IN PAYING FINE.

Imprisonment with hard labour may be imposed in default of payment of a fine and costs upon a summary trial of an indictable offence under Part LV. of the Code. R. v. Burtress, 3 Can. Cr. Cas. 536.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 80, 39 N.S.R. 125.]

LIMITATION OF TOTAL OF PENALTIES.

(1) Sec. 17 of the Temperance Act of 1864 which provides that two or more offences by the same party may be included in one complaint, and that whatever may be the number of offences included in one complaint, the maximum of penalty which may be imposed for them all shall in no case exceed $100, is to be construed as permissive and not as imperative; and, if separate complaints are laid in respect of each offence, convictions obtained thereon with accumulated penalties of more than $100 may be enforced, although the offences were all prior to the laying of the first information. (2) There is no presumption that a complaint made for a single offence under that Act is to include all offences to be charged against the accused thereunder previous to the date of the complaint and within three months' limitation within which prosecutions are required to be brought. Wentworth v. Mathieu, 3 Can. Cr. Cas. 429.

[Referred to in R. v. Gallagher, 18 Can. Cr. Cas. 349.]

IMPRISONMENT IN DEFAULT OF PAYING FINE; WHEN HARD LABOUR MAY BE ADDED.

(1) Hard labour cannot be imposed with imprisonment, ordered under Code, sec. 872, in default of payment of a fine upon summary conviction unless imprisonment with hard labour might have been imposed in the first instance as part of the punishment for the offence. (2) Where imprisonment with hard labour is imposed in default of paying a fine for a first offence under the Canada Temperance Act, the warrant of commitment returned on habeas corpus cannot be amended under secs. 117 and 118 of that Act, as such penalty is greater than the statute authorizes. The King v. McIver, 7 Can. Cr. Cas. 183.

PENALTY; STATUTORY AUTHORITY TO REMIT; WHETHER PROSECUTOR'S COSTS INCLUDED.

The power conferred upon the Minister of Marine by the Fisheries Act to remit penalties does not authorize him to remit the costs awarded to a private prosecutor, and a mandamus should go to the justice to issue a distress warrant for such costs. (Per Tuck, C.J., Hanington and McLeod, JJ.) The fine having been remitted, there is no remedy for the recovery of the prosecutor's costs and the justice could not be directed by mandamus to issue a distress warrant to enforce payment. (Per Barker and Gregory, JJ.) The word "penalty" in sec. 18, sub-sec. 6, of the Fisheries Act includes both fine and costs, and the Minister of Marine had power to remit both. (Per Landry, J.) The Court being equally divided, no order made. Ex parte Gilbert, 10 Can. Cr. Cas. 38.

SUMMARY CONVICTION; WHEN HARD LABOUR MAY BE ADDED.

Section 739 (2) of the Revised Cr. Code authorizes the imposition of hard labour upon an imprisonment in default of distress, only where imprisonment with hard labour in the first instance might have been imposed in addition to a fine with imprisonment in default of distress or payment. The King v. Clark (No. 1), 12 Can. Cr. Cas. 17.

MAXIMUM IMPRISONMENT FOR TWO MONTHS; SENTENCE OF SIXTY DAYS; POSSIBLE EXCESS OVER TWO MONTHS.

A summary conviction imposing a sentence of sixty days is not invalid where the statutory maximum is two months, unless there is a reasonable probability of the sixty days' term being in the particular case more than two months. (Per Graham, E.J.) It being possible that the prisoner might be detained in gaol for a longer period than if the sentence had been in for one or two months, the conviction is bad and the prisoner entitled to be discharged on habeas corpus. (Per Russell, J.) The King v. Brindley, 12 Can. Cr. Cas. 170.

THEFT; MAXIMUM SENTENCE; ADDITIONAL PUNISHMENT FOR SECOND OFFENCE.

(1) On a summary trial before a city police magistrate for theft (Code, sec. 386) the maximum penalty is seven years' imprisonment unless a previous conviction has been charged in the information by analogy to the procedure under Code, sec. 851 for charging previous convictions in indictments in cases in which a greater punishment may be imposed by reason thereof. (2) The Court of Appeal will set aside a sentence for more than seven years for theft where no previous conviction has been charged in the proceedings, and will impose instead the sentence which it deems appropriate, notwithstanding the admission of the accused made to the magistrate after conviction that he had been previously convicted of theft. (3) On a motion to the Court of Appeal to set aside a sentence as erroneous, the personal attendance of the prisoner is not necessary while the question of law is being argued, but if the Court substitutes a different sentence the prisoner should be brought into Court to receive sentence. The King v. Edwards, 13 Can. Cr. Cas. 202.

UNAUTHORIZED PUNISHMENT; REDUCTION ON APPEAL.

(1) On an appeal from a summary conviction, the Court hearing the appeal is the absolute judge both of law and facts, and, where the conviction appealed from awards a penalty in excess of that authorized by law, the Appellate Court may impose a new sentence at its discretion. (2) Where an excessive sentence has been imposed on a summary conviction following a plea of guilty, the Court hearing an appeal therefrom may modify the conviction by imposing a lawful punishment less than the legal maximum. (3) The Appellate Court tries the case re novo upon the merits, and its powers are not limited to the cutting off of the unlawful excess. The King v. Baird, 13 Can. Cr. Cas. 240.

IMPRISONMENT IN DEFAULT OF FINE; REDUCING SENTENCE IN EXCESS OF STATUTORY LIMIT.

(1) The term of imprisonment in default ing of paying a fine for such offence is controlled by Code, sec. 739 (b), and must, therefore, not exceed three months. (2) Where the term of imprisonment is improperly in excess of three months in default of payment of the fine, the summary conviction will be ended by reducing the term to three months on the hearing of a motion to quash. The King v. McGuire, 13 Can. Cr. Cas. 312.

SUMMARY CONVICTION; PENAL STATUTE; HARD LABOUR MADE OBLIGATORY IN DEFAULT OF FINE; COMMITMENT FOR IMPRISONMENT "ACCORDING TO LAW;" UNCERTAINTY; DISCHARGE ON HABEAS CORPUS; QUEBEC CITY BY-LAWS.

(1) When penal statute provides everything for which the offender can be condemned thereunder it is illegal for the Court to convict him otherwise than according to the precise terms of the Act. (2) Where the statute stipulates the amount of the note and the obligation for payment of costs, and in default of payment, imprisonment for six months at hard labour, a summary conviction which states that in default of payment of the fine and the costs, the offender shall be "imprisoned for six months, according to law," is void, as not following the terms of the statute and for uncertainty in leaving it to the gaoler to interpret the law. (3) The prisoner has a right to object that his imprisonment without hard labour is illegal if the statute under which he is condemned requires the imprisonment to be with hard labour. Poulin v. City of Quebec, 13 Can. Cr. Cas. 391.

PERSONAL ATTENDANCE OF ACCUSED; SENTENCE REDUCED ON APPEAL.

Where the Judge hearing an appeal from a summary conviction affirms the adjudication of the magistrate, but reduces the term of imprisonment awarded, the order may be made without the personal attendance of the accused as for a re-sentence. Johnston v. Robertson, 13 Can. Cr. Cas. 452.

PERJURY; FINE NOT PERMISSIBLE AS SOLE PUNISHMENT FOR PERJURY.

Perjury being an offence punishable with imprisonment for more than five years, there is no jurisdiction to impose as the punishment therefor, a fine in lieu of imprisonment (Code, sec. 1035), but both imprisonment and fine may be awarded. The King v. Legros, 14 Can. Cr. Cas. 161.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 200; R. v. Graves (No. 2), 16 Can. Cr. Cas. 336; followed in Rex v. Farrell, 20 O. L.R. 182, 15 Can. Cr. Cas. 287; The King v. Drummond (1905), 10 Can. Cr. Cas. 340.]

SUMMARY CONVICTION; IMPRISONMENT AND PAYMENT OF COSTS; FURTHER IMPRISONMENT FOR NONPAYMENT.

On a summary conviction awarding imprisonment, costs may also be awarded, and in default of payment imprisonment for a further term not exceeding three months. Ex parte Tierney, 14 Can. Cr. Cas. 194.

FINE; IMPRISONMENT IN DEFAULT; WHEN HARD LABOUR MAY BE ADDED.

Sec. 739 (2) of the Revised Cr. Code authorizes the imposition of hard labour upon an imprisonment in default of distress, only where imprisonment with hard labour in the first instance might have been imposed in addition to a fine with imprisonment in default of distress or payment. The King v. Riley, 14 Can. Cr. Cas. 346.

IMPRISONMENT A "PENALTY."

A "penalty" ordinarily means a suffering either in person or in property as a punishment annexed by law or judicial decision to a violation of law, and sentences of imprisonment are included. The King v. Leach et al., 14 Can. Cr. Cas. 375.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 204; R. v. Graves (No. 2), 16 Can. Cr. Cas. 322.]

CANADA TEMPERANCE ACT; IMPRISONMENT IN DEFAULT OF PAYING FINE.

A conviction under the Canada Temperance Act may by virtue of Cr. Code, sec. 739 (b) direct imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods. The King v. Whiting, 14 Can. Cr. Cas. 414.

SUMMARY CONVICTION; NO POWER TO ADJUDGE THAT APOLOGY BE MADE.

A justice hearing a complaint for obstructing passengers by using insulting language (Code, sec. 238 (e)) has no power to adjudge that defendant make an apology to the complainant. The King v. Turnbull, 15 Can. Cr. Cas. 1.

SUMMARY CONVICTION; WILFULLY KILLING A DOG; PENALTY "OVER AND ABOVE THE AMOUNT OF INJURY."

(1) On a summary conviction under Code, sec. 537 for wilfully killing a dog, the whole penalty, which is not to exceed $100 "over and above the amount of injury done," belongs to the Crown, and there is no jurisdiction to award damages to be paid to the owner of the dog. (2) Where the adjudication was that the defendant pay a fine of $1 and costs and further pay the owner $20 damages for the loss of the dog, the summary conviction will be amended by striking out the award of damages. (3) An amended conviction imposing a fine of $21 is bad as not conforming with the adjudication. (4) Code, sec. 539, which empowers the magistrate in certain cases to award compensation up to $20 to the person aggrieved does not apply to the offence of killing a dog, for which Code, sec. 537 provides a punishment. The King v. Annie Cook, 16 Can. Cr. Cas. 234.

THEFT OF DOMESTIC FOWL; SENTENCE OF THREE YEARS' IMPRISONMENT REVERSED.

(1) For the offence of stealing domestic fowl, the limit of imprisonment is two years on indictment under Code, sec. 370 if the value of the fowl is over $20 and one month's imprisonment on summary conviction if the value is less than $20; consequently a conviction under the Speedy Trials clauses with a sentence exceeding two years must be set aside as unauthorized either by the Code or at common law if the record does not disclose the value. (2) Although at common law the theft was punishable with more than two years' imprisonment on indictment without regard to the value, Code, sec. 370 has the effect of limiting the punishment where the value is over $20 to two years' imprisonment, and a greater punishment on indictment could only be supported, if at all, on its appearing that the value was less than $20 and, semble, in the latter case the Court in passing sentence should have regard to the limit of imprisonment which might have been imposed on summary conviction. (3) The Court of Appeal is not bound to impose the legal maximum sentence in reducing an excessive sentence under Code, sec. 1018, but may either impose such new sentence as it considers proper under the circumstances or may discharge the accused if it considers his interim punishment to have been ample for the offence. The King v. Williams, 16 Can. Cr. Cas. 482.

THIRTY DAYS OR ONE MONTH; AMENDMENT.

(1) Where a statute limits the period of imprisonment in default of paying a fine to one month, and the conviction awards thirty days, the Court will not on certiorari quash the conviction on the ground that the thirty days may exceed one month but will amend the conviction to one month under Cr. Code, sec. 889, if satisfied with the proof of the offence. (2) Sec. 101, subsec. 5, of the Ontario Liquor License Act, applies to authorize the re-summoning of the offender and revision of the penalty in respect of a subsequent conviction in any case where the prior conviction has been set aside. [R. v. Gavin, 1 Can. Cr. Cas. 59, considered.] The King v. Rudolph, 17 Can. Cr. Cas. 206.

SUMMARY CONVICTION; MEMORANDUM OF FINE AND IMPRISONMENT ENDORSED ON INFORMATION NOT STATING HARD LABOUR.

The imposition of hard labour upon a commitment following a summary conviction will not be held invalid merely on the ground that the memorandum of the term of imprisonment endorsed by the magis-

trate on the information did not mention hard labour; such memorandum is not conclusive as to the actual adjudication, and where the warrant of commitment recites a conviction with hard labour, the onus is upon the accused to shew, either by the conviction itself or by proof of the actual adjudication pronounced that hard labour which the magistrate might legally impose was not ordered. [Ex parte Carmichael (1903), 8 Can. Cr. Cas. 19, distinguished.] The King v. Gratton, 17 Can. Cr. Cas. 324.

LIMIT OF PENALTY; SIX MONTHS' IMPRISONMENT AND $100 FINE, INCLUDING COSTS.

(1) Notwithstanding Code, sec. 777, a city police magistrate holding a summary trial without the consent of the accused for keeping a disorderly house cannot impose a penalty in excess of that provided by Code, sec. 781. (2) Code, sec. 1124 as to reducing punishments in excess of those authorized does not apply to convictions for indictable offences upon summary trial under Part XVI. of the Code, and if the conviction on such trial imposes an illegal penalty, the prisoner will be discharged on habeas corpus. The King v. Shing, 17 Can. Cr. Cas. 463.

[R. v. Randolph, 4 Can. Cr. Cas. 165, and R. v. Spooner, 4 Can. Cr. Cas. 209, followed; disapproved in R. v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.]

PUNISHMENT ON PLEA OF GUILTY; FINE OF CORPORATION.

(1) On an indictment of a railroad company for omission to take reasonable care of a consignment of a dynamite whereby life and property was endangered and fatalities resulted from an explosion, the trial Judge on a plea of guilty may consider the evidence taken at the coroner's inquest held concerning the resultant deaths at which the railroad company was represented by counsel and fix the appropriate fine with reference to the seriousness of the case as so appearing. (2) A fine of $25,000 was imposed where the railroad company knowing the consignment to consist of explosives shipped the same unattended in an ordinary freight car mixed with other freight and after learning that it was dynamite neglected to take any precautions en route, notwithstanding slight explosions and leakages being observed, as a result of which neglect two men were killed and forty others injured. The King v. Michigan Central Railroad Co., 17 Can. Cr. Cas. 483.

STATUTORY POWERS; POWER TO SUSPEND OR CANCEL LICENSE FOR INFRACTION OF BY-LAW.

(1) A statutory power to pass by-laws carries with it the implied power to impose reasonable penalties for their infraction. (2) Statutory power given to a licensing authority, such as the board of a Dental College, to pass by-laws for the government, discipline and regulation of the dental profession, will include power to prohibit a licensed dentist from working on salary for an unlicensed dentist or in such a way as to permit an unqualified person to make a profit from his practice. (3) Although the statute does not expressly confer power to impose penalties or other punishment for infraction of a by-law, the licensing board may legally provide for the suspension or cancellation of the license of a dentist who carries on business for the benefit of an unlicensed person or for a corporation. Gordon v. Dental College, 18 Can. Cr. Cas. 224.

WHETHER DISCRETIONARY.

The provision of sec. 24 of the Nova Scotia Temperance Act (N.S. Laws 1910, ch. 2, as amended N.S. Laws 1911, ch. 33) which declares that the offender on each subsequent conviction shall be "liable to imprisonment for three months," gives no discretion to the magistrate to lessen the term of imprisonment. (Dictum per Townshend, C.J.) The King v. Fraser, 20 Can. Cr. Cas. 167, 7 D.L.R. 496.

IMPRISONMENT; CHANGING TO "HARD LABOUR."

Where a prisoner was convicted of being a vagrant and sentenced to six months' imprisonment, and no provision was made for "hard labour" and thereafter the words "hard labour" were added in the absence of the accused, and as so changed the commitment was made out to conform to it, such change is invalid and the commitment will be set aside on habeas corpus proceedings. [Criminal Code, sec. 727; see R. v. McAnn, 3 Can. Cr. Cas. 110; Regina v. Hartley, 20 O.R. 481, referred to.] The King v. Kirwin, 20 Can. Cr. Cas. 181.

SPECIAL STATUTORY CASES OF THEFT AND RECEIVING; PUNISHMENT ON SUMMARY CONVICTION.

Where the subject matter of a theft is of any of the special classes for which the procedure of summary conviction is applicable (ex. gr., stealing a dog worth less than $20), the punishment on a summary conviction for receiving is limited in like manner as for the principal offence by virtue of Cr. Code, sec. 401. R. v. Frizell, 22 Can. Cr. Cas. 214, 15 D.L.R. 674.

GREATER PUNISHMENT FOR SUBSEQUENT OFFENCE.

Sections 851 and 963 of the Criminal Code, as to the procedure in case of a charge for a second or subsequent offence involving an increased penalty, apply only to indictable offences. R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536.

SUMMARY TRIAL; RECORD; PUNISHMENT BY WHIPPING; MEDICAL SUPERVISION.

Failure to set out, in the record of a conviction on summary trial under which

the punishment of whipping was ordered, that the whipping should take place under the supervision of a medical officer in the terms of Code, sec. 1060 will not invalidate the sentence; the directions of Code, sec. 1060 cannot be varied by the magistrate and, even if they should be formally stated in the record (as to which, quære) the omission is an informality only and does not affect the validity of the conviction. The fixing of the time or times for punishment by whipping ordered to take place during the convict's term of imprisonment is left by Cr. Code, sec. 1060 in the discretion of the prison surgeon under whose supervision the whipping is to be done; and it is an excess of jurisdiction on the part of a magistrate holding a summary trial to order in the sentence that ten lashes be imposed six weeks after imprisonment and ten lashes six weeks before expiration of the term of six months imprisonment imposed; but the Court hearing a habeas corpus application may amend the conviction under Cr. Code, sec. 1124 by imposing the proper sentence where satisfied of the offence. Where a sentence of whipping imposed on a summary trial was successfully attacked as having improperly included a direction as to the times when the whipping should take place, which by statute was under the control of the prison surgeon and not of the magistrate, and pending such determination in a habeas corpus application the Court had stayed proceedings in respect thereof, the Court has a discretion to strike out the sentence of whipping and confirm the sentence of imprisonment if the latter is so near expiry that it would be impossible to carry out the evident intention of the convicting magistrate that the first half of the whipping should be given at a considerable interval from the second half. R. v. Boardman, 23 Can. Cr. Cas. 191, 18 D.L.R. 698.

FINE AND IMPRISONMENT; DIVISIBILITY; HABEAS CORPUS.

Where a conviction imposes an absolute order for imprisonment and also a fine with imprisonment in default (Cr. Code, sec. 781), the direction as to punishment is divisible, and the absolute term may stand notwithstanding the invalidity of that part of the conviction which conditionally orders imprisonment in default; and a discharge on habeas corpus will be refused where the detention can be justified by reason of the absolute term not having expired. R. v. Carlisle, 7 Can. Cr. Cas. 470, followed. R. v. Miller, 25 Can. Cr. Cas. 151.

[Followed in R. v. Willson, 29 Can. Cr. Cas. 42.]

RAILWAY.

POWERS OF A "RAILWAY CONSTABLE;" OFFENDERS TAKEN BEFORE JUSTICE OF ANOTHER COUNTY.

A person summoned but not arrested for trespassing on a railway track, is not liable to be tried elsewhere than in the local jurisdiction wherein the offence was committed. Sec. 283 of the Railway Act (Can.) 51 Vict. ch. 29, authorizing a railway constable to "take" persons offending against the provisions of that Act, and punishable summarily, before a justice for any county, etc., within which such railway passes, and giving such justice jurisdiction to deal with such a case, as though the offence had been committed "within the limits of his own local jurisdiction," applies only where the offender has been arrested by a railway constable. Semble, the provisions of sec. 283 of the Railway Act apply only to arrests made by a railway constable without a warrant under the provisions of that Act, and not to a case where an information is laid and a warrant issued instead of a summons to bring the offender before the justice to answer the charge. R. v. Hughes, 2 Can. Cr. Cas. 332.

OBSTRUCTING OFFICER OF A RAILWAY.

(1) Any person who obstructs or impedes an officer of a railway company in the execution of his duty upon any of the premises of the company is liable to fine or imprisonment under sec. 291 of the Railway Act, 1903 (Can.). (2) It is an obstruction of the railway officer for a cabman having no right upon the railway cabstand to refuse to move away from same with his cab on the demand of the officer whose duty it was to enforce the company's regulations respecting the station property. The King v. Leclaire, 12 Can. Cr. Cas. 332.

[Referred to in R. v. Matheson, 21 Can. Cr. Cas. 312, 12 D.L.R. 480.]

PROSECUTION FOR INFRINGEMENT OF BY-LAW OF RAILWAY COMMISSION; STATUTORY EFFECT OF BY-LAW IN GAZETTE.

(1) Where a prosecution is brought under by-laws passed under statutory authority such as the by-laws of the Board of Railway Commissioners and provision is also made for their publication in the Canada Gazette, the by-law may be operative before such publication, but it will be necessary in order to support a conviction thereunder for an offence taking place between the times of the passing of the by-law and of the official publication in the Gazette, such by-law must be proved before the trial Court and it must also be shewn that defendants had notice of it. (2) Although no objection of want of notice or of proof of notice was taken before the justices trying the case, a summary conviction in

the absence of notice of the by-law would be so contrary to natural justice that the Court on certiorari will quash the conviction for want of evidence of same. The King v. Canadian Northern Railway Company, 18 Can. Cr. Cas. 170.

THEFT BY AGENT; RAILWAY CONDUCTOR; RECEIVING MONEY FOR PASSENGER'S TRANSPORTATION; FAILURE TO ACCOUNT.

A railway conductor who takes from a passenger for his transportation a sum of much less than the authorized fare and issues no ticket or receipt therefor is guilty of theft under Code, sec. 308 if he fraudulently omits to account for and pay to the railway company the money so received. Money so taken for transportation is money received by the railway conductor "on terms requiring him to account for or pay the same" to the company within the meaning of Code, sec. 308. The King v. McLellan (No. 1), 10 Can. Cr. Cas. 1.

RAILWAY OBSTRUCTION ENDANGERING LIFE.

(1) On an indictment for various acts of obstruction of a railway by placing pieces of iron on the rails in a manner likely to wreck a train, the prosecution may elect to treat the several acts of obstruction continuing for several weeks as cumulative acts forming one offence in law, and the refusal of the trial judge to order that the prosecution elect as to which act of obstruction it would proceed upon, is not error in law. (2) A conviction on such indictment would be an answer to a fresh indictment for any of the offences as to which evidence was given for the prosecution. (3) Where the trial Judge considers it necessary for a fair trial of an indictment charging various acts, any of which would be an offence, he may order the prosecutor to furnish particulars or direct separate trial. (4) It is not error for the trial Judge to have charged the jury strongly against the accused on the uncontradicted evidence for the Crown, if he left the facts entirely to the jury as to whether the accused was or was not guilty. The King v. Michaud, 17 Can. Cr. Cas. 86.

OBSTRUCTION OF STREET CROSSING; STANDING CARS; OPERATION OF GATES.

To justify conviction of a railway company under sec. 394 of the Railway Act (Can.) for obstructing a street crossing by allowing cars to stand across the street, it must be shewn by the prosecution that the obstruction was wilful, and where the crossing was protected by gates and the only evidence was of the times when the gates remained closed against street traffic for periods in excess of five minutes, a conviction should be quashed where it was not shewn that any one train or car caused the obstruction, nor was it shewn that the delay was not attributable to the gateman rather than to the trainmen; sec. 394 of the Railway Act does not apply to obstruction caused by the gateman's neglect at a street crossing. R. v. Grand Trunk R. Co. 23 Can. Cr. Cas. 80, 18 D.L.R. 223.

SMOKE REGULATION; MUNICIPAL BY-LAWS; COMMISSION CONTROL.

The provisions of order number 5678 of the Railway Commission, Can., for the regulation of the discharge of smoke from locomotives supersedes, as to railway engines operated by a railway subject to federal legislative control, the provisions of a smoke by-law passed by a municipality under provincial authority. [C.P.R. v. Notre Dame de Bonsecours, [1899] A.C. 367, distinguished.] R. v. Canadian Pacific R. Co. 23 Can. Cr. Cas. 487, affirmed in 24 Can. Cr. Cas. 226.

SMOKE; RAILWAY ROUNDHOUSE.

The smoke stack of a locomotive engine is not a flue stack or chimney within clause 45 of sec. 400 of the Municipal Act, R.S.O. 1914, ch. 192, which empowers municipal councils to pass by-laws for smoke regulation; and a railway company is not liable to conviction under clause 45 for the discharge of smoke from its locomotives while in the roundhouse. R. v. Canadian Pacific R. Co. 24 Can. Cr. Cas. 226, 25 D.L.R. 444, affirming 23 Can. Cr. Cas. 487.

[Followed in R. v. G.T.R. 27 Can. Cr. Cas. 138.]

RAPE.

Verdict of common assault; Limitation of time for information on charge of assault; Cr. Code, sec. 841. 2 Can. Cr. Cas. 96.

Lesser offence of assault included; Note on limitation of time for summary proceedings for assault. 2 Can. Cr. Cas. 101.

Form of indictment for rape. 2 Can. Cr. Cas. 101.

Note on complaint by prosecutrix; Time of, as affecting admissibility of evidence. 3 Can. Cr. Cas. 304.

Complaint by prosecutrix. 11 Can. Cr. Cas. 31.

CROSS-EXAMINATION OF PROSECUTRIX; PREVIOUS CONNECTION WITH OTHER MEN.

The prosecutrix, in an indictment for rape, was asked in cross-examination, after she had declared she had not previously had connection with a man, other than the prisoner, whether she remembered having been in the milk-house of G. with two persons named M. one after another:—Held, that the witness may object, or the Judge may, in his discretion, tell the witness she is or she is not bound to answer the question; but the Court ought not to have refused to allow the question to be put, because the counsel for the prosecution objected to the question. Laliberté v. The Queen, 1 S.C.R. 117.

RAVISHING BY FORCE AND TERROR; UTMOST RESISTANCE; SUFFICIENCY OF EVIDENCE.

The meaning of the phraseology in an indictment for rape that the prisoner "violently and against her will feloniously did ravish" the prosecutrix, is, that the woman has been quite overcome by force or terror, accompanied by as much resistance on her part as was possible under the circumstances, and so as to have made the ravisher see and know that she already was resisting to the utmost. Where, therefore, the evidence of the prosecutrix shewed that the prisoner, having followed her into the house and without her knowledge bolted the door, succeeded, after she had several times escaped from him, in dragging and throwing her upon the bed, where he had connection with her, she making several attempts to get up, but being too exhausted to do so, the prisoner avowing that he had come on purpose and as she was in his power he would do as he pleased, that she resisted as long as she could, and then, before he had effected his purpose, screamed out and called to her child, who was outside, being corroborated as to the screams by the child and by another witness who heard cries, manifestly those of the prosecutrix; it also appeared the husband of the prosecutrix had received a letter from her on the 20th of the same month in which the rape was said to have been committed, which it was alleged was on the 17th of that month, stating the prisoner had been at his house and abused her:—Held, sufficient evidence to warrant a conviction for rape. R. v. Fick, 16 U.C.C.P. 379.

CIRCUMSTANTIAL EVIDENCE; CORROBORATION; ADMISSIONS BY PROSECUTRIX; QUESTIONS FOR JURY.

On a Crown case reserved it is not proper to reserve the question whether there is sufficient evidence in support of the criminal charge, that being a question for the jury; whether there is any evidence is a question of law for the Judge. The evidence against the prisoners here was the uncorroborated evidence of the woman charged to have been raped, which, in view of the admissions made by her, and the circumstances, was unsatisfactory:—Held, that the evidence was properly submitted to the jury, but the Court directed that the attention of the executive should be called to the case. Regina v. Herman Lloyd, George Lloyd and Albert Lloyd (1890), 19 O.R. 352.

CONSENT; PAYMENT TO PROSECUTRIX; ADMISSIBILITY OF STATEMENTS BY PRISONER'S COUNSEL.

On a trial for rape the evidence of the prosecutrix was that the prisoner knocked her down, got on her, pulled up her clothes and committed a rape on her. A witness proved that the prisoner stated that he did no more than her husband would have done. Evidence was admitted of a statement made by prisoner's counsel at a previous trial on behalf of prisoner, that prisoner had had connection with the woman with her consent and that he had paid her $1.00:—Held, that there was sufficient evidence of the commission of the offence; and that the statement of the prisoner's counsel was properly admitted. Regina v. Bedere (1892), 21 O.R. 189.

CONSENT; RAPE ON LUNATIC; CONSENT FROM ANIMAL PASSION.

In this case the charge was assault with intent to ravish. The woman was insane, and there was no evidence as to her general character for chastity, or anything to raise a presumption that she would not consent. The jury were directed that if she had no moral perception of right and wrong, and her acts were not controlled by the will, she was not capable of giving consent, and the yielding on her part, the prisoner knowing her state, was not an act done with her will. They convicted, saying she was insane and consented:—Held, that the conviction could not be sustained. In the case of rape of an idiot or lunatic, the mere proof 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 from imbecility, of expressing assent or dissent; and if she consent from mere animal passion, it is not rape. Regina v. Connolly (1867), 26 U.C.Q.B. 317.

CONSUMMATION THROUGH FEAR OR SOLICITATION; QUESTIONS FOR JURY.

The defendant was indicted and convicted for committing a rape on his daughter. The learned Judge left it to the jury to say whether on the evidence the act of connection was consummated through fear or merely through solicitation:—Held, that the question was one of fact entirely for the jury, and could not have been withdrawn from them, there being ample evidence to sustain the charge, and it having been left to them with the proper direction in such a case. Regina v. Cardo (1889), 17 O.R. 11.

INDICTMENT FOR; CONVICTION FOR ASSAULT.

An assault with intent to commit a felony is an attempt to commit such felony within the meaning of sec. 183 of R.S.C. ch. 174, sec. (1). On an indictment for rape a conviction for an assault with intent to commit rape is valid. On such conviction the prisoner was held properly sentenced to imprisonment under R.S.C. ch. 162, sec. 38 (2). John v. The Queen, 15 Can. C.S.R. 384.

FEMALE UNDER FOURTEEN YEARS; "WOMAN."

(1) The words "man" and "woman" in the Criminal Code, sec. 266, which defines

the crime of rape, are to be taken in a general or generic sense as indicating all males and females of the human race, and not in a restricted sense as distinguished from boys and girls. (2) An indictment for rape under the Criminal Code, secs. 266 and 267, lies against one who has ravished a female under the age of fourteen years against her will, notwithstanding the provisions of sec. 269, which enacts that everyone is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife. R. v. Riopel, 2 Can. Cr. Cas. 225.

STATEMENT OF COMPLAINANT AFTER OFFENCE.

Upon a charge of rape, statements made by the complainant to a police officer on the day after the offence was alleged to have been committed and in response to his enquiries, the complainant having on the day of the offence complained to others of an assault but not of rape, are not admissible in evidence either as part of the res gestæ or as in corroboration. R. v. Graham, 3 Can. Cr. Cas. 22.

VERDICT OF INDECENT ASSAULT.

If on an indictment for rape the jury acquit the accused of that offence but find him guilty of an indecent assault, the verdict should stand notwithstanding the improper admission in evidence of statements made by the complainant after the alleged offence, if the other evidence in the case is ample to warrant the verdict of indecent assault. R. v. Graham, 3 Can. Cr. Cas. 22.

COMPLAINT BY PROSECUTRIX; ADMISSIBILITY OF DETAILS.

Upon the trial of a charge of rape the whole statement made by the woman by way of complaint shortly after the alleged offence, including the name of the party complained against and the other details of the complaint, is admissible in evidence as proof of the consistency of her conduct and as confirmatory of her testimony regarding the offence, but not as independent or substantive evidence to prove the truth of the charge. Whether or not the complaint was made within a time sufficiently short after the commission of the offence as to admit evidence of the particulars of the complaint, is a question to be decided by the Court under the circumstance of the particular case; but it is nevertheless the province of the jury to take into consideration the time which intervened, in weighing the probability of its truth. The lapse of seven days between the date of the offence and the time of making complaint thereof was held insufficient under the circumstances to exclude testimony of the particulars of the complaint. R. v. Riendeau, 3 Can. Cr. Cas. 293.

PROOF THAT CIVIL ACTION TAKEN FOR DAMAGES.

Proof on behalf of the defence that the injured party or her parents had instituted civil proceedings to recover damages arising from the commission of the alleged rape is properly excluded upon the criminal trial as irrelevant, unless other facts have been disclosed in evidence which tend to shew an intent to thereby wrongfully extort money from the accused. R. v. Riendeau, 3 Can. Cr. Cas. 293.

EVIDENCE OF CONDUCT INCONSISTENT WITH RESISTANCE.

On a charge of rape evidence is admissible on behalf of the defence to contradict a statement of the complainant, made on her cross-examination, denying that, on an occasion when she met the accused subsequent to the alleged rape, she had refused to put an end to the interview, as requested by her mother, and had struck her mother for the latter's interference. Such evidence is relevant to the charge not only as affecting the credibility of the complainant's testimony generally, but as shewing conduct inconsistent with resistance to the alleged offence. R. v. Riendeau (No. 2), 4 Can. Cr. Cas. 421.

[Referred to in R. v. Fouquet, 10 Can. Cr. Cas. 265.]

ABETTOR JOINTLY INDICTED WITH PRINCIPAL; ORDER FOR SEPARATE TRIAL; COMMENT ON FAILURE OF PRINCIPAL TO CALL THE ALLEGED ABETTOR.

(1) Where two prisoners are jointly indicted but an order is made for their separate trial, the one is an admissible witness for the other and is bound to testify although he may prevent his evidence being used against himself at his subsequent trial. (2) Only the person then on trial is a "person charged" within the meaning of the Canada Evidence Act, sec. 4, and comment is not prohibited as to the failure of the accused to call as a witness the person jointly indicted with him but whose trial has been ordered to be separate. The King v. Blais, 10 Can. Cr. Cas. 354.

AIDING AND ABETTING A RAPE; RELATIONS OF PROSECUTRIX WITH A WITNESS FOR PROSECUTION; REFUSAL OF BOTH TO ANSWER AS TO ALLEGED ILLICIT CONNECTION PRIOR TO THE RAPE.

(1) On a charge of aiding and abetting another to commit rape if it appears that a man called as a witness for the prosecution had immediately prior to the offence been in the company of the prosecutrix under circumstances making it probable that he had had illicit connection with her, and that the man accused of the rape had taken the prosecutrix away from the witness, the witness may be cross-examined as to his relations with the prosecutrix for

the purpose of showing prejudice against the accused and for this purpose is bound to answer whether he had had connection with the prosecutrix on that occasion. (2) Where the witness refused to answer as to his connection with the prosecutrix and the trial Judge upheld his refusal and the prosecutrix also refused to answer as to same, but the guilt of the accused was corroborated by independent testimony, Code, sec. 746, may be applied to uphold the conviction on the ground that no substantial wrong has been occasioned by the ruling. The King v. Finnessey, 10 Can. Cr. Cas. 347.

COMPLAINT OF PROSECUTRIX; INTERROGATION BY POLICE OFFICER; STATEMENT NOT VOLUNTARY; GENERAL REPUTATION OF PROSECUTRIX.

(1) Where the depositions on which an indictment for rape is founded shew that the statements of the prosecutrix relied upon by the Crown to shew a complaint were not made spontaneously, but in answer to questions by the police officer, evidence of the answers so made is inadmissible against the accused. (2) On a charge of rape, evidence is admissible for the defence of the general bad reputation of the prosecutrix for unchastity. The King v. Bishop, 11 Can. Cr. Cas. 30.

QUESTIONS PUT TO COMPLAINANT BY A RELATIVE ON THE FOLLOWING DAY.

Where the complainant makes a statement, to a third party, not in the presence of the accused, such statement may be given in evidence, provided it is shewn to have been made at the first opportunity which reasonably offered itself after the commission of the offence, and has not been elicited by questions of a leading and inducing or intimidating nature. The King v. Spuzzum, 12 Can. Cr. Cas. 287.

COMPLAINT BY PROSECUTRIX FOLLOWING OFFENCE.

Evidence of complaint made by the woman on a charge of rape as corroborative of nonconsent will be rejected if made only in answer to questions suggesting the guilt of the accused. The King v. Dunning, 14 Can. Cr. Cas. 461.

VERDICT OF COMMON ASSAULT.

(1) A verdict of common assault may be found upon an indictment for rape. (2) Where the complainant on the trial of a charge of rape denies on cross-examination that while unmarried she had been living with a third person as his wife, evidence is not admissible to contradict her on that point as it is irrelevant to the issue. The King v. Muma, 17 Can. Cr. Cas. 285.

PROVING THAT WOMAN NOT THE WIFE OF ACCUSED.

On a trial for rape, where the prosecutrix was not expressly asked whether she was the wife of the accused but was sworn as a witness and identified herself under a name differing from that upon which the accused was arraigned and had pleaded, and further swore that she did not know the accused by name, this was held sufficient proof that she was not the wife of the accused, and leave to appeal was refused. The King v. Mullen (No. 2), 18 Can. Cr. Cas. 80.

[Applied in R. v. Walebek, 21 Can. Cr. Cas. 130, 10 D.L.R. 522.

EVIDENCE: RELEVANCY AND MATERIALITY; EVIDENCE OF COMMISSION OF SIMILAR OFFENCE.

(1) It cannot be shewn on the trial of a person for rape, that a few minutes after the commission of the offence charged, or at any other time, he committed a similar crime against the person of a sister of the complaining witness, such evidence not being admissible either as part of the res gestæ, or to shew a propensity on the part of the accused to commit such crimes. (2) A statement by a female witness on a trial for rape, in response to a question of the counsel for the accused, that she would like to see the prisoner go to prison for life, will not permit the Crown prosecutor to question her as to the commission of a similar offence by the accused against the witness. (3) A cross-examination by the counsel for the accused on a trial for rape as to acts of cruelty committed by the accused against the witness and the complaining witness, to which, in addition to answering the question fully, she volunteered the further reply that the accused was also guilty of a similar offence towards her, will not permit the Crown prosecutor to question her as to the details of such assault. [Rex v. Bond, [1906] 2 K.B. 389, 21 Cox C.C. 22, followed: Reg. v. Rearden, 4 F. & F. 76, distinguished.] The King v. Paul, 19 Can. Cr. Cas. 339, 5 D.L.R. 347.

REASONABLE DOUBT.

The doctrine of "reasonable doubt;" Note. 10 Can. Cr. Cas. 268.

FAILURE TO DIRECT AS TO.

The failure of the trial Judge, ex mero motu to direct the jury to give to the prisoner the benefit of any reasonable doubt, is not a good ground for interfering with the verdict in a case where the evidence does not point to any reduced or lesser offence. R. v. Riendeau, 3 Can. Cr. Cas. 293.

[Referred to in R. v. Fouquet, 10 Can. Cr. Cas. 265, 14 Que. K.B. 97.]

INSTRUCTION AS TO REASONABLE DOUBT.

In order to enable a jury to return a verdict against the prisoner, they must be satisfied beyond any reasonable doubt of his guilt; this is a conviction created in their minds not merely as a matter of probability and if it was only an impression of probability their duty was to acquit. [R. v. White, 4 F. & F. 384, and R. v. Krafchenko, 22 Can. Cr. Cas. 277, 17 D.L.R. 244, applied.] R. v. Schurman, 23 Can. Cr. Cas. 365, 19 D.L.R. 800.

DOCTRINE OF REASONABLE DOUBT; SUMMARY CONVICTION.

The principle that an accused person ought not to be convicted unless upon the whole case it is shewn that he is guilty beyond a reasonable doubt is applicable to summary conviction proceedings for an offence created by provincial law and punishable thereunder by fine or imprisonment. R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

DOCTRINE OF REASONABLE DOUBT.

In a criminal prosecution the guilt of the accused must be established beyond reasonable doubt. R. v. Shortall, 28 Can. Cr. Cas. 98.

REBUTTAL.

Leave to adduce cumulative evidence in rebuttal on collateral fact. 7 Can. Cr. Cas. 68.

RECEIVING.

"MONEY, VALUABLE SECURITY OR OTHER PROPERTY."

See Extradition.

Nature of evidence required; Recent possession as evidence. 4 Can. Cr. Cas. 104.

Note on resumption of possession in transit by owner. 2 Can. Cr. Cas. 356.

PROVING OFFENCE COMMITTED IN FOREIGN COUNTRY; WHAT NECESSARY TO PROVE.

Upon a charge of having in possession goods stolen in a foreign country, it is not always necessary to prove the state of the law of that country. When the Crown proved that the prisoner had taken, and had in his possession in Canada, property which he had, in any other country, taken under such circumstances that had he taken it in like manner in Canada, it would, by the laws of Canada, have been felony, then the offence was proved. And an allegation in the indictment that the prisoner "feloniously had taken and carried away" the goods does not impose any additional burden of proof upon the Crown. (Per Taylor, C.J.) It may be necessary under certain circumstances for the Crown to prove the foreign law as an element in the moral quality of the Act. (Per Killam, J.) Regina v. Jewell, 6 Man. L.R. 460.)

ACCESSORY; CONVICTIONS FOR BOTH THEFT AND RECEIVING.

The receiving of goods merely as an act done in the commission of the theft does not constitute a separate offence of receiving stolen property knowing it to have been stolen. If the accused were not an aider and abettor or a principal in the second degree in the commission of the theft, the circumstance that he was an accessory before the fact by counselling and procuring the commission of the theft, and therefore liable under sec. 61 of the Criminal Code to be convicted as a principal, does not prevent his conviction for the substantive offence of afterwards receiving the stolen property knowing it to have been stolen. Such an accessory before the fact who afterwards becomes a receiver of the stolen property may be legally convicted both of the theft and of "receiving." R. v. Hodge, 2 Can. Cr. Cas. 350.

TRIAL FOR HOUSE-BREAKING AND THEFT.

In the offence of receiving stolen goods the stolen goods must have been taken and stolen by a person other than the person accused of the receiving. The essential elements of the offense of receiving stolen goods are not included in the offence of "house-breaking and theft," and a conviction for receiving stolen goods cannot be rendered on the summary trial of a person charged only with house-breaking and theft. R. v. Lamoureux, 4 Can. Cr. Cas. 101.

[Followed in R. v. Groulx, 15 Can. Cr. Cas. 20, 23, 18 Que. K.B. 120.]

RECEIVING STOLEN MONEY; PRIOR ACQUITTAL FOR THEFT OF SAME.

(1) The offence of receiving stolen money or goods is not comprised in the offence of theft, and an acquittal for theft will not bar a conviction on a separate indictment for unlawfully receiving the subject-matter of the theft knowing it to have been stolen. (2) On a charge of receiving stolen property it is not essential for the prosecution to prove by whom the theft was committed if it is proved that the property was in fact stolen and that the accused knew it had been stolen. (3) If an indictment charges the accused with unlawfully receiving money stolen by a person named, the mention of the name is surplusage and if the jury find the accused guilty of receiving money stolen "by a person unknown," such verdict is legal without amending the indictment. The King v. Groulx, 15 Can. Cr. Cas. 20.

UNLAWFUL POSSESSION OF STOLEN PROPERTY BROUGHT INTO CANADA; RECENT POSSESSION AFTER THEFT WITHOUT ACCOUNTING FOR SAME.

A conviction for retaining in possession with knowledge that it had been stolen property brought into Canada after being stolen elsewhere is supported by evidence of possession of the property by the ac-

cused within a few days after the theft without accounting for such possession, and of circumstances from which the jury might infer that the accused had himself stolen the property. The King v. Duff (No. 1), 15 Can. Cr. Cas. 351.

RECEIVING STOLEN GOODS; NUMBER OF ARTICLES STOLEN.

The prisoner was convicted before a County Judge's Criminal Court on a charge of receiving stolen goods, knowing them to have been feloniously stolen, and was sentenced to imprisonment. On an application for a habeas corpus:—Held, that the Court was a Court of Record, and that under R. S.O. ch. 70 sec. 1, there was therefore no right to the writ. Held, also, that the Judge had power to imprison. Held, also, that if an indictment for stealing certain articles be sustainable as to some of the articles stolen, the conviction is good, although the indictment may contain any number of articles as to which an indictment could not be sustained. Regina v. St. Denis (1875), 8 P.R. (Ont.) 16.

RETAINING STOLEN PROPERTY WITH KNOWLEDGE.

Where poultry stolen a few hours before were found in the possession of the accused in his poultry shop, the onus is cast upon the accused to give a satisfactory account of how he came by the stolen property and in default he may properly be convicted of unlawfully retaining the same under Code, sec. 399. The King v. Lum Man Bow, 16 Can. Cr. Cas. 274.

RECOGNIZANCE.

See also Bail; Estreat.

FINDING SURETIES TO KEEP THE PEACE. See Keeping the peace.

Required on certiorari under Ontario provincial law. 5 Can. Cr. Cas. 567.

Rule of High Court respecting. 5 Can. Cr. Cas. 568.

Deposit in lieu of, on certiorari. 5 Can. Cr. Cas. 569.

When recognizance should shew jurisdiction. 6 Can. Cr. Cas. 418.

Certiorari application dismissed for want of; No second application allowed. 7 Can. Cr. Cas. 172.

Affidavit of justification, Nova Scotia practice. 7 Can. Cr. Cas. 538.

Note on estreat of. 7 Can. Cr. Cas. 22.

On certiorari; Irregularity; Motion to quash. 8 Can. Cr. Cas. 123.

WHEN ACCUSED TO APPEAR; ESTREAT OF RECOGNIZANCE; RELIEF OF BAIL.

Held, that under an ordinary recognizance of bail on an indictable charge, the accused is not bound to appear unless a bill be found against him; when, therefore, the accused was called, though the grand jury had not, owing to absence of witnesses, an opportunity of finding a bill, and his recognizance estreated, a rule was made absolute for the relief of the bail. The Queen v. Ritchie (1865), 1 C.L.J. 272.

COMPETENCY OF NONRESIDENT AS SURETY.

Persons nonresident within the jurisdiction of the general sessions of the peace to which an appeal is given, are not competent sureties in a recognizance to prosecute an appeal from a summary conviction of a justice of the peace. Regina v. Lyon, 9 C.L.T. 6.

LAST DAY OF ASSIZES; ESTREAT; RELIEF FROM ON PAYING COSTS.

Defendant having entered into a recognizance to appear at a certain Assizes, attended until the last day, when he left, assuming, as no indictment had been found, that the charge against him, of a breach of the Foreign Enlistment Act, was not intended to be prosecuted. He was, however, called, and his recognizance estreated. The Court, under the circumstances, relieved him and his sureties, under C.S.U.C. ch. 117, sec. 11, on payment of costs, and on his entering into a new recognizance to appear at the following Assizes. The Queen v. McLeod, 24 U.C.Q.B. 458.

NOT NECESSARY ON RETURN OF CERTIORARI.

Held, that on the return of a writ of certiorari a recognizance is unnecessary. Regina v. Nunn, 10 P.R. (Ont.) 395.

RECOGNIZANCE; TIME OF FILING; APPEAL FROM SUMMARY CONVICTION.

It is too late to file the recognizance required by sec. 77 of the Summary Convictions Act. See Cr. Code, sec. 880, on an appeal from a summary conviction or order where the defendant has not remained in custody, after the appellant has entered upon his case. Bestwick v. Bell (1889), 1 Terr. L.R. 193.

RECOGNIZANCE OF BAIL; HOW TO BE TAKEN; NOTICE TO SURETIES.

(1) A recognizance of bail is taken in open Court by the clerk of the Court addressing the parties, being then before him in open Court, by name, and stating the substance of the recognizance; and the verbal acknowledgment of the parties so taken is quite sufficient without more. (2) In this case a recognizance was drawn up which stated that the principal and sureties personally came before the clerk of Assize, in open Court, and acknowledged, etc.; and also stated that it was taken and acknowledged in open Court before the Clerk of Assize. As a matter of fact the parties actually came before the Court, and properly acknowledged the debt to the Crown in open Court:—Held, that the recognizance should have stated that the parties personally came before the Court and that the recognizance was taken and acknowl-

edged in open Court; and the name of the clerk should merely have been subscribed to it; but the errors made in drawing it up were not sufficient to avoid it. (3) Notice to the sureties of the recognizance is not necessary where it is taken as and where this one was. (4) The provision of R.S.C. ch. 179, secs. 10 and 11, and R.S.O. ch. 88, secs. 7 and 8, requiring the written order of the Judge for the estreating or putting in process of a recognizance, applies only to recognizances to appear to prosecute, or to give evidence, or to answer for any common assault, or to articles of the peace, and does not apply to a recognizance such as the one here in question, whereby the bail became bound for the appearance of their principal to stand his trial upon an indictment for conspiracy. (5) The estreat roll was sufficiently signed by the clerk when he signed the affidavit at the foot of the roll. (6) It is no part of the duty of the clerk in making up the roll to instruct the sheriff as to what disposition he is to make of the money therein mentioned when collected. And where the clerk in making it up stated it to be made in accordance with a Provincial statute and also with two Dominion statutes, thus leaving it uncertain whether the moneys were to be paid over to the Provincial Treasurer or to the Dominion Minister of Finance. Held, that the words so used were surplusage, and did not affect the validity of the roll, and should be stricken out. The estreat roll as drawn up stated that it was a roll of fines, issues amerciaments and forfeited recognizances, set, imposed, lost or forfeited, by or before the Court, etc., commenced, etc., and contained the names of parties, residences, etc., with the amounts for which the bail were bound, filled it under the heading "amount of fine imposed." Held, that the roll sufficiently shewed the recognizance to have been forfeited, and that it was fairly entered and extracted on the roll as a forfeited recognizance. (8) Held, that the proceedings to collect the debt due to the Crown under the recognizances were civil, and not criminal, proceedings, and were to be regulated by R.S.O. ch. 88; and the writ of fieri facias and capias issued in this case, following the form given in the schedule to that Act, was not open to any objection. (9) Held, that, under the circumstances set forth in the affidavits, the Court would not be justified in releasing the bail from their liability. Re Talbot's Bail (1892), 23 O.R. 65.

RECOGNIZANCE OR DEPOSIT ON A MOTION TO QUASH A CONVICTION.

A rule of Court required that no motion to quash a conviction should be entertained unless the defendant were shewn to have entered into and deposited a recognizance in $300 with one or more sufficient sureties, or to have made a deposit of $200. On a motion to make absolute a rule nisi to quash a certain conviction, a recognizance had been entered into and deposited but without an affidavit of justification of the sureties or other evidence of their sufficiency:—Held, following Regina v. Richardson, that the rule of Court had not been complied with and that therefore the rule nisi must be discharged. But $200 having been deposited a day or two before the return day of the rule nisi, with the view of complying with the rule of the Court, Held, that the ends of justice would be served by allowing the applicant to take a new rule nisi in the terms of the one discharged and this privilege was accordingly granted. The Queen v. Petrie (1889), 1 Terr. L.R. 191.

SUFFICIENCY; FAILURE TO STATE PARTICULARITY OF THE OFFENCE CHARGED.

A recognizance which on its face does not set out the particular offence charged against the person bailed, and which therefore on its face cannot be identified with any case, is insufficient to establish that a case is pending. R. v. Leblanc, 8 Mont. L.M. 114.

VALIDITY OF RECOGNIZANCE; OMITTING WORDS "TO OWE."

A recognizance taken before a police magistrate under 32 and 33 Vict. ch. 30, sec. 44 (D), Form Q. 2 (Schedule), omitted the words "to owe;" it was held, fatal, and that an action would not lie upon the instrument as a recognizance. Re gina v. Hoodless, 45 U.C.Q.B. 556.

RECOGNIZANCE OR DEPOSIT AS SECURITY FOR COSTS ON APPEAL; APPELLANT NOT TAKEN INTO CUSTODY.

The recognizance or deposit required to be given or made on appealing from a summary conviction under that statute (similar to Cr. Code, sec. 880 (c)) is not invalid because the appellant was not first taken into custody. The King v. Jordan, 5 Can. Cr. Cas. 438.

DEPOSIT IN LIEU OF RECOGNIZANCE; REQUISITES OF; RETURN BY JUSTICE TO APPELLATE COURT.

(1) A defendant fined in a summary conviction proceeding who thereupon pays the fine to the clerk of the Court instead of giving a recognizance or applying to the justice under Code, sec. 880 (c) to fix the deposit on appeal, loses his right of appeal under secs. 879 and 880, notwithstanding that the magistrate afterwards fixed the amount of deposit for the costs only and such deposit was made and transmitted to the Appellate Court with the conviction. (2) The deposit authorized by Code, sec. 880 (c) in lieu of a recognizance on appeal

from a summary conviction must include the fine, and the whole sum covering both the fine and the probable costs of appeal must be transmitted to the Appellate Court. (3) Semble, the duty is upon the appellant to obtain the justice's return of such deposit to the Appellate Court under Code, sec. 888, and unless such return is made the appeal must be quashed. The King v. Neuberger, 6 Can. Cr. Cas. 142.

[Considered in R. v. Tucker, 10 Can. Cr. Cas. 221.]

SUMMARY CONVICTION; JOINT APPEAL BY SEVERAL DEFENDANTS; TWO SURETIES ESSENTIAL.

On a joint appeal, under sec. 879 of the Criminal Code, by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellants, and the appeal will be quashed if the recognizance be given with only one surety. The Queen v. Joseph, 6 Can. Cr. Cas. 144.

[Referred to in R. v. Edelston, 17 Can. Cr. Cas. 156.]

SUMMARY TRIAL; RELEASE ON SUSPENDED SENTENCE; INFORMATION UNDER OATH AS TO BREACH OF RECOGNIZANCE.

Where after a summary trial the accused is convicted but is released on suspended sentence and a recognizance is taken binding the accused to keep the peace and be of good behavior (Code, sec. 971), the magistrate has no jurisdiction to impose sentence without an information under oath charging a breach of the recognizance (Code, sec. 973). The King v. Siteman, 6 Can. Cr. Cas. 224.

APPEAL FROM SUMMARY CONVICTION; DEFECT IN RECOGNIZANCE.

The recognizance upon appeal from a summary conviction must be conditioned that the defendant should "personally appear," and the omission of the word "personally" makes the recognizance defective. Ex parte Sprague, 8 Can. Cr. Cas. 109.

[Distinguished in R. v. Koogo, 19 Can. Cr. Cas. 57.]

PROCEEDINGS ON A SUNDAY; COMMITTAL FOR TRIAL AND RECOGNIZANCE TO APPEAR; VALIDITY.

(1) Where a person has been arrested and committed for trial upon a charge of an indictable offense, and has given a recognizance for his appearance for trial, all of these proceedings taking place upon a Sunday the validity of the order of committal and of the recognizance cannot be inquired into by process of certiorari. (2) The proceedings before the justice were regular. (Per Hanington, J.) Ex parte Garland, 8 Can. Cr. Cas. 385.

RECOGNIZANCE ON CERTIORARI.

(1) Nova Scotia Crown Rule No. 28 is a general order of Court as to security for costs on certiorari under Cr. Code, sec. 1126, and a recognizance given thereunder may be enforced by attachment under Code, sec. 1096. (2) Sec. 1126 of the Code applies as well to a recognizance required to be given on the application for the writ of certiorari, as to a recognizance given after return made to the writ, if, upon the former, the Court may order that the conviction be quashed on the return of the writ without further order. The King v. Townsend (No. 5), 13 Can. Cr. Cas. 209.

WHETHER REQUIRED ON CERTIORARI TO REMOVE CONVICTION ON SUMMARY TRIAL FOR INDICTABLE OFFENCE.

Sec. 892 of the Criminal Code 1892 (now sec. 1126 of the Criminal Code 1906), as to recognizances in certiorari proceedings, applied only to matters under the Summary Convictions clauses and not to summary trials by a magistrate or two justices under the Summary Trials clauses for certain indictable offences. The King v. Earley (No. 3), 14 Can. Cr. Cas. 10.

RECOGNIZANCE OF APPELLANT ALONE.

The recognizance of the appellant alone may be accepted as security from an applicant for a stated case under Code, sec. 762. The King v. Turnbull, 15 Can. Cr. Cas. 1.

CERTIORARI; NONE REQUIRED FROM PROSECUTOR APPLYING FOR WRIT.

(1) A prosecutor in a summary conviction matter against whom an order of dismissal with costs has been made by the magistrate need not file a recognizance on applying for a certiorari to remove the dismissal order. (2) Ontario Crown Rule 1285 as to recognizances under Code, sec. 1126 does not apply to applications made by a prosecutor whether acting directly on behalf of the Crown or as a private prosecutor. Re Martin and Garlow, 15 Can. Cr. Cas. 446.

RECOGNIZANCE FOR DEFENDANT'S APPEARANCE.

Where there has been no election of speedy trial without a jury, a recognizance to appear "at the next Court of competent jurisdiction" for the county, is sufficiently definite to indicate the next Court sittings at which the defendant could be tried other than those of the County Court Judge's Criminal Court. The King v. Bailly, 18 Can. Cr. Cas. 298.

CERTIORARI.

An application for a writ of certiorari should not be dismissed under B.C. Crown Office Rule 36 on a preliminary objection that no recognizance had been filed. Semble, Crown Office Rule 36 is complied with if the recognizance on a certiorari is filed on taking out the order or writ in case the Judge grants the certiorari. The King v. Ferguson, 19 Can. Cr. Cas. 31.

APPEAL FROM SUMMARY CONVICTION; CONTINUANCE.

The recognizance given on the release of the accused pending an appeal to an inferior Court from a summary conviction will remain in force for the purposes of continuances ordered by a superior court in substitution for the erroneous quashing of the appeal by the inferior court to which by statute the appeal had to be taken. [Ex parte Blues, 24 L.J.M.C. 138, specially referred to.] R. v. Trottier, 22 Can. Cr. Cas. 102, 14 D.L.R. 355.

REQUÊTE CIVILE; CERTIORARI; QUEBEC PRACTICE.

The surety of an accused person may petition by requête civile in the Province of Quebec to have set aside a judgment given upon an order for forfeiture of the recognizance, and his petition can and should be accompanied by a writ of certiorari if it is desired to show that the order itself was irregular. R. v. Davis, 24 Can. Cr. Cas. 382.

DEFAULT JUDGMENT AGAINST SURETIES; FORFEITURE OF BAIL.

When an accused is bound over by recognizance for trial at the "next criminal sitting," that means the term of the Court which will sit for the hearing of criminal causes, and not a sitting for which, by direction of the Crown authorities, neither grand nor petit jury had been summoned; so the forfeiture of a recognizance to appear for trial at the next criminal sitting is not authorized in respect of a session of the Court of King's Bench in Quebec without a grand or petit jury on default in obeying a notice to appear on the opening day fixed by order-in-council. R. v. Tremblay, 27 Can. Cr. Cas. 46.

RECORD.

See also Summary Conviction; Certiorari; Appeal.

Note on records of acquittal.

Records of criminal Courts in Ontario; Inspection; R.S.O. ch. 324, sec. 11. 8 Can. Cr. Cas. 247.

COURT OF GENERAL SESSIONS; PUBLIC DOCUMENTS.

(1) The judgments of the Courts of General Sessions in Ontario are public records, and the clerk of the peace holds them as their statutory custodian in the interests of the public generally and not as a deputy officer of the Crown. (2) Any person tried and acquitted in such Court is entitled to a copy of the record of such acquittal and the indictment without the fiat of or intervention by the Attorney-General of the province, and a mandamus will lie to the clerk of the peace to compel the delivery to him of certiorari copies. The King v. Scully, 5 Can. Cr. Cas. 1. [Affirmed in Attorney-General v. Scully, 6 Can. Cr. Cas. 167, 383.]

COURT OF GENERAL SESSIONS; INSPECTION; CERTIFIED RECORD OF ACQUITTAL; FIAT OF ATTORNEY-GENERAL UNNECESSARY.

(1) The judgments of the Courts of General Sessions in Ontario are public records, and any person interested therein is entitled, as of right, to inspect them, and to obtain an exemplification of the record. (2) A person tried and acquitted in any criminal Court is entitled to a copy of the record of such acquittal and of the indictment without the fiat of or intervention by the Attorney-General of the province, and a mandamus will lie to compel the delivery of certified copies, or an exemplification thereof upon tender of the proper fees. (3) The English statute, 46 Edw. III., as to the publicity of Court records is in force in Ontario. Attorney-General v. Scully, 6 Can. Cr. Cas. 167.

CONTROL BY PROVINCIAL COURTS OF COURT RECORDS; EXEMPLIFICATION OF PROCEEDINGS IN CRIMINAL PROSECUTION; MANDAMUS TO CLERK OF THE PEACE.

The control exercised by provincial Courts over their own records and their own officers should not, as a general rule, be interfered with by the Supreme Court of Canada on appeal from a provincial Court. Attorney-General v. Scully, 6 Can. Cr. Cas. 381.

RECORDS OF CRIMINAL COURTS; INSPECTION AND COPIES OF PROCEEDINGS; "PERSONS AFFECTED" BY THE RECORD.

(1) A person charged with receiving stolen property knowing the same to have been stolen is a "person affected" by the record of the prosecution and conviction of the parties from whom he is charged to have received the property for the theft thereof, and is entitled to inspection of such record in Ontario under R.S.O. 1897, ch. 324, sec. 11. (2) Where one of the persons so convicted of theft had also been convicted of the theft of other similar property as to which no charge for receiving had been laid against the applicant, and no connection was shewn between that charge and the one for receiving, the applicant is not a "person affected" by the record of the prosecution for the theft of such other property, and is not entitled under said statute to inspection of such record. Re Chantler, 8 Can. Cr. Cas. 245.

RE-EXAMINATION.

Right of; Note. 7 Can. Cr. Cas. 312.

RELIGION.

OFFENCES AGAINST RELIGION; DISTURBING RELIGIOUS MEETINGS; CALLING ON CO-RELIGIONISTS TO LEAVE.

A person who enters a hall, leased by a religious association or body, while a meeting for religious worship is being held in it under the direction of officers of the association, and addressing himself to the assemblage, says he is a Catholic and a French-Canadian, as most of them are, that they should not stay where they are, and calls upon them to leave, is guilty of the offence of disturbing a religious meeting under Cr. Code, sec. 173. The King v. Gauthier, 11 Can. Cr. Cas. 263.

REMAND.

REMAND FOR MORE THAN THREE CLEAR DAYS.

Where on a preliminary enquiry a remand is desired for a time exceeding three clear days, the justice may remand only by warrant, declaring that it appears to be necessary to remand the accused; and an informal remand endorsed upon the warrant is insufficient. R. v. Holley, 4 Can. Cr. Cas. 510.

[Referred to in R. v. Goulet, 20 Can. Cr. Cas. 191.]

MAGISTRATE'S REMAND; ACCUSED BROUGHT FROM UNITED STATES TO ANSWER CHARGE OF OFFENCE IN CANADA; NO ENQUIRY INTO ALLEGED ILLEGALITY OF ARREST AND TRANSPORTATION FROM FOREIGN COUNTRY.

(1) The Court will not enter into an enquiry upon habeas corpus as to whether the prisoner brought before a justice and remanded by him for an offence committed in Canada was arrested in the United States and brought back to Canada without an extradition warrant. (2) The prisoner must be remanded to custody on the return of a writ of habeas corpus if the return shews a proper warrant or legal cause of detention although of later date than the writ to which the return is made. The King v. Walton, 10 Can. Cr. Cas. 269.

[Referred to in R. v. Wishart, 18 Can. Cr. Cas. 161.]

WARRANT OF REMAND; STATUTORY FORM; SHEWING JURISDICTION OF JUSTICE; SIGNATURE AS A "J. P."

(1) A warrant of remand signed with the addition of the letters "J. P." after the signature, and containing a reference to the signer or "some other justice" for the county, must be taken to shew jurisdiction on its face. (2) Where statutory forms are declared to be sufficient by the statute itself, a warrant following the statutory form is good, although it does not mention all of the statutory conditions of discharge. Ex parte Hilchie, 11 Can. Cr. Cas. 85.

[Applicable in Collette v. R. 16 Can. Cr. Cas. 289.]

REMISSION.

See Punishment.

Of penalty under provincial law; Pardoning power. 5 Can. Cr. Cas. 345.

Note on pardons and commutations. 5 Can. Cr. Cas. 354.

REMOVING LAND MARKS.

BOUNDARY MARKS SET BY SURVEYOR UNDER RESOLUTION OF MUNICIPAL COUNCIL.

(1) When the boundary between a highway and contiguous land has been settled by a judgment and the boundary marks duly placed, a municipal council in the Province of Quebec has no power or authority to appoint, by resolution, a surveyor to draw another boundary line. (2) Any proceedings by the surveyor without notice to the parties, under the resolution, are illegal, and marks placed by him are not "lawfully" placed, within the meaning of Cr. Code, sec. 532, and their removal does not amount to the offence therein described. (3) A prosecution of the owner of the property, by the corporation, for the offence in question, is, under the circumstances, without probable cause and is inferentially brought through malice, and makes the corporation liable for the damages caused thereby. Morissette v. Parish of St. François Xavier, 18 Can. Cr. Cas. 291.

REPLY.

Right of reply to Crown counsel; Cr. Code, sec. 661. 6 Can. Cr. Cas. 350.

JOINT INDICTMENT; RIGHT OF REPLY.

On a joint indictment for one offence, when the evidence for the one would inure to the benefit of the other, the right to a general reply is with the prosecution, though only one defendant called witnesses in defence. R. v. Connolly, 1 Can. Cr. Cas. 468.

RIGHT OF REPLY; COUNSEL REPRESENTING THE ATTORNEY-GENERAL; DEFENCE ADDUCING NO EVIDENCE; SUMMING UP FOR PROSECUTION.

(1) Where no evidence is offered for the defence, the defendant's counsel has the right to the last address to the jury notwithstanding that the prosecution is conducted by counsel acting for the Attorney-General. (2) The "right of reply" permitted by Code, sec. 661 to the Attorney-General or to counsel acting on his behalf, is the right to again address the jury at the

close of the evidence, and before the address of defendant's counsel, when the defence offers no evidence. The Queen v. LeBlanc, 6 Can. Cr. Cas. 348.

CROWN PROSECUTORS IN ONTARIO; RIGHT OF REPLY.

A Crown prosecutor instructed by a provincial Attorney-General is a counsel "acting on behalf of the Attorney-General" under Code, sec. 661 (2) and has the right of reply, although no witnesses are called for the defence. The King v. Martin, 9 Can. Cr. Cas. 371.

TRIAL; RIGHT OF REPLY; CROWN PROSECUTORS IN N.W.T. INSTRUCTED BY DEPARTMENT OF JUSTICE.

Crown prosecutors in the North-West Territories acting under instructions from the Department of Justice at Ottawa are within the provision of Code, sec. 661, respecting counsel acting on behalf of the Attorney-General or Solicitor-General and have the right of reply, although no witnesses are examined for the defence. The King v. Charles King, 9 Can. Cr. Cas. 426.

RESERVED CASE.

See also Appeal.

Functions of Judge as a juryman. 1 Can. Cr. Cas. 278.

Misdirection in favour of accused; Application by Crown. 7 Can. Cr. Cas. 196.

Facts forming basis of finding must be certified where question of law is dependent on the facts. 7 Can. Cr. Cas. 417.

At request of Crown. 7 Can. Cr. Cas. 202.

Remitting the evidence and the findings. 7 Can. Cr. Cas. 426.

CROWN CASE RESERVED; QUESTIONS RESERVABLE; SUFFICIENCY OF INDICTMENT.

A Crown case reserved should be reserved for the consideration of the justices of one of the divisions of the High Court, not of a Divisional Court, and when the Court is asked whether on the evidence the defendants were lawfully convicted, the whole of the evidence should not be made part of the case, but merely the material facts established by the evidence. That the sufficiency of an indictment upon a motion to quash it is not a question of law which arises on the trial, and therefore cannot be reserved under R.S.C. ch. 174, sec. 259, and the Court has no power to entertain it. (Falconbridge, J., dubitante.) Semble, also, that the indictment in this case was sufficient. Regina v. Gibson (1889), 16 O.R. 704.

JUDGE'S CHARGE; FAILURE TO CHARGE JURY AS TO CORROBORATION OF ACCOMPLICE.

The question whether or not a Judge, in charging a jury, should caution them that the evidence of an accomplice should be corroborated, is not a matter for a Court to review on a case reserved, for it is not a question of law, but of practice, though a practice which should not be omitted. [Regina v. Stubbs, 7 Cox C.C. 48, and Regina v. Beckwith, 8 C.P. 274, followed.] Regina v. Andrews, 12 O.R. 184.

OBJECTION TO VENUE; CHARGING JURY IN OPEN COURT.

(1) An objection to the venue in an indictment is not an objection which could have been reserved at the trial and is a proper subject of a writ of error under sec. 266, R.S.C. ch. 174, but any error in the statement of venue is cured by sec. 247 of the statute. (2) An objection that the trial Judge did not deliver the whole of his charge to the jury in open Court is not a question of record; "that it could have been reserved, and that a writ of error did not lie for it." (3) It is too late to allege a diminution of the record after errors assigned. Greer v. Regina (1892), 2 B.C.R. 112.

AMENDMENT OF RESERVED CASE; ADDING EVIDENCE.

A reserved case may be amended at the request of the defendant, during the argument thereon before the Full Court, by adding the evidence taken at the trial. The Queen v. Ross (1884), 1 Mont. L.R. (Q.B.) 227, 28 L.C.J. 261.

QUESTIONS OF LAW NOT TO BE RESERVED BEFORE CONVICTION.

On the trial of a prisoner who had been extradited from the United States for felony:—Held, that no question of law can be reserved and heard until after conviction. Regina v. Paxton, 2 L.C.L.J. 162.

QUESTION DISPOSED OF BY DEMURRER.

A question having been raised at the trial by demurrer as to the power of the Court to try or convict the defendant for another offence than that for which he was extradited, and having been decided by the presiding Judge against the defendant:—Held, that it was too late to raise the question, by case reserved, for the Full Court. The Queen v. Cunningham, 18 N.S.R. 31.

RESERVING QUESTION OF LAW; WRIT OF ERROR QUASHED.

When a panel has been gone through and a full jury had not been obtained the Crown on the second calling over the panel was permitted, against the objection of the prisoner, to direct eleven of the jurymen on the panel to stand aside a second time, and the Judge presiding at the trial was not asked to reserve and neither reserved nor refused to reserve the objection. After conviction and judgment a writ of error was issued:—Held, per Taschereau, Gwynne and Patterson, J.J., affirming the judgment of the Court below, that the question was one of law arising on the trial which could

have been reserved under sec. 259 of ch. 174, R.S.C. and writ of error should, there fore, be quashed. Sec. 266, ch. 174, R.S.C. That the Crown could not without shewing cause for challenge direct a juror to stand aside a second time. Sec. 164, ch. 174, R.S.C. (The Queen v. Lacombe, 13 L.C. Jur. 259, overruled.) (Per Ritchie, C.J., and Strong, Fournier and Patterson, JJ.) That all the prisoner could complain of was a mere irregularity in procedure which could not constitute a mistrial. (Per Gwynne, J.) Morin v. The Queen (1890), 18 Can. S.C.R. 407.

There must be a conviction before a case can be reserved. R. v. Lalanne, 3 Mont. L.N. 16.

WHAT QUESTIONS TO BE RESERVED.

The forwarding of the whole of the evidence taken at the trial does not dispense with the necessity for the trial Judge to certify his findings of fact and to specify the points of law as to which he entertains the doubt. Reg. v. Giles (1894), 31 C.L.J. 33.

ADDRESSES OF COUNSEL.

The question as to the order of addresses to the jury by counsel at the close of the evidence is not a question of law proper to be reserved for the opinion of a Court of Appeal under Cr. Code, sec. 743. R. v. Connolly, 1 Can. Cr. Cas. 468.

[Referred to in R. v. Walker, 18 Can. Cr. Cas. 85.]

TRIAL WITHOUT JURY; FINDINGS.

Where the trial takes place by consent without a jury the finding by the trial Judge of an intent to steal should not be interfered with unless there is no evidence thereof which could properly be submitted to a jury. R. v. Gibbons, 1 Can. Cr. Cas. 340.

ABSOLUTE FAILURE OF EVIDENCE.

When there is no conflict in the evidence, and it tends indubitably in a direction favourable to the defendant, or does not establish his guilt, a verdict convicting the defendant would not be supported by nor be based upon proper evidence, and would manifestly be against the weight of evidence; and in cases where there is an absolute failure of evidence to sustain the verdict, the Court can give leave to apply to the Court of Appeal for a new trial. R. v. Harris, 2 Can. Cr. Cas. 75.

IMPROPER ADMISSION OF EVIDENCE; "SUBSTANTIAL WRONG OR MISCARRIAGE" AT TRIAL.

The intention of sec. 746 of the Criminal Code is that the improper admission of evidence shall not in itself constitute a sufficient reason for granting a new trial, and the improper admission is not necessarily a "substantial wrong or miscarriage." [Makin v. New South Wales (1894), A.C. 57, distinguished.] R. v. Woods, 2 Can. Cr. Cas. 159.

[Referred to in Allen v. R. 18 Can. Cr. Cas. 17; R. v. Eliasoph, 16 Can. Cr. Cas. 134; R. v. Lew, 1 D.L.R. 103; R. v. Finnessey, 11 O.L.R. 338; R. v. Drummond, 10 Can. Cr. Cas. 344, 10 O.L.R. 546; considered in R. v. McLean, 11 Can. Cr. Cas. 265, 39 N.S.R. 160, 164; disapproved by McLeod, J., dissenting; R. v. Clarke, 2 Can. Cr. Cas. 331.]

IMPROPER ADMISSION OF DEPOSITIONS.

Where a deposition of a deceased witness taken on an enquiry before a magistrate has been improperly admitted in evidence at the trial, and is of such a nature that it must have influenced the jury in their verdict, its improper admission is a "substantial wrong" entitling the accused to a new trial (Cr. Code, sec. 746). R. v. Hamilton, 2 Can. Cr. Cas. 390.

[Relied on in R. v. Coote, 8 Can. Cr. Cas. 199, 10 B.C.R. 285, 290; referred to in Allen v. R. 18 Can. Cr. Cas. 31.]

JUDGE'S CHARGE; MISDIRECTION; FAILURE TO OBJECT.

If on a trial for murder a most important and substantial ground of defence clearly disclosed by the evidence is not submitted to the jury by the Judge's charge, the conviction cannot stand, although the prisoner's counsel did not ask at the trial for any other or fuller direction. R. v. Theriault, 2 Can. Cr. Cas. 444.

[Referred to in R. v. Lew, 1 D.L.R. 103; Alaska Packers' Association v. Spencer, 10 B.C.R. 490; explained in R. v. Daley, 16 Can. Cr. Cas. 177, 37 N.B.R. 416; distinguished in R. v. Fouquet, 10 Can. Cr. Cas. 255, 261, 14 Que. K.B. 94.]

RESERVATION AFTER SENTENCE AND DURING IMPRISONMENT.

A reserved case may be granted under Cr. Code, sec. 743 at any time, however remote from the date of the trial or judgment, if it is still possible that some beneficial result may accrue to the prisoner by a decision in his favour. R. v. Paquin, 2 Can. Cr. Cas. 134.

[Referred to in R. v. Gots, 6 Terr. L.R. 91.]

JURISDICTION OF PRESIDING JUDGE AS A QUESTION RESERVED.

Whether the Judge presiding at the trial had jurisdiction to summarily try the defendants is a "question of law" under Cr. Code, sec. 743, and may be the subject of a reserved case. R. v. Paquin, 2 Can. Cr. Cas. 134.

WHERE TRIAL JUDGE IN DOUBT.

A reserved case should not be granted by the trial Judge unless he has some doubt in the matter upon which it is suggested

that a question be reserved for the opinion of a Court of Appeal. R. v. Létang, 2 Can. Cr. Cas. 505.

[Referred to in R. v. Brindamour, 11 Can. Cr. Cas. 322.]

RESERVED CASE ON CROWN'S APPLICATION; NOTICE OF HEARING.

Notice of an application by the Crown for a new trial, and of the hearing of a case reserved on the Crown's application where the accused has been acquitted at the trial, should be served upon the accused personally. The authority of the solicitor acting for the accused in the trial proceedings is prima facie to be presumed to have terminated upon the latter's acquittal; and proof of service upon the solicitor is insufficient in the absence of evidence rebutting such presumption. R. v. Williams, 3 Can. Cr. Cas. 9.

[Disapproved of in R. v. Kiau, 7 Que. K.B. 381; discussed in R. v. Phinney (No. 1), 36 N.S.R. 272; followed in Attorney-General v. Midland Ry. Co. 3 O.R. 511; questioned in R. v. Hammond, 29 O.R. 211; distinguished in R. v. Clarke, 3 O.L.R. 176.]

QUESTION OF FACT OR OF WEIGHT OF EVIDENCE.

(1) A question depending upon the facts or the weight of evidence cannot properly be made the subject of a reserved case under Cr. Code, sec. 743. (2) On a case reserved upon a conviction for failing to supply necessaries to a wife whereby her health is likely to be permanently injured, the conviction should be affirmed, if there is some evidence from which an inference may be drawn that such injury was likely to result from the nonsupplying of necessaries. R. v. McIntyre, 3 Can. Cr. Cas. 413.

[Referred to in R. v. Brindamour, 11 Can. Cr. Cas. 322; R. v. Sam Chak (No. 2), 12 Can. Cr. Cas. 502.]

CONVICTION AGAINST WEIGHT OF EVIDENCE.

In deciding whether there should be a new trial on the ground that the verdict against the accused was against the weight of evidence, the question is whether or not the verdict is one which the jury, as reasonable men, ought not to have found. A new trial will not be granted merely because the trial Judge is dissatisfied with the verdict and favours an acquittal. R. v. Brewster, 4 Can. Cr. Cas. 34.

[Considered in R. v. Jenkins, 14 Can. Cr. Cas. 221, 232, 14 B.C.R. 71.]

ERROR IN LAW.

If upon a summary trial for the theft of money, the trial Judge in making his finding, bases the same upon the theory that, as a matter of law, it would be presumed that it was possible for the prisoner to shew how he had come by the money seen in his possession and that the onus was upon him to do so, such is an error in law entitling the accused to a new trial. R. v. MacCaffery, 4 Can. Cr. Cas. 193.

[Discussed in R. v. Phinney (No. 1), 36 N.S.R. 269.]

QUESTION OF LAW ARISING BEFORE THE TRIAL.

A reserved case upon an objection taken before pleading, that the charge, upon upon which the accused was arraigned for a "speedy trial," was not founded upon the evidence adduced at the preliminary enquiry should not be heard by the Appellate Court to which it is referred until after the trial has been concluded, and then only in case of conviction. R. v. Trepanier, 4 Can. Cr. Cas. 259.

[Discussed in R. v. Phinney (No. 1), 36 N.S.R. 269; referred to in R. v. Lynn (No. 2), 19 Can. Cr. Cas. 132, 4 Sask. L.R. 324.]

REVIEW OF QUESTION OF LAW ON SUMMARY TRIAL.

A magistrate summarily trying a charge of theft of goods of the value of less than $10 under Code, sec. 783, and not under sec. 785, is not a "Court or Judge having jurisdiction in criminal cases" within Code, sec. 742 allowing an appeal by way of case reserved. R. v. Hawes, 4 Can. Cr. Cas. 529.

REDUCING ILLEGAL SENTENCE ON CASE RESERVED.

To justify a sentence of more than three years' imprisonment for assault and wounding a public officer, the charge must allege that the offence was committed while the officer was engaged in the execution of his duty (Code, sec. 243). The Court of Appeal hearing a case reserved as to the validity of a sentence has power under Cr. Code, sec. 476 (c), to correct the erroneous sentence. R. v. Dupont, 4 Can. Cr. Cas. 566.

[Commented on in R. v. Williams, 21 O.L.R. 467; discussed in R. v. Amyot, 11 Can. Cr. Cas. 232, 242, 16 Can. Cr. Cas. 486.]

NO REVIEW OF JUSTIFIABLE FINDINGS OR QUESTIONS OF CREDIBILITY OF WITNESS.

Where on a case reserved or a case stated by direction of a Court of Appeal the sole question is whether there was evidence of guilt, and no leave has been obtained to apply for a new trial on the ground that the verdict is against the weight of evidence, the finding of a jury, or of the trial Judge trying the case without a jury, cannot be disturbed as to conclusions or inferences justly capable of being drawn from the evidence, or as to the credibility of the witnesses. The King v. Clark, 5 Can. Cr. Cas. 235.

RESPITED SENTENCE; ENFORCEMENT.

Where the conviction and sentence of a

prisoner tried under the Speedy Trials, Part LIV., is respited pending the hearing of an appeal by way of case reserved, and the conviction is affirmed on the appeal, another Judge may, in the absence of the trial Judge from the Province, give effect to the respited judgment by virtue of sec. 770. The King v. Brooks, 5 Can. Cr. Cas. 372.

FAILURE OF PRISONER'S COUNSEL TO OBJECT; DUTY OF JUDGE IN CRIMINAL CASE TO EXCLUDE ILLEGAL EVIDENCE.

The prosecution is not entitled to give evidence of the prisoner's bad character, unless or until the prisoner adduces evidence to prove his good character, either by examining his own witnesses on that point or by questioning the Crown witnesses thereon as a part of their cross-examination. A new trial will be ordered where such evidence is wrongly admitted against the prisoner, although no objection was raised to it by the prisoner's counsel. The King v. Long, 5 Can. Cr. Cas. 493.

[Relied on in R. v. Laws, 15 Can. Cr. Cas. 395, 19 Man. L.R. 274; referred to in R. v. Thompson, 21 Can. Cr. Cas. 98, 10 D.L.R. 475.]

CASE RESERVED ON ATTORNEY-GENERAL'S APPLICATION; MOTION TO QUASH; PLACING A PRISONER TWICE IN JEOPARDY.

A case may be reserved at the instance of the Crown upon a question of law as to whether there was any evidence of insanity to support the jury's verdict of not guilty upon that ground. The King v. Phinney (No. 1), 6 Can. Cr. Cas. 469.

RESERVED CASE ON CROWN'S APPLICATION; DISCRETION TO REFUSE NEW TRIAL NOTWITHSTANDING ERROR BELOW.

(1) Where a verdict of not guilty is returned by the Judge's direction after the evidence is heard, and a reserved case is taken to the Court of Appeal at the instance of the Crown upon the ground that the direction was erroneous and that it was for the jury and not for the Judge to say whether a certain printed advertisement disclosed an unlawful intent, the Court of Appeal may decline to order a new trial although it upholds the objection that such direction was erroneous. (2) Notwithstanding the power to order a new trial upon a case reserved at the instance of the Crown, the accused should not ordinarily be put in jeopardy a second time for the same offence merely because his acquittal was due to an erroneous direction not resulting in a mistrial. (3) Where there has been acquittal, the preferable practice is for the trial Judge to refuse to reserve a case upon the application of the prosecutor complaining of an erroneous direction, and for the prosecutor to apply to the Court of Appeal under Code, sec. 744 for leave to appeal. (Per Osler, J.A.) The King v. Karn, 6 Can. Cr. Cas. 479.

[Referred to in R. v. Phinney (No. 2), 7 Can. Cr. Cas. 208, 36 N.S.R. 295; R. v. Burr, 12 Can. Cr. Cas. 107.]

FORM OF REMITTING THE EVIDENCE.

The Judge reserving a case for the Court of Appeal as to the sufficiency of the evidence to sustain a conviction should either state the effect of the evidence given or extract the material parts of it, and not send up the whole body of the evidence with a question as to its sufficiency. The King v. Cohon, 6 Can. Cr. Cas. 386.

SPEEDY TRIAL; IMPROPER RECEPTION OF EVIDENCE; JUDGE'S CERTIFICATE THAT OTHER EVIDENCE SUFFICIENT FOR CONVICTION; "SUBSTANTIAL WRONG."

The improper reception of evidence before a County Judge trying a case without a jury under the Speedy Trials clauses will not entitle the prisoner to a new trial upon a case reserved, if the County Judge certifies therein that apart from the evidence objected to there was sufficient evidence to compel him to find the prisoner guilty. The King v. Tutty, 9 Can. Cr. Cas. 544.

FAILURE OF PRISONER TO TESTIFY; COMMENT BY JUDGE; NEW TRIAL; RESERVED CASE; TIME OF APPLICATION.

(1) Where the trial Judge, in his charge to the jury, called attention to the fact that the prisoner charged with theft was not called to testify on his own behalf, and warned the jury that they were not to take that fact to his prejudice, but stated that if the accused were innocent he could have proved that he was not in the locality at the time, this is a prohibited "comment" within the meaning of sec. 4 (2) of the Canada Evidence Act, 1893, entitling the accused to a new trial. (2) A case may be reserved for the opinion of the Appellate Court after sentence has been imposed. The King v. McGuire, 9 Can. Cr. Cas. 554.

ESSENTIAL PART OF CRIME NOT LEGALLY PROVED; "SUBSTANTIAL WRONG OR MISCARRIAGE;" NEW TRIAL.

Where a conviction has been made without the legal proof required by law of an essential part of the crime, such defect is a "substantial wrong or miscarriage at the trial" within Code, sec. 746, and the conviction must be set aside. The King v. Drummond, 10 Can. Cr. Cas. 340.

[Referred to in R. v. Lew, 1 D.L.R. 103; R. v. Finnessey, 10 Can. Cr. Cas. 353; R. v. Sanfield, 13 Can. Cr. Cas. 8.]

INADMISSIBLE OPINION TESTIMONY; "NO SUBSTANTIAL WRONG."

The reception of opinion testimony as to the illegality of the transactions in question was improper, but as a case against the accused was sufficiently made out without that testimony, and the trial was with-

out a jury, the conviction should stand under Code, sec. 746 (1f). The King v. Harkness (No. 2), 10 Can. Cr. Cas. 199.

IRREGULARITY; IF SUBSTANTIAL WRONG NOT NEGATIVED BY APPELLATE COURT, CONVICTION CANNOT BE AFFIRMED; NEW TRIAL.

If upon a case reserved, the Appellate Court finds that important depositions were improperly received in evidence, and is unable to say that no substantial wrong or miscarriage was occasioned by the irregularity, the conviction should be quashed notwithstanding Code, sec. 746 (f), but a new trial may be ordered. The King v. Brooks, 11 Can. Cr. Cas. 188.

[Commented on in R. v. Weir, 8 Que. P.R. 402; referred to R. v. Eliasoph, 16 Can. Cr. Cas. 131; R. v. Farrell, 15 Can. Cr. Cas. 285; Allen v. R. 18 Can. Cr. Cas. 31; relied on in Re Janneau, 12 Can. Cr. Cas. 361; R. v. Poirier, 31 Que. S.C. 69.]

DOUBT AS TO EVIDENCE.

If the trial Judge has no doubt that there was evidence of the offence to go to the jury, he should not reserve a case upon that point. The King v. Brindamour, 11 Can. Cr. Cas. 315.

TRIAL; FACT NOT DECIDED BY TRIAL JUDGE; QUASHING RESERVED CASE.

A case can be reserved only upon a question of law and will not be entertained upon the ground of improper statements alleged to have been made by the sheriff to the jury, as to which the evidence is wholly upon conflicting affidavits which the trial Judge referred to the Court of Appeal without himself deciding the fact. The King v. Barnes, 13 Can. Cr. Cas. 301.

OBJECTION NOT TAKEN TILL AFTER VERDICT; RESERVED CASE REFUSED.

An application for a reserved case must be made before verdict to preserve the right of appeal from its refusal, if the defect is one which might have been cured by an amendment at the trial. Ead v. The King, 13 Can. Cr. Cas. 348.

[Referred to in R. v. Pertella and Lee Chung, 14 Can. Cr. Cas. 208; R. v. Jenkins, 14 Can. Cr. Cas. 234; R. v. Blythe, 15 Can. Cr. Cas. 225.

RESERVED CASE BY POLICE MAGISTRATE; CERTIFYING THE CHARGE TO WHICH ACCUSED PLEADED.

On a case reserved by a police magistrate under Code, sec. 1013, in respect of a summary trial under Code, sec. 777, for an indictable offence a copy of the written "charge" to which the accused has pleaded should either be included in the case reserved or be certified therewith for the use of the Court of Appeal. The King v. Silverman, 14 Can. Cr. Cas. 79.

QUESTION ASSUMED TO HAVE AFFECTED DECISION OF TRIAL JUDGE.

(1) On a reserved case the Court of Appeal may properly assume that each question submitted was considered by the trial Judge as materially affecting the conviction. (2) On being applied to for a reversed case, the trial Judge should not grant it upon any question not relevant to the verdict or judgment. (3) Upon an indictment containing two counts, one for the major charge and the other for the minor charge, the Appellate Court, on a case reserved after conviction upon both counts tried together, may direct a new trial upon both charges if of opinion that there was such fundamental error upon the trial of the major charges as to cause a mistrial as to both. The King v. Walkem, 14 Can. Cr. Cas. 122.

OBJECTION NOT TAKEN UNTIL AFTER VERDICT; MOTION FOR RESERVED CASE TOO LATE.

After verdict a reserved case under Code, sec. 1014 can be granted only of the Court's own motion, in respect of an objection not previously taken, and counsel should, therefore, not be heard either for or against the objection. The King v. Pertella, 14 Can. Cr. Cas. 208.

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APPEAL BY CASE RESERVED; ABSTRACT QUESTIONS OF LAW.

The question submitted to a Court of Appeal on a case reserved under Code, sec. 1014, should be those only which actually arise in the circumstances of the particular case and not merely hypothetical or abstract questions of law. The King v. Hogarth, 18 Can. Cr. Cas. 272.

RESERVED CASE; PRO FORMA FINDING FOR PURPOSE OF APPEAL.

A magistrate making a summary conviction and stating a reserved case must not send up a mere pro forma finding; the findings upon which an appeal is to be heard must be the real findings upon the questions necessary for the proper determination of the case. The King v. Luttrell, 18 Can. Cr. Cas. 295.

ACADEMIC QUESTION IN CASE RESERVED; RIGHT OF COURT OF APPEAL TO REFUSE TO HEAR.

The reserving of purely academic questions for the opinion of the Court of Appeal, while within the powers of the Court

below, the Court of Appeal may refuse to hear them. The King v. Lynn (No. 2), 19 Can. Cr. Cas. 129.

[Referred to in R. v. Stauffer, 19 Can. Cr. Cas. 205, 4 Sask. L.R. 284.]

RULING PRIOR TO DISPOSAL OF CRIMINAL CASE.

A reserved case is prematurely granted before a decision for or against the guilt of the accused; and a case reserved for a court of criminal appeal on the application of the Crown at a "speedy trial" in respect of a ruling that the prior commitment for trial was irregular must be quashed where it appears that the case was not disposed of by the county judge upon the ruling but was adjourned in order to have the reserved case determined, bail being taken for the appearance of the accused. R. v. Lant, 22 Can. Cr. Cas. 212, 15 D.L.R. 651.

REFUSAL TO GRANT POSTPONEMENT.

The discretion of the trial judge at a criminal trial in refusing to grant a postponement to enable the defence to make enquiries as to the antecedents of two Crown witnesses who had not been examined at the preliminary enquiry, is not a question of law which can be reserved under Cr. Code, 1906, sec. 1014. [R. v. Johnson, 2 Car. & K. 354, referred to; R. v. Blythe, 15 Can. Cr. Cas. 224, 19 O.L.R. 389, considered.] R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, affirmed in 23 Can. Cr. Cas. 194, 18 D.L.R. 217.

[Referred to in R. v. De Mesquito, 24 Can. Cr. Cas. 407.]

QUESTION OF LAW; CORROBORATIVE EVIDENCE.

Where corroborative evidence is not required by statute and there is nothing to shew that the Judge trying a criminal charge without a jury had misdirected himself upon a matter of law, it is irregular to reserve for the Court of Appeal the question whether the evidence disclosed sufficient corroboration of an accomplice's evidence, such not being in such circumstances a "question of law" within Cr. Code, sec. 1014. [R. v. Bechtel, 19 Can. Cr. Cas. 423, and 21 Can. Cr. Cas. 40; 5 D.L.R. 497 and 9 D.L.R. 552, referred to.] R. v. McClain, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

QUESTION OF LAW RESERVED.

A question depending upon the weight or insufficiency of the evidence where there is legal evidence on the point, cannot properly be made the subject of a reserved case, although where the evidence merely points to a suspicion of guilt and lacks the material ingredients necessary to constitute proof of the offence the question becomes one of the lack of legal evidence to support it (which is a question of law) rather than one as to the weight of evidence. [R. v. McIntyre, 3 Can. Cr. Cas. 413, 31 N.S.R. 422; R. v. Winslow, 3 Can. Cr. Cas. 215, 12 Man. L.R. 649, referred to.] R. v. Howe, 24 Can. Cr. Cas. 215.

QUESTION OF LAW.

The trial judge should not grant a reserved case under Cr. Code, sec. 1014 unless he has some doubt upon the point sought to be raised. [R. v. Letang (1899), 2 Can. Cr. Cas. 505; R. v. Brindamour (1906), 11 Can. Cr. Cas. 315, followed.] R. v. Batterman, 24 Can. Cr. Cas. 351.

QUESTION OF LAW; SUFFICIENCY OF EVIDENCE FOR JURY.

If the trial Judge should wrongly tell the jury that there was competent evidence of the offence, his direction in that respect would raise a "question of law" which could be reserved under Cr. Code, sec. 1014, for the opinion of the Court of Appeal, although the appreciation of the facts where there is competent evidence of the offence pertains exclusively to the jury. (Per Carroll, J.) Rivet v. The King, 25 Can. Cr. Cas. 235, 27 D.L.R. 695.

LEAVE TO APPEAL; GROUNDS FOR REFUSING RESERVED CASE.

Where a Judge refuses to reserve a case it would be expedient that he give his reasons for refusal, and in doing so certify the facts sufficiently to shew the Court whether the question of law has a foundation in fact. In default of the trial Judge doing this, a proper course for the Court of Appeal to take on a motion for leave to appeal would be to request him to do so for the purpose of informing the Court of Appeal sufficiently to enable it to decide whether or not the trial Judge should be directed to reserve the question. (Per Beck, J.) R. v. Murray and Mahoney (No. 2), 27 Can. Cr. Cas. 247, 33 D.L.R. 702. See also 25 Can. Cr. Cas. 214, 28 D.L.R. 372, 28 Can. Cr. Cas. 247, 38 D.L.R. 395.

LEAVE TO APPEAL; SUMMARY TRIAL.

A city police magistrate summarily trying a charge of keeping a disorderly house without the consent of the accused (Code secs. 774, 776) cannot grant a reserved case under secs. 1013 and 1014 in respect of the conviction nor can the Court of Appeal grant leave to appeal and direct a case to be stated under sec. 1015. R. v. Davidson (No. 2), 28 Can. Cr. Cas. 56, 35 D.L.R. 94. See 28 Can. Cr. Cas. 44, 35 D.L.R. 82.

RES JUDICATA.

See also autrefois acquit; Previous conviction.

In criminal matters; 2 Can. Cr. Cas. 496.

SUCCESSIVE APPEALS; AFFIRMANCE BY EQUAL DIVISION OF COURT; SECOND APPEAL FROM SUCCESSIVE APPLICATIONS.

The prisoner was remanded for extradition by the Chancery Division of the High Court of Justice, which on appeal to this

Court was affirmed, the Court being equally divided. A second writ of habeas corpus was thereupon obtained, and the prisoner brought before the Common Pleas Division, when he was again remanded, whereupon he again appealed to this Court, which appeal was dismissed with costs, as under such circumstances a second appeal could not be entertained. The prisoner having already appealed to this Court from the judgment of the Chancery Division, he must abide by the legal result of such appeal, viz., the dismissal of it and consequent affirmance of the decision appealed from, and he could not again ask interference of this Court on the same state of facts. (Per Hagarty, C.J., Spragge, C.J.O., concurring.) The grounds for the technical rule of practice of the House of Lords on an equal division have no existence in other appellate tribunals, although in the particular case, the Appellate Court is the Court of last resort. The effect of an equal division in this Court as in a Court of first instance, is simply that the rule of motion drops or the appeal is dismissed, and the judgment below remains undisturbed, but is not considered as a binding authority. (Per Burton and Patterson, JJ.A.) The Act 29-30 Vict. ch. 45, apparently substituted the right of appeal in habeas corpus cases for successive applications from Court to Court. By the effect of the Judicature Act, a decision of any one division is a decision of the High Court, this matter had therefore been already disposed of on the former appeal. (Per Patterson, J.A.) Re Hall, 8 Ont. App. R. 135.

ORDER QUASHING SEARCH WARRANT FOR LIQUORS.

A judgment on certiorari quashing a search warrant for intoxicating liquors issued under the Canada Temperance Act is not res judicata as to the constable who executed the warrant, if he was not a party to and had no notice of the certiorari proceedings. Sleeth v. Hurlbert, 3 Can. Cr. Cas. 197.

[Referred to in McKeen v. Colpitts, 15 Can. Cr. Cas. 495.]

FORMER COVICTION FOR RELATED OFFENCE; PERSONATION OF ELECTOR AND PERJURY; OATH OF IDENTITY; PREVIOUS ACQUITTAL FOR PERSONATION.

(1) Where a person has been acquitted by a Court of competent jurisdiction, the acquittal is a bar to all further proceedings to punish him for the same matter, although a plea of autrefois acquit may not be allowed because of the different nature of the charges. (2) A plea of autrefois acquit to a charge of perjury in taking the oath of identity at a polling booth is not supported by a record of acquittal on a charge of personating an elector at the same time and place, although the oath of identity and the alleged personation was in regard to the same elector. (3) A verdict for personation could not have been received under an indictment for perjury in taking the oath of identity, although the facts constituting the personation must necessarily be shewn in order to prove the perjury. (4) The acquittal on the first charge became res judicata as between the Crown and the accused, and it was not open to the Crown to proceed on the second charge in which a conviction could only be had by the second jury overruling the contrary verdict of the first jury. The King v. Quinn, 10 Can. Cr. Cas. 412.

RESTITUTION.

Note on restitution and compensation. 5 Can. Cr. Cas. 114.

Seizure of personal effects of accused upon his arrest; Order for restoration. 7 Can. Cr. Cas. 549.

DISCRETION OF COURT TO ORDER A WRIT OF CERTIORARI.

The defendant having been convicted at the Quarter Sessions on an indictment for forcible entry, was fined, but that Court refused to order a writ of restitution, and the case was removed here by certiorari:—Held, that it was in the discretion of this Court either to grant or refuse the writ; and under the circumstances the verdict being against the charge of the learned chairman, and the prosecutor's case not one to be favoured, it was refused. Regina v. Wightman (1869), 29 U.C.Q.B. 211.

THEFT OF MONEY; FAILURE TO PROVE IDENTITY; RESTITUTION TO PRISONER OF STOLEN MONEY.

McIntyre was indicted for stealing $95 in bank notes and acquitted. He applied to have $37 in notes found on his person when arrested returned to him, which was resisted on behalf of the prosecutor. The P.E. Island statute of 6 William IV. ch. 22, sec. 38, enacts that when a prisoner is not convicted, the Court may, if it sees fit, order restitution of the property where it "clearly appears" to have been stolen from the owner. When arrested the prisoner had the money sewed up in his trousers and among the notes was a $5 one of the Bank of N.B., a $5 of the Bank of Halifax, and a $5 of the Bank of Montreal, and when asked why he had put the money there he said, "To hide it from the police." The prosecutor swore he had carefully counted the money before the robbery and that it included a $5 Bank of N.B. note and a $5 Bank of Halifax note:—Held (Peters, J.), that the evidence was not sufficient to identify the notes as the prosecutor's and that the application must be granted. R. v. McIntyre, 2 P.E.I. 154.

ORDER FOR RESTITUTION OF STOLEN PROPERTY; COMPENSATION FOR LOSS OF PROPERTY.

To entitle the aggrieved party to an order for the restitution to him of money found on the prisoner convicted of stealing money from the person, proof must be adduced identifying the money so found as the money which was stolen. Where the accused was convicted of the theft of the bank notes but there was no evidence to identify the same with the bank notes found on and taken from the prisoner at the time of arrest, and no application was made immediately after the conviction for an order of compensation to the prosecutor for his loss, an order may be properly made ex parte for the restoration to the prisoner of the money so taken from him. The King v. Haverstock, 5 Can. Cr. Cas. 113.

RETAINING.

See Receiving.

REVIEW.

See Appeal.

RIOT.

LONE ATTACK UNCONNECTED WITH ASSEMBLY; VALIDITY OF JOINT CONVICTION.

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:—Held, that a conviction for riot could not be sustained. The prisoner having been indicted jointly with a number of the rioters on a charge of riot and convicted, upon a case reserved after verdict, the conviction was quashed. The Queen v. William Corcoran (1876), 26 U.C.C.P. 134.

INDICTMENT FOR RIOT AND ASSAULT; CONVICTION FOR RIOT ONLY.

Defendant was indicted for a riot and assault, and the jury found him guilty of a riot, but not of the assault:—Held, that a conviction for riot could not be sustained, the assault, the object of the riotous assembly, not having been executed; although the defendant might have been guilty of riot or joining in an unlawful assembly. Regina v. Kelly (1857), 6 U.C. C.P. 372.

ROBBERY.

See Theft.

SCHOOLS.

Personal chastisement of pupil; Excess. 8 Can. Cr. Cas. 178.

SCHOOL TEACHER AND PUPIL; PERSONAL CHASTISEMENT.

(1) The authority of a school teacher to chastise a pupil is to be regarded as a delegation of parental authority. (2) Corporal punishment inflicted by a school teacher upon a pupil is presumed to be reasonable and for sufficient cause, until the contrary is shewn. (3) Where there is a sufficient cause for punishing the pupil, and the chastisement produces only temporary pain and no serious injury, it will be presumed to be reasonable. (4) Any punishment with an instrument calculated to produce danger to life or limb is unreasonable and unlawful. (5) Any punishment protracted beyond the child's powers of endurance is excessive and unlawful. (6) Any punishment which ordinarily may seriously endanger life, limb, or health, or which disfigures the child, or causes any other permanent injury, is in itself unreasonable and unlawful. (7) If there is any reasonable doubt whether the punishment was excessive, the school teacher should have the benefit of the doubt. The Queen v. Robinson, 7 Can. Cr. Cas. 52.

CHASTISEMENT OF SCHOLAR BY TEACHER; DISCIPLINE OF SCHOOL.

A boy fourteen years of age and of strong physique, who attends a public school, may legally be whipped by his teacher for continued insubordination and misconduct, affecting the discipline and control of the school. The King v. Zinck, 18 Can. Cr. Cas. 456.

SEAMEN.

See also Shipping.

HARBOURING DESERTING SEAMAN; NATIONALITY OF VESSEL.

Upon a prosecution for harbouring and secreting a deserting seaman the procedure to be followed and the punishment to be imposed are governed by the Seamen's Act of Canada if the offence was committed in Canada by a resident of Canada, and sec. 711 of the Imperial Merchant Shipping Act, 1894, is confirmatory of such rule as regards cases coming within the latter Act. (Per Ouimet, J.) The appeal from a summary conviction under the Seamen's Act of Canada, for harbouring and secreting a deserting seaman is under sec. 879 and not under sec. 742 of the Criminal Code, and in the Province of Quebec the appeal should be taken to the Crown side and not to the appeal side of the Court of Queen's Bench of that province. (Per Ouimet, J.) Where the information sets up in general terms that the accused had har-

boured and secreted a seaman who had deserted from a vessel named, but contains no allegation that the vessel was a duly registered British ship, the necessary intendment is that the prosecution is brought under the Seamen's Act of Canada. (Per Wurtele, J.) In such case it is necessary for the accused to plead and prove the vessel to be a duly registered British ship before jurisdiction under the Seamen's Act of Canada is ousted on the ground that the Imperial Merchant Shipping Act governs the case, the punishment provided in the latter statute being limited to cases of desertion from registered British ships, while the Canadian statute applies to ships of all nationalities and whether registered or not. (Per Wurtele, J.) R. v. O'Dea, 3 Can. Cr. Cas. 402.

[Followed in R. v. O'Dea, 8 Can. Cr. Cas. 155.]

REFUSAL TO PAY SEAMAN'S WAGES OR TO GRANT DISCHARGE.

(1) A magistrate has no power to summarily convict the master of a British ship for nonpayment of a seaman's wages and for refusal to give a discharge if the ship is of Canadian register and within Canadian jurisdiction at the time complaint is made. (2) The effect of the Imperial Merchant Shipping Act, 1894, sec. 261, subsec. (d), is to exclude the operation of sec. 168 of that Act in such cases as being a provision concerning wages although grouped under another sub-heading. The King v. Meikle, 7 Can. Cr. Cas. 369.

SEARCH.

Search warrant under Liquor Act, see Intoxicating Liquors.

Of prisoner on his arrest or detention. 5 Can. Cr. Cas. 392.

PRELIMINARY STATEMENT AS TO PURPOSE.

The right of search given by sec. 130 of the Liquor License Act, R.S.O. 1887, ch. 194, may be exercised without any preliminary statement of the purpose for which the search is to be made. A formal demand of admittance is sufficient. Regina v. Sloan, 18 (Ont.) A.R. 482.

OF PERSON UNDER ARREST; RELEASE BY OFFICER WITHOUT COMPLAINT LAID.

Where a letter carrier violates the rules of the Post Office Department by failing to enter a letter bearing a nonexistent address in the book provided for that purpose, or to return the letter to the post office, there is reasonable and probable cause for detaining and searching him, and an action for damages against the peace officer who effected the arrest is not maintainable in the absence of evidence that the officer had made an improper and illegal use of his authority in the manner in which he effected such detention and search. Mayer v. Vaughan (No. 2), 6 Can. Cr. Cas. 68.

SEARCH FOR STOLEN GOODS; SEIZURE AND ARREST BY CONSTABLE; FAILURE TO GIVE ACCOUNT.

In order to obtain a search warrant under the Act 32 and 33 Vict. ch. 30, it is not necessary that the information should allege that the goods have been stolen by the party whose premises are sought to be searched, and it is sufficient if it allege that they have been feloniously stolen. Under a search warrant, the goods alleged to have been stolen having, upon the search made under the warrant, been found in the store and warehouse of a party who, though not the person charged in the information with having stolen them, had refused to allow the owner to see them or to give him any satisfaction regarding them, the constable is justified not only in taking the goods so found but also the body of the party on whose premises they were found, before the justice who issued the warrant to give an account of how he came by them. Hamilton et al. v. Calder, 23 N.B.R. 373.

NOT TO ISSUE UNLESS OFFENCE IS SHEWN TO BE COMMITTED.

Pending a prosecution for selling intoxicating liquor contrary to the provisions of the Canada Temperance Act 1878, 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 a 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, and defendant was convicted of the latter offence:—Held, that before a search warrant can issue under sec. 108 of the Act some offence against the provisions of the Act must be shewn to have been committed, and that the information for a search warrant and the evidence in this case shewed such a previous offence to have taken place. Regina v. Heffernan (1887), 13 O.R. 616.

TIME FOR EXECUTION; COMMON GAMING HOUSE.

An order to enter a house reported to be a common gaming house must be executed within a reasonable time. Regina v. Ah Sing (1892), 2 B.C.R. 167.

DESCRIPTION OF PREMISES TO BE SEARCHED.

(1) A search warrant for intoxicating liquors issued under the Canada Temperance Act is not invalid because it does not shew on its face that the premises directed to be searched are within the territorial jurisdiction of the magistrate. (2) It is not necessary that the premises directed to be searched should be described in the search

warrant by metes and bounds or with other particularity of a like nature, and a direction to search the dwelling house of a named person in a certain township is sufficient. (3) A direction to search several buildings or places in respect of any one charge may be made by the one search warrant. Sleeth v. Hurlbert, 3 Can. Cr. Cas. 197.

[Specially referred to in Willinsky v. Anderson, 19 O.L.R. 437; referred to in R. v. Anderson, etc. 14 Can. Cr. Cas. 453.]

DEFECTIVE INFORMATION; AMENDMENT; ASSENT OF INFORMANT.

(1) Where an informant fairly stated the facts of the case to the magistrate and the latter issued a search warrant upon an information which did not disclose a criminal offence, the informant is not liable in damages for the erroneous view of the magistrate that he had jurisdiction to issue a search warrant thereon. (2) But if the informant upon the preliminary enquiry assents to an amendment of the information to charge the offence of theft and proceeds with the charge upon the amended information, he will be liable in an action for malicious prosecution brought after the dismissal of the charge if the jury find that the informant did not believe at the time when said amendment was made, that the accused had wrongfully taken the chattel without any belief that he had a right to take it. Pring v. Wyatt, 7 Can. Cr. Cas. 60.

CONSPIRACY TO DEFRAUD THE PUBLIC; SEARCH WARRANT IN AID OF PROSECUTION; CERTIORARI TO QUASH; INFORMATION FOR SEARCH WARRANT; REQUISITES OF.

(1) A search warrant issued under Code, sec. 569 is a judicial proceeding and may be removed by certiorari. (2) It is essential that an information for a search warrant under Code, sec. 569 should set forth the "causes of suspicion" (Code form J.) in order to satisfy the justice that there is reasonable ground for believing that the articles to be searched for are associated with the crime charged. (3) If the information for a search warrant does not pledge the informant's oath to such belief and state the cause of his suspicion, it is insufficient, and a search warrant granted upon it is bad and should be quashed. The King v. Kehr, 11 Can. Cr. Cas. 52.

SUMMARY CONVICTION; KEEPING LIQUOR FOR SALE; IRREGULARITY IN INFORMATION FOR SEARCH WARRANT; EXECUTION OF SEARCH WARRANT OUTSIDE OF CITY WHERE ALLEGED KEEPING FOR SALE IS CHARGED.

If the evidence is sufficient to prove the keeping of liquor for sale, the conviction will not be quashed because the liquor in question was seized under a search warrant under the Canada Temperance Act outside of the city limits and the information and conviction for keeping are expressed to be for an offence within the city, if the magistrate had jurisdiction both in the city and at the place of seizure. Ex parte Wilson, 15 Can. Cr. Cas. 264.

[Referred to in Ex parte Horsman, 15 Can. Cr. Cas. 281.]

SEARCH WARRANT FOR LIQUOR; INFORMANT EXECUTING WARRANT AS CHIEF OF POLICE.

The fact that the informant as chief of police laid the information for and executed a search warrant under the Canada Temperance Act will not invalidate a summary conviction for keeping liquor for sale although based upon the result of the search under the warrant. Ex parte Dewar, 15 Can. Cr. Cas. 273.

[Distinguished in R. v. Le Blanc, 21 Can. Cr. Cas. 221.]

JUSTIFICATION FOR DETENTION OF PROPERTY IF VALID ON ITS FACE.

A search warrant under the Canada Temperance Act, regular and valid on its face and issued by the proper officer is, until quashed, a justification to the officer seizing or detaining the liquor in accordance with the direction of the warrant, although the information did not authorize its issue, and it might have been quashed or set aside on that ground had application been made. McKeen v. Colpitts, 15 Can. Cr. Cas. 488.

SEARCH WARRANT NOT AN "ORDER."

A search warrant is not an "order" under the statute, R.S.N.S. 1900, ch. 40, sec. 6, under which convictions and orders must be quashed before action brought in respect of their enforcement. Johnston v. MacDougall (No. 1), 17 Can. Cr. Cas. 58.

POSSESSION OF WARRANT AT TIME OF SEIZURE; PROSECUTING INSPECTOR ASSISTING CONSTABLE AT SEIZURE.

(1) In describing an offence in an information or search warrant, a variation from the precise words of the statute is not fatal, if the words used are such as bring the case within the plain meaning of the enactment. (2) The causes of suspicion need not be set forth in the information for a search warrant under the Prohibition Act (P.E.I.) as that statute provides a special form which does not provide for the insertion of the causes and therefore Code, form No. 1 does not apply. (3) It is the duty of a peace officer executing a search warrant to have it with him at the time of its execution, and it will be presumed until the contrary is shewn that such duty was performed. (4) An inspector under the Prohibition Act (P.E.I.) may execute a search warrant for liquors although himself the prosecutor, and he may legally act as assistant to the peace officer

to whom a search warrant is directed. Fanning v. Gough, 18 Can. Cr. Cas. 66.

SEARCH WARRANT ON GAMING-HOUSE; PRODUCING WARRANT.

In the execution of a search warrant on a gaming-house charge under Cr. Code, sec. 641, where the place is not a dwelling house or part of a dwelling house, the police officer executing it must have the search warrant with him in order to exhibit it for inspection if asked for, but it is not obligatory where it is not a dwelling house that the officer should first demand an entrance or signify the cause of his coming before breaking in. [Hodder v. Williams, [1895] 2 Q.B. 663, referred to.] An officer executing a search warrant is protected only in so far as he uses no more force than under the circumstances is reasonably necessary. Wah Kie v. Cuddy (No. 2), 23 Can. Cr. Cas. 383, 20 D.L.R. 351, affirming 23 Can. Cr. Cas. 325, 19 D.L.R. 378.

INFORMATION FOR SEARCH WARRANT; SUFFICIENCY.

A search warrant will be quashed if the information for same taken under Cr. Code, sec. 629, fails to allege the causes of suspicion as required by Code form No. 1. [R. v. Kehr, 11 Can. Cr. Cas. 52, 11 Q.L.R. 517, applied.] It will be quashed if the information for same, taken under Cr. Code, sec. 629, fails to allege any criminal offence. When issued under the authority of Cr. Code, sec. 629, it is invalid if it does not allege a criminal offence. R. v. Frain, 24 Can. Cr. Cas. 389.

IRREGULAR INFORMATION; CANADA TEMPERANCE ACT.

A search warrant for liquors under the Canada Temperance Act will be quashed if the information therefor does not disclose facts and circumstances shewing the causes of suspicion. [R. v. Kehr (1906), 11 Can. Cr. Cas. 52, 11 O.L.R. 517, followed.] R. v. Bender, 26 Can. Cr. Cas. 393, 30 D.L.R. 520.

CANADA TEMPERANCE ACT; GROUNDS OF SUSPICION IN INFORMATION.

Reasonable grounds of suspicion required by law to appear in an information for a search warrant for liquors under the Canada Temperance Act are disclosed where a hotelkeeper is the accused and the informant swears that he knows that intoxicating liquor is being brought to defendant's hotel and persons are resorting there, as the deponent has good reason to believe, for the purpose of drinking the same. R. v. Bedford, 27 Can. Cr. Cas. 107, 32 D.L.R. 781.

EXECUTION; SUNDAY; CANADA TEMPERANCE ACT.

A search warrant for liquor issued under the Canada Temperance Act, R.S.C. 1906, ch. 152, cannot be executed on a Sunday. Ex parte Willis; R. v. Lawlor, 27 Can. Cr. Cas. 383.

INFORMATION TO OBTAIN SEARCH WARRANT; SUFFICIENCY.

An information to obtain a search warrant under sec. 629 of the Criminal Code (Form 1) must state the cause of suspicion, otherwise it is invalid. The search warrant issued by the magistrate as provided by form 2 of sec. 629 is invalid if it does not describe the things to be searched for and the offence in respect of which the search is made, and a search made under such warrant is illegal. R. v. La Vesque, 30 Can. Cr. Cas. 190, 42 D.L.R. 120.

INTOXICATING LIQUORS; SEARCH WARRANT; PARTICULARITY.

A search warrant for liquors under the Liquor Act (Alta.) should describe the premises to be searched with sufficient accuracy to enable one to know from the mere reading of it what premises are to be searched. R. v. Gibson, 30 Can. Cr. Cas. 308.

SEARCH WARRANT.

See Search; Intoxicating Liquors.

SECRET COMMISSIONS.

RECEIVING A SECRET COMMISSION BY AGENT OR EMPLOYEE; CRIMINAL OFFENCE.

The words "agent or employee" in the statute 8 and 9 Edw. VII. ch. 33, sec. 3 (Can.), respecting secret commissions, do not apply to professional men, and a mining engineer engaged to make a report on a mine is not within the statute. The King v. Vici, 18 Can. Cr. Cas. 51.

FALSE STATEMENT IN WRITING; COLLUSIVE PRICE FIXING.

Where by collusion between the seller and buyer's employee whose duty it was to fix the prices at which the buyer would purchase, such prices were systematically doubled or trebled over the ordinary rates, and these prices were re-stated in the seller's account copied from the buyer's order form, and the employee so dishonestly crediting fictitious prices was receiving cash presents from the seller as a share or bribe for the continuance of the fraud, charges under the Secret Commissions Act, Can. 1909, are sustainable against the seller, not only in respect of the corrupt gifts, but for issuing a statement of account false and erroneous in a material particular intended to mislead, and also in respect of the fraudulent order form as to his privity to the use of same to deceive the buyer. R. v. Rabinovitch and Clingman, 23 Can. Cr. Cas. 496, 21 D.L.R. 600, affirmed in 24 Can. Cr. Cas. 350.

EMPLOYEE RECEIVING; RAILWAY FREIGHT CONDUCTOR SPOTTING CARS.

Where a railway conductor was charged under the Secret Commissions Act, Can., 1909, for taking money for his own use from a farmer for "spotting" cars required under the Grain Act, Can., and which it was the conductor's duty to place at a station where there was no agent, and the defence developed on cross-examination of the Crown witnesses was that the amounts paid to him by the farmer at various times were tips or gratuities made after the location of the cars and not sums bargained for, it is competent for the Crown to adduce evidence in rebuttal of the suggested defence by calling other farmers who had at approximately the same time made similar payments to him for the allocation of cars to them for an agreed consideration; such evidence, although not admissible to prove the main facts of the case, was admissible to rebut by anticipation the indicated defence of innocent motive and want of design and to shew the state of mind of the parties with regard to the facts proved, although no witnesses were called for the defence. [Makin v. A.-G. for New South Wales, [1894] A.C. 57, applied; R. v. Birney, 3 Can. Cr. Cas. 339; R. v. Collins, 4 Can. Cr. Cas. 572; R. v. Pollard, 15 Can. Cr. Cas. 105; R. v. Wilson, 21 Can. Cr. Cas. 105, cited.] R. v. Howes, 23 Can. Cr. Cas. 258, 20 D.L.R. 283.

SECURITY FOR COSTS.

See also Costs; Recognizance.

Rule requiring recognizance with sufficient sureties; Necessity for affidavit of justification. Regina v. Ah Gin (1892), 2 B.C.R. 207.

PRIVATE PROSECUTION; RECOGNIZANCE TO PROSECUTE AFTER CHARGE DISMISSED BY JUSTICE; PREFERRING INDICTMENT; SECURITY FOR COSTS OF ACCUSED.

(1) A prosecutor bound over at his own request to prefer an indictment after the discharge of the accused on a preliminary enquiry, is only permitted to appear by counsel before the grand jury when the practice of the Court so authorizes; and the practice in the district of Montreal requires a formal application to the Court for permission. (2) The accused may apply for security for costs under Code, sec. 595 (4) at the time of the prosecutor's application for leave to go before the grand jury. (3) Where counsel for the private prosecutor prepared an indictment and had it signed by the clerk of the Crown, but without leave of the Court or notice to the Crown prosecutors, preferred the indictment and examined witnesses before the grand jury, a true bill returned thereon will not necessarily be quashed; but security for costs will be ordered on the defendant's application in like manner as would have been done under Code, sec. 595 (4) upon the prosecutor's application for leave. The King v. Hoo Yoke, 10 Can. Cr. Cas. 211.

CERTIORARI.

Security for costs cannot be ordered against the petitioner for a writ of certiorari in a criminal case in the absence of a general rule of Court passed under Code, sec. 1126. Tierney v. Choquet, 13 Can. Cr. Cas. 238.

SEDITION.

SPEAKING SEDITIOUS WORDS.

A charge of speaking seditious words with intent in contravention of Cr. Code, sec. 134 may be supported by evidence of seditious words openly expressed in a public place to a mere acquaintance, although others were not in a position to overhear what was said; the jury is entitled to draw inferences both as to the probability of the conversation being repeated by the person addressed and as to the possible effect on such person's loyalty. [R. v. Felton, 25 Can. Cr. Cas. 207, considered.] R. v. Cohen, 25 Can. Cr. Cas. 302, 28 D.L.R. 74. [Referred to in R. v. Manschrick, 27 Can. Cr. Cas. 17, 32 D.L.R. 584; distinguished in R. v. Trainor, 27 Can. Cr. Cas. 232, 33 D.L.R. 658.]

EVIDENCE; CRIMINAL INTENT; SEDITIOUS WORDS; INFERENCES.

On a charge of speaking seditious words (Cr. Code, sec. 134), it is always open to the jury, or to the judge if trying the case without a jury, to infer the seditious intention from the words and the circumstances under which they were spoken. Under Cr. Code, secs. 132 and 134, it is an indictable offence to speak seditious words, i.e., words expressive of a seditious intention, and a conviction will be sustained if the words were a slander on the British Government and were uttered either with the intent of raising disaffection and discontent among his Majesty's subjects, or with intent to promote public disorder by insulting and annoying the hearers so that a breach of the peace is a probable consequence. [R. v. Burns (1886), 16 Cox 355; R. v. Aldred (1909), 74 J.P. 55, referred to.] Alien residents of Canada owe a temporary allegiance to the King while they reside under his protection and are included amongst the King's "subjects" in the sense in which that term is used in a charge for speaking seditious words with intent to raise disaffection or public disorder amongst his Majesty's subjects, and it is, therefore, unnecessary to prove on the trial that any of the hearers were nat-

ural born or naturalized British subjects. R. v. Felton, 25 Can. Cr. Cas. 207, 28 D.L.R. 372.

[Referred to in R. v. Manschrick, 27 Can. Cr. Cas. 17, 32 D.L.R. 584.]

SEDITIOUS WORDS; INTENT; EVIDENCE; NEW TRIAL.

On a charge under Cr. Code, sec. 134, of speaking seditious words, the question of seditious intent is one for the jury. [R. v. Felton, 25 Can. Cr. Cas. 207, 28 D.L.R. 372; R. v. Cohen, 25 Can. Cr. Cas. 302, 28 D.L.R. 74, referred to.] A new trial will not be granted in respect of a conviction for uttering seditious words, because of the prosecution eliciting on cross-examination of defendant's witness that the persons to whom the words were uttered had repeated them to the witness on an occasion when the accused was not present. R. v. Manschrick, 27 Can. Cr. Cas. 17, 32 D.L.R. 584.

SEDITIOUS LIBEL; INTENT.

Defamatory words likely to stir up and excite public discontent and disaffection will constitute a seditious libel under Cr. Code, sec. 132 as being "expressive of a seditious intention," if they are found to have been published with intent to have the seditious effect alleged; the question of the existence of such intention in any particular case is one for the jury, and while it may be inferred by them from the nature of the publication, the verdict against the accused must be set aside and a new trial ordered if the trial Judge declined to charge the jury in any way as to the intention of the accused. [Reg. v. Burns, 16 Cox C.C. 355; R. v. McHugh (1901), 2 Irish R. 569, approved; R. v. Aldred, 22 Cox C.C. 1, disapproved.] R. v. Giesinger, 27 Can. Cr. Cas. 53, 32 D.L.R. 325.

SEDITIOUS WORDS; EVIDENCE; INDICTMENT.

To constitute the crime of uttering seditious words, more must appear than the expression of disloyal and unpatriotic sentiments in a private conversation. [R. v. Cohen, 25 Can. Cr. Cas. 302, 28 D.L.R. 74, distinguished.] The Court will take judicial notice of the existence of a state of war between His Britanic Majesty and a foreign power on a trial for using seditious language. A count of an indictment charging the use of seditious language with intent "to raise disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of His Majesty's subjects" will not, on appeal, be held invalid for duplicity where no objection was taken to same at the trial. On an indictment for speaking seditious words with intent, etc., an objection that neither the words nor their purport were set out in the count, will not be made the subject of a reserved case where no objection was taken at the trial and where no application had been made to the trial Judge to order particulars; failure to supply reasonable particulars if demanded might have constituted a mistrial, but, where not demanded, the objection was cured by verdict. [The Queen v. Stroulger, 17 Q.B.D. 327, followed.] R. v. Trainor, 27 Can. Cr. Cas. 232, 33 D.L.R. 658.

ELEMENTS OF OFFENCE OF PUBLISHING SEDITIOUS LIBEL; CR. CODE, SECS. 132-134.

R. v. Bainbridge, 28 Can. Cr. Cas. 444.

INTENT; EVIDENCE.

Statements made by the accused with the intention of dissuading his hearers from making voluntary contributions to the Red Cross Fund and for the avowed purpose of so assisting the enemy, will support a charge of sedition. R. v. Barron, 30 Can. Cr. Cas. 326, 44 D.L.R. 332.

SEDUCTION.

Corroborative evidence on charge of seduction. 2 Can. Cr. Cas. 258, 261.

Speedy trial; Amendment as to date of offence; Note. 10 Can. Cr. Cas. 236.

MERGER OF TRESPASS IN FELONY; DUTY TO ACQUIT.

Whenever, in a civil action for seduction, it turns out upon trial that the act complained of was not merely a trespass, but a felony, the learned Judge must direct an acquittal:—Held, however, per Curiam, that in this case the evidence (as given below), being considered unsatisfactory, the learned Judge was justified in not directing a verdict for the defendant. Brown v. Dalby, 7 U.C.Q.B. 160.

CONVICTION FOR SEDUCTION ON EVIDENCE SUPPORTING RAPE.

A prisoner indicted and tried under sec. 3, clause (a) of the Act respecting offences against public morals and public convenience, R.S.C. ch. 157, with having seduced a girl under sixteen:—Held, properly convicted of such offence, although the evidence given, if believed in whole, would have supported conviction for rape, an indictment for which had been previously ignored by the grand jury. Regina v. Doty, 25 O.R. 362.

ENTICING FROM PARENT OF GIRL UNDER SIXTEEN; CONVICTION FOR ABDUCTION NO BAR FOR SEDUCTION.

The prisoner was convicted under R.S.C. ch. 162, sec. 44, the Act relating to "offences against the person" for unlawfully taking an unmarried girl under the age of sixteen years out of the possession and against the will of her father. On the same day the prisoner was again tried and convicted under R.S.C. ch. 157, sec. 2, the Act relating to "offences against public morals," for the seduction of the said girl being previously of chaste character and

between the ages of twelve and sixteen years of age:—Held, that the offences were several and distinct, and that a conviction on the first indictment did not preclude a conviction on the second one. Regina v. Smith (1890), 19 O.R. 714.

CORROBORATION.

(1) The corroborative evidence "implicating" the accused which is made necessary by Criminal Code, sec. 684, to sustain a charge of seduction of a girl under sixteen, may consist of the prisoner's admission made after she had attained sixteen that he had had connection with her. (2) A statement made by the accused before he was charged with the offence that he had been advised that if he could get the girl to marry him he would escape "punishment," is corroborative evidence "implicating" the accused and proper to be considered by a jury or by a Judge exercising the functions of a jury. R. v. Wyse, 1 Can. Cr. Cas. 6.

EVIDENCE; CORROBORATION.

Evidence of the girl's pregnancy, and of her having been employed in domestic service at the defendant's residence and of facts shewing merely a strong probability of there having been no opportunity at which any other man could have been responsible for her condition, does not constitute the corroborative evidence "implicating the accused" required by Cr. Code, sec. 684, in order to sustain a conviction. R. v. Vahey, 2 Can. Cr. Cas. 258.

[Referred to in R. v. Burr, 13 O.L.R. 485, by Osler J., dissenting, R. v. Daun, 12 O.L.R. 227.]

"UNDER PROMISE OF MARRIAGE;" "UNDER" EQUIVALENT TO "BY MEANS OF;" PRIOR ENGAGEMENT TO MARRY; RENEWAL OF PROMISE.

To constitute the offence of seduction "under promise of marriage" provided by Code, sec. 182, it must be shewn that the seduction was accomplisheed by means of the promise. A finding by the jury that the accused had previously become engaged to marry the girl and that he renewed the promise of marriage at the time of the seduction is insufficient to sustain a conviction for seduction under promise of marriage. The Queen v. Walker, 5 Can. Cr. Cas. 465.

SEDUCTION UNDER PROMISE OF MARRIAGE; PROSECUTION WITHIN A YEAR; CHASTE CHARACTER; ORIGINAL SEDUCTION AND PROMISE BEFORE THE YEAR.

(1) Where a seduction under promise of marriage has taken place and the illicit intercourse between the parties is continued, upon renewals of promise, for more than a year before the commencement of the prosecution, a prosecution for the original seduction is barred by Code, sec. 551 (c), and a conviction is not warranted as for a subsequent seduction within the year as the woman is not then of "previously chaste character." (2) The term "previously chaste character" in Code, sec. 182 is not equivalent to previously chaste reputation, but refers to the actual moral status of the woman. (3) Semble, under certain circumstances a woman who has been guilty of unchaste conduct may subsequently become chaste in legal contemplation and be seduced a second time. The King v. Lougheed, 8 Can. Cr. Cas. 184.

[Approved in R. v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.]

SPEEDY TRIAL; SUBSTITUTING NEW CHARGE; AMENDMENT AS TO DATE OF OFFENCE; ANOTHER OCCURRENCE TO WHICH A DIFFERENT DEFENCE MIGHT APPLY; RIGHT TO ELECT ON SUBSTITUTED CHARGE; RE-ARRAIGNMENT.

(1) A County Judge holding a speedy trial upon a charge of seduction may substitute a new charge to conform to the evidence of the prosecution by stating it as of a prior date upon which a different occurrence is sought to be proved, but such substitution is subject to the right of the accused to re-elect the mode of trial. (2) As regards the offence of seduction the change of the date of the alleged offence by an amendment of the indictment or charge is in substance the laying of a new charge to which a different defence might be applicable. (3) Code, sec. 723 applies to authorize an amendment as to time or place in a speedy trial charge without re-election, only where the act or transaction which forms the foundation of the charge is the same, and a mistake was made in the evidence or charge as to the true date of the occurrence. The King v. Lacelle, 10 Can. Cr. Cas. 229.

[Referred to in R. v. Sylvester, 19 Can. Cr. Cas. 310, 1 D.L.R. 192; R. v. Daun, 11 Can. Cr. Cas. 246; Dufresne v. R. 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

PROMISE OF MARRIAGE; CORROBORATION.

(1) On a charge of criminal seduction under promise of marriage, corroboration is essential under Code, sec. 684; but the corroboration need not be as to every fact in issue and it is sufficient if it confirms the belief that the prosecutrix is speaking the truth. (2) The defendant having been convicted and no question having been reserved or appeal taken except as to the sufficiency of the corroboration under Code, sec. 684, the Appellate Court cannot review the whole evidence but must proceed on the assumption that the charge as laid was fully proved by the complainant's testimony if the corroborative evidence satisfies the

statutory requirements. The King v. Daun, 11 Can. Cr. Cas. 244.

[Referred to in R. v. Whistnant, 20 Can. Cr. Cas. 322; R. v. Burr, 12 Can. Cr. Cas. 108; R. v. McArthur, 14 Can. Cr. Cas. 344; R. v. Pailleur, 15 Can. Cr. Cas. 347.]

CORROBORATION; STATEMENTS ANTECEDENT TO THE OFFENCE; ADMISSIONS SUBSEQUENT TO OFFENCE.

Evidence that the accused charged with seduction of a girl between 14 and 16 (Revised Code, sec. 211) had previously told a witness other than the girl of his desire to have sexual intercourse with her, and of subsequent admissions of the accused from which it might be inferred that he had afterwards taken advantage of an opportunity when he was left in charge of the house where the girl lived, is corroborative evidence to go to the jury under sec. 1002 of the Revised Code (former sec. 684), although no medical evidence is adduced in support of the girl's story. The King v. Burr, 12 Can. Cr. Cas. 103.

[Referred to in Von Koolberger v. Lapointe, 19 Que. K.B. 244.]

SEDUCTION UNDER PROMISE OF MARRIAGE; INDUCEMENT TO CARNAL INTERCOURSE.

The seduction and illicit connection with a girl under twenty-one and of previously chaste character, is "under promise of marriage" punishable under Cr. Code, sec. 212 whether it follows immediately after the promise of marriage or afterwards during the engagement if it can be inferred that the subsistence of the promise induced the girl's consent to carnal intercourse. The King v. Romans, 13 Can. Cr. Cas. 68.

[Distinguished in R. v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.]

MEANING OF "CHARACTER;" PROMISE OF MARRIAGE; EVIDENCE.

(1) The words "previously chaste character" as used in the Criminal Code (1906), sec. 212, as to seduction under promise of marriage, do not necessarily imply that the female shall be "virgo intacta." (2) A finding that a woman under the age of 21 years had sexual intercourse with the prisoner on a number of occasion in the year 1910, he being then over the age of 21 years, negatives a charge of seduction under promise of marriage based upon a similar act in the year 1911 alleged to have been induced by a promise of marriage. (3) The promise of marriage referred to in sec. 212 of Criminal Code (1906) must be an absolute promise and not a conditional promise only to be performed in the event of pregnancy happening, or it will be insufficient to support a charge of seduction under promise of marriage. (4) An admission of the prisoner made on the witness stand and a letter written by him saying among other things, "I can't marry you now," and making reference to procuring medicine for the girl's pregnancy is corroborative of a charge of seduction under promise of marriage. [R. v. Romans, 13 Can. Cr. Cas. 68, distinguished; R. v. Lougheed, 8 Can. Cr. Cas. 184, at p. 187, approved.] The King v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.

GIRL UNDER SIXTEEN; PREVIOUS CHASTE CHARACTER.

Where the girl was physically chaste, a conviction for her seduction when under the age of sixteen may be supported under Cr. Code (1906) sec. 211, although the circumstances indicated a fixed intention on her part, by arrangement with an intermediary, to surrender herself to the man for a stipulated price. [See R. v. Romans, 13 Can. Cr. Cas. 68; R. v. Lougheed, 8 Can. Cr. Cas. 184; and R. v. Comeau, 19 Can. Cr. Cas. 350, 5 D.L.R. 250.] R. v. Rioux, 22 Can. Cr. Cas. 323, 17 D.L.R. 691.

SEDUCTION UNDER PROMISE OF MARRIAGE.

Apart from any question of corroboration a promise of marriage cannot be predicated upon a mere question by the accused to the complainant asking if she loved him enough to live with him as he had money enough for two and her assent by answering "yes," so as to support a charge under Cr. Code, sec. 212 of seduction under promise of marriage. R. v. Spray, 24 Can. Cr. Cas. 152.

PREVIOUSLY CHASTE CHARACTER; PROMISE OF MARRIAGE.

Where the girl had been seduced by the accused in a foreign country and came to Canada with him, the resumption of illicit intercourse in Canada under promise of marriage will not support a charge under Cr. Code, sec. 212, of seducing a female of "previously chaste character" unless there is evidence that between the two acts of seduction there was such conduct and behaviour on her part as to imply reform and self-rehabilitation in chastity. [R. v. Lougheed, 8 Can. Cr. Cas. 184, approved.] R. v. Hauberg, 24 Can. Cr. Cas. 297.

EVIDENCE OF AGE.

On a criminal charge of seduction of a girl under twenty-one where the evidence of the girl's parents is not available, the girl's own testimony that her age was nineteen and the testimony to the like effect given by the woman under whose care she had been when a small child based upon information then received and upon personal observation is admissible in proof of her age being under twenty-one. [R. v. Cox [1898], 1 Q.B. 179, 67 L.J.Q.B. 293, 18 Cox 672, followed.] Cr. Code, sec. 984 does not exclude any other class of evidence that is by law admissible, but provides for another means of determining the age of the child or young person against whom the offence was committed in the specified classes of cases where the age is material, by enacting that the jury or the magistrate, as

the case may be, may infer her age by the girl's appearance. R. v. Spera, 25 Can. Cr. Cas. 180, 28 D.L.R. 377.

SEDUCTION EVIDENCE; PREVIOUSLY CHASTE CHARACTER.

Where two charges of illicit intercourse with a girl between fourteen and sixteen years of age are brought assigning different dates, the corroborative evidence merely as to the occurrence on the later date is not effective under Cr. Code, sec. 1002 as corroboration of the alleged former offence under Cr. Code, sec. 211; nor is the girl's testimony affirming carnal intercourse with the accused on the first date, while she was under the influence of liquor, conclusive as negativing her previously chaste character on the second date (Cr. Code, secs. 210 and 211) as to which the burden of proof is by sec. 210 placed upon the accused. R. v. Farrell, 26 Can. Cr. Cas. 273, 29 D.L.R. 671.

EVIDENCE OF UNCHASTITY.

On the trial of a charge under Cr. Code, sec. 211 for seducing a girl between fourteen and sixteen, of previously chaste character, testimony is admissible on behalf of the accused to prove prior specific acts of illicit intercourse between the girl and another man. R. v. Pieco, 27 Can. Cr. Cas. 435, 35 D.L.R. 124.

PREVIOUSLY CHASTE CHARACTER.

"Previously chaste character" of a girl, as it concerns the offence of seduction (Cr. Code, secs. 211 and 212), is not limited in its meaning to the physical condition of virginity, and notwithstanding that condition at the time of the alleged offence it may be shewn in defence of the charge by her admissions or otherwise that the girl had previously committed acts of gross immorality with a man and had exhibited a disposition for lewdness. R. v. Flora, 29 Can. Cr. Cas. 125, 41 D.L.R. 73.

SELF-DEFENCE.

See also Murder; Manslaughter; Homicide.

WOUNDING BY SHOOTING; JUSTIFICATION; PREVENTING ENTRANCE TO DWELLING-HOUSE TO COMMIT ASSAULT.

Trespass for shooting at and wounding plaintiff with a pistol. Plea, justifying in defence of defendant's dwelling-house, and to prevent plaintiff and others entering and assaulting him:—Held, bad, on demurrer, as shewing no defence, for before firing defendant should have warned the plaintiff to desist and depart, which was not averred. Semble, also, bad in point of form, for not shewing expressly whether defendant intended to admit the shooting or not. Spires v. Barrick, 14 U.C.Q.B. 420.

SHOOTING WITH INTENT; JUSTIFICATION; SELF-DEFENCE; CONTINUATION OR TERMINATION OF ASSAULT.

(1) Upon a charge of shooting with intent to do grievous bodily harm in which the plea is self-defence, it is a question for the jury whether the assault upon the accused, which had still provoked the shooting, had ended or was still being pursued. (2) It is misdirection to charge the jury that, to support the plea of self-defence to the infliction of grievous bodily harm, they must find that the accused could not otherwise have preserved himself from death or grievous bodily harm, it being a sufficient justification if the accused had a reasonable apprehension of grievous bodily harm to himself from the violence of the assault upon him, and if he believed on reasonable grounds that he could not preserve himself from grievous bodily harm otherwise than by inflicting grievous bodily harm upon his assailant. The King v. Ritter, 8 Can. Cr. Cas. 31.

BURDEN OF PROOF.

When on a murder trial, homicide by the accused is proved, it is for the latter, if he claims to justify his act as one of self-defence, to prove that the mode of defence that he employed was necessary. R. v. Shayanez, 26 Can. Cr. Cas. 438.

SENTENCE.

See also Imprisonment; Fine.

No habeas corpus to set aside erroneous sentence of Court of general and competent jurisdiction. 1 Can. Cr. Cas. 544.

CONCURRENT SENTENCES.

There is no presumption that sentences passed at the one time are to be concurrent. Ex parte Bishop, 1 Can. Cr. Cas. 118.

COUNTY JUDGE'S CRIMINAL COURT.

Where sentence has been passed by a Court having general jurisdiction of the case such as the County Judge's Criminal Court has in cases of theft, and the prisoner is detained in custody thereunder, the authority of the Court to pass the sentence need not be set out by the gaoler upon the return to a writ of habeas corpus. R. v. Burke, 1 Can. Cr. Cas. 539.

[Referred to in Ex parte Goldsberry, 10 Can. Cr. Cas. 392; Ex parte Goldsberry, 27 Que. S.C. 397, 434.]

COMPUTATION OF TIME FROM PASSING.

The term of imprisonment in pursuance of any sentence runs from the day of the passing of such sentence, without interruption, except when especially provided otherwise by law. The revocation of a ticket of leave by the Crown, without cause assigned, works no interruption in the running of the sentence which shall terminate at the

same time as if such license had never been granted. R. v. Johnson, 4 Can. Cr. Cas. 178.

LIMIT OF, ON SUMMARY TRIAL FOR AGGRAVATED ASSAULT.

On a charge under Cr. Code, sec. 783 (c) of aggravated assault with grievous bodily harm, a police magistrate in Ontario trying the case on the consent of the accused to be tried summarily, the sentence which the magistrate may impose is not limited to six months' imprisonment, but may be as great as can be imposed therefor on a trial on indictment at General Sessions. R. v. Archibald, 4 Can. Cr. Cas. 159.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 77, 39 N.S.R. 122; R. v. Coolen, 7 Can. Cr. Cas. 524; R. v. Crawford, 20 Can. Cr. Cas. 53, 6 D.L.R. 380.]

LIMIT OF; REDUCING ILLEGAL SENTENCE ON CASE RESERVED.

To justify a sentence of more than three years' imprisonment for assault and wounding a public officer, the charge must allege that the offence was committed while the officer was engaged in the execution of his duty (Code, sec. 243.) The Court of Appeal hearing a case reserved as to the validity of a sentence has power under Cr. Code, sec. 476 (c) to correct the erroneous sentence. R. v. Dupont, 4 Can. Cr. Cas. 566.

[Commented on in R. v. Williams, 16 Can. Cr. Cas. 486, 21 O.L.R. 467; discussed in R. v. Amyot, 11 Can. Cr. Cas. 232, 242, 15 Que. K.B. 28.]

ILLEGALITY OF SENTENCE; IMPRISONMENT LONGER THAN IS AUTHORIZED.

Habeas corpus does not lie to correct a sentence of imprisonment passed by a County Court Judge's Criminal Court alleged to be for a time longer than is authorized. The proper mode of procedure is by case reserved or by appeal under Part LII. of the Code. The King v. Kavanagh, 5 Can. Cr. Cas. 507

[Referred to in Ex parte Goldsberry, 10 Can. Cr. Cas. 392, 397, 27 Que. S.C. 434.]

PASSING SENTENCE A JUDICIAL ACT; NO MANDAMUS TO CORRECT ERROR ONLY.

(1) On an application for a mandamus to a magistrate, the Superior Court cannot itself amend the conviction in question. (2) Mandamus does not lie to compel an inferior Court to render a judgment in terms conformable to the opinion of the Superior Court, nor to correct the erroneous decision of an inferior Court in a matter within its jurisdiction unless by such decision the jurisdiction is denied. (3) The passing of sentence upon a convicted person is a judicial act and not merely ministerial even where the statute prescribes a fixed penalty. The King v. Case (No. 1), 7 Can. Cr. Cas. 204.

IMPRISONMENT; COMPUTATION FROM DATE OF SENTENCE.

It is unnecessary in a sentence of imprisonment to a penitentiary, or in the warrant issued in pursuance thereof, to state a date from which the imprisonment is to run, as under the Penitentiaries Act the term of imprisonment counts from the date of sentence unless otherwise ordered. The King v. Smitheman (No. 1), 9 Can. Cr. Cas. 10, affirmed in 9 Can. Cr. Cas. 17.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 281, 19 Que. K.B. 133.]

CERTIFICATE OF SENTENCE TO PENITENTIARY; DATE OF SENTENCE.

If the certificate of sentence to imprisonment in a penitentiary is irregular for omission of the date of sentence, leave may be given on a habeas corpus motion to return an amended certificate correcting the omission. The King v. Wright, 10 Can. Cr. Cas. 461.

[Followed in McCrea v. Watson, 37 N.B. R. 627.]

RELEASE ON SUSPENDED SENTENCE; PREVIOUS CONVICTION.

The proper time for taking evidence of a previous conviction to exclude a magistrate's jurisdiction to release on suspended sentence is after the finding of guilty on the present charge and not during the hearing of the charge. The King v. Bonnevie, 10 Can. Cr. Cas. 376.

SENTENCE OF IMPRISONMENT.

(1) If a person sentenced to imprisonment upon summary conviction gives a recognizance and is liberated under sec. 750 (c) pending an appeal from the summary conviction, the interval until his return to custody will not count on the term of imprisonment, as affirmed on the appeal. (2) If a person sentenced to imprisonment upon summary conviction remains in gaol pending his appeal therefrom, the time so served counts on the term of imprisonment as affirmed on the appeal. (3) Where the accused sentenced on summary conviction to three months' imprisonment served seven days thereunder and then obtained his release under Code, sec. 750, pending an appeal, but the conviction was afterwards affirmed, a fresh commitment erroneously issued for the whole term of three months instead of for the remainder of such term is not bad in toto and may be amended under Code, secs. 1121 and 1124 on habeas corpus. Collette v. The King, 16 Can. Cr. Cas. 281.

RESERVED CASE AFTER SENTENCE; RESPITE OF SENTENCE.

(1) On reserving a case by way of appeal after conviction, the trial Judge has power to postpone sentence and admit the accused to bail meanwhile or after sentencing the accused or stay the execution of

the sentence pending the determination of the reserved case upon bail being given. (2) The power to respite the execution of the sentence pronounced until the appeal shall have been decided, is not restricted to cases reserved during the trial or in which no part of the sentence has been carried out, but may be exercised on granting a reserved case, after a substantial portion of the imprisonment order has been served. Johnston v. Attorney-General, The King v. Johnston, 16 Can. Cr. Cas. 296.

SENTENCE AND IMPRISONMENT; LIMITATIONS; SUMMARY TRIAL.

The restriction of Cr. Code, sec. 780, by which the imprisonment must not exceed a term of six months where a charge of theft not exceeding $10 is tried summarily under Cr. Code, sec. 773, by a magistrate not of the class having extended jurisdiction under Cr. Code, sec. 777, applies not only where the accused pleads "not guilty" (Cr. Code, sec. 780), but also where he pleads "guilty" and is under sec. 778 liable to "such sentence as by law may be passed in respect to such offence, etc." Where an excessive term of imprisonment has been imposed upon a plea of guilty at a summary trial of an indictable offence, the plea is not equivalent to a "deposition" for the purposes of reducing the sentence in certiorari proceedings by an amendment of the conviction; the latter must, therefore, be quashed where the punishment is excessive and there are no depositions from which the court may, in the terms of Cr. Code, sec. 1124, satisfy itself that an offence of the nature described has been committed. R. v. Alexander and Shouldice, 21 Can. Cr. Cas. 473, 13 D.L.R. 385.

SENTENCE AND IMPRISONMENT; WHEN TIME BEGINS TO RUN.

Where a defendant on summary conviction is sentenced to imprisonment for a certain term by a magistrate, the period of imprisonment is to be calculated from the time the actual imprisonment commences. [Bowdler's Case, 17 L.J.Q.B. 243; Ex parte Foulkes, 15 M. & W. 612; Braham v. Joyce, 4 Exch. 487, followed.] R. v. Gregg, 22 Can. Cr. Cas. 51, 13 D.L.R. 770.

IMPRISONMENT IN DEFAULT OF FINE; SUMMARY TRIAL.

Sub-section 2 of Cr. Code, sec. 781 (Amendment of 1913) applies to authorize a commitment in default of paying the fine imposed on a summary trial under Cr. Code, sec. 773 (c) for aggravated assault, where the sole penalty in the first instance was a fine, as well as to cases where both fine and imprisonment were imposed in the first instance; and this although the imprisonment on default of paying the fine is referred to in the sub-section as being for a "further term" not exceeding six months. Hard labour may be imposed although the imprisonment is only in the alternative of default being made in paying the fine imposed on a summary trial (ex. gr., for aggravated assault). R. v. Nelson, 22 Can. Cr. Cas. 301, 17 D.L.R. 305.

PARTIAL REMISSION OF SENTENCE FOR GOOD CONDUCT; POWER TO REVOKE OR FORFEIT.

A convict in a penitentiary may provisionally earn a remission of part of his sentence by good conduct duly certified in pursuance of the of the Penitentiary Regulations of November, 1898; but remissions so earned are subject to forfeiture under such Rules and this without any hearing in the nature of a trial or any right of the convict to be heard. R. v. Huckle, 23 Can. Cr. Cas. 73, 19 D.L.R. 359.

REPRIEVE; DEATH SENTENCE; DISCRETION OF TRIAL JUDGE; PROPOSED APPEAL TO PRIVY COUNCIL.

The right of the trial Judge in a capital case to grant a reprieve of the death sentence is discretionary; and where it is sought for the purpose of appealing to the Judicial Committee of the Privy Council on a point of a purely technical character, quite apart from the merits of the conviction, and after a decision by the provincial Court of Appeals against the prisoner, a reprieve will be refused if in the Judge's opinion the further appeal which could be had only by an application to the Privy Council for special leave would be a frivolous one. R. v. Cook (No. 2), 23 Can. Cr. Cas. 86, 19 D.L.R. 318. See also 22 Can. Cr. Cas. 241, 23 Can. Cr. Cas. 50, 18 D.L.R. 706.

RUNNING OF SENTENCE; LIBERTY ON BAIL PENDING APPEAL; QUASHING OF APPEAL.

Where a person under sentence for an indictable offence was improperly given his liberty by taking bail for an appeal where no appeal lay, the time during which the convict was at liberty between the giving of bail and the quashing of the appeal does not run in his favour, although he had served a part of the sentence before bail was accepted; the period of the bail in such case is within sec. 3 of the Prisons and Reformatories Act, R.S.C. 1906, ch. 148, enacting that the time during which a convict is "out on bail" shall not be reckoned as part of his sentence; and his continuance at liberty after the quashing of the appeal constitutes an "escape" under Cr. Code, sec. 196, and on being retaken he must serve the remainder of the time for which his sentence was to run. [Robinson v. Morris, 23 Can. Cr. Cas. 209, 19 O.L.R. 633, applied.] R. v. Rapp, 23 Can. Cr. Cas. 203, 18 D.L.R. 690.

RUNNING OF SENTENCE ON SUMMARY CONVICTION.

On a summary conviction awarding imprisonment for four months for a second of-

fence against a liquor law, the defendant who had been allowed at the time of sentence to go at large upon his recognizance to appear when called upon, is not entitled to have the period for which he was so at liberty prior to arrest upon a warrant of commitment counted as part of the four months' term. [R. v. Robinson, 12 Can. Cr. Cas. 447, 14 O.L.R. 519, overruled; R. v. Taylor, 12 Can. Cr. Cas. 244, referred to.] Robinson v. Morris, 23 Can. Cr. Cas. 209.

EXCESSIVE FINE ON SUMMARY TRIAL.

Where a penalty in excess of the statutory limit of Cr. Code, sec. 781 (amendment of 1913) is imposd on a summary trial without consent (Code, secs. 773 and 774) on a charge of keeping a disorderly house, the remedy is by certiorari (Cr. Code, secs. 599, 797 (2) [amendment of 1913] 1124 and 1126) and not by a motion under Cr. Code, sec. 1016 (2) to the Court of criminal appeal to pass the proper sentence; the latter clause applies only where an appeal may be taken to the Court of Appeal under sec. 1013. R. v. Booth, 23 Can. Cr. Cas. 224.

HARD LABOUR; SUMMARY TRIAL.

Where both fine and imprisonment are imposed on a summary trial for an offence within Cr. Code, sec. 781 (amendment of 1913), hard labour may be imposed at the discretion of the justices as an incident to the imprisonment. [R. v. Burtress, 3 Can. Cr. Cas. 536, referred to.] R. v. Morton, 23 Can. Cr. Cas. 172, 18 D.L.R. 553.

ILLNESS OF JUDGE BEFORE SENTENCE DAY AND AFTER VERDICT; JURISDICTION OF OTHER JUDGE.

When the Judge who had presided at a criminal trial with a jury before the Court of King's Bench, Quebec, was taken ill between the date of the verdict of guilty and the date to which sentence was deferred, and was unable to preside on the latter date, another Judge of that Court may with the concurrence of the Chief Justice take the place of the trial Judge and pass sentence. R. v. Bourret, 24 Can. Cr. Cas. 65.

CONSIDERATION OF PRIOR CONVICTIONS.

Leave may be given to the Crown after verdict to adduce evidence of previous convictions of the accused for the information of the Court in determining the punishment. (See also R. v. Bonnevie, 10 Can. Cr. Cas. 376.) R. v. Rowluk, 24 Can. Cr. Cas. 127.

CORRECTION ON APPEAL.

Where the sentence passed by the Court below is declared erroneous, the Court hearing the appeal under Cr. Code, sec. 1018, may, on setting it aside, declare what the proper sentence should be and remit the case with directions to pronounce the specific sentence declared by the Appellate Court. R. v. Sperdakes, 24 Can. Cr. Cas. 210.

SUSPENSION OF SENTENCE; SUMMARY TRIAL.

A magistrate holding a summary trial has power under Criminal Code, sec. 1081, to suspend sentence in certain cases, but sentence cannot be suspended until there has been an adjudication of guilt. R. v. White, 24 Can. Cr. Cas. 277.

ALTERNATIVE OF LEAVING JURISDICTION; STAY OF COMMITMENT.

Where a magistrate imposes a sentence of three months' imprisonment on convicting the accused tried before him under Part XVI, sec. 774, for an indictable offence, and at the same time directs that the accused be given time to leave the city by staying the issue of the commitment for forty-eight hours, the accused is free from arrest under that conviction on returning to the city more than three months after the commitment might have issued, for the sentence of commitment was then spent. (Per Galt, J.) R. v. Fitzpatrick, 25 Can. Cr. Cas. 42.

ONE SENTENCE FOR SEVERAL OFFENCES; SUMMARY TRIAL.

In view of Cr. Code, sec. 1005, it would be no objection that one sentence has been pronounced upon a charge tried under the "Summary trials" procedure, Part XVI. of the Criminal Code (secs. 777 and 778), for two distinct offences disclosed in the written charge on which the accused elected summary trial and pleaded guilty, provided the sentence was warranted for one of such offences. R. v. Morgan, 25 Can. Cr. Cas. 192.

EXCESSIVE FINE; EVIDENCE OF OTHER OFFENCE.

In sentencing a defendant found guilty of an offence the magistrate should not increase the severity of the sentence because he considers the defendant guilty of another offence with which he has not been charged. R. v. Harris, 30 Can. Cr. Cas. 13, 40 D.L.R. 684.

SEPARATE TRIAL.

Note on separate trials on joint indictment. 3 Can. Cr. Cas. 353.

JOINT INDICTMENT; SEPARATE TRIALS; DISCRETION.

Where several persons are indicted jointly, the Crown has the option of having them tried separately instead of together. Where several persons are indicted jointly, none of them can demand a separate trial as a matter of right. When the trial of the defendants jointly instead of separately would work an injustice to any of them, the presiding Judge may, on due cause being shewn, exercise his discretionary right

to direct a separate trial. (Grounds upon which a separate trial is usually allowed, considered.) R. v. Weir (No. 4), 3 Can. Cr. Cas. 351.

[Referred to in R. v. Martin, 9 Can. Cr. Cas. 383.]

HUSBAND AND WIFE JOINTLY ACCUSED; ADMISSION BY ONE INCRIMINATING THE OTHER; ADMISSIBILITY.

(1) Where two prisoners are being jointly tried for an offence, a voluntary admission made by one of them is evidence against himself only, and if it implicates a fellow prisoner the trial Judge should warn the jury that the statement is evidence only against the person making it, and should not be considered in weighing the evidence against the fellow prisoner. (2) Semble, the prisoner jointly charged and likely to be implicated by the statement of the other accused person, would have good ground for applying to be separately tried, in order to prevent the statement being put in even with such warning, as evidence before the jury by which he is to be tried. The King v. Martin, 9 Can. Cr. Cas. 371.

[Referred to in R. v. Eliasoph, 16 Can. Cr. Cas. 131, 19 Que. K.B. 238; R. v. See Woo, 16 Can. Cr. Cas. 214.]

RAPE; ABETTOR JOINTLY INDICTED WITH PRINCIPAL.

Where two prisoners are jointly indicted but an order is made for their separate trial, the one is an admissible witness for the other and is bound to testify although he may prevent his evidence being used against himself at his subsequent trial. The King v. Blais, 10 Can. Cr. Cas. 354.

DISAGREEMENT OF JURY UPON SOME COUNTS; SEPARATE TRIAL BEFORE NEW JURY.

As each count in an indictment may be treated as a separate indictment (Cr. Code, sec. 857), if the jury agree upon some counts and disagree upon others, the trial Judge may take their verdict on those upon which there is an agreement and may discharge the jury and order a separate trial as to the others before a new jury. The King v. Toronto Railway Co. (No. 1), 18 Can. Cr. Cas. 417, affirmed in 25 Can. Cr. Cas. 183, 25 D.L.R. 586.

SEPARATE TRIAL OF COUNTS; EVIDENCE.

Where evidence is tendered in support of one count of an indictment which while admissible thereon is not admissible in proof of another count of the same indictment, the defendant's remedy is to apply under Cr. Code, sec. 857 to have each count tried separately if he fears that, notwithstanding the direction which would properly be given by the judge to the jury to disregard such evidence in considering the second count, the jury would unconsciously be influenced thereby to the prejudice of the accused. R. v. Strong, 24 Can. Cr. Cas. 430, 26 D.L.R. 122.

SHEEP PROTECTION.

VICIOUS PROPENSITY OF A DOG IMMATERIAL.

The owner of a sheep killed or injured by a dog can, under R.S.O. (1887), ch. 214, sec. 15, recover the damage occasioned thereby without proving that the dog had a propensity to kill or injure sheep; and the Act applies to a case where the dog has been set upon the sheep. Regina v. Perrin (1888), 16 O.R. 446.

ONTARIO SHEEP PROTECTION ACT; OWNING VICIOUS DOGS; ORDER FOR DESTRUCTION; ORDER FOR DAMAGES; SEPARATE INFORMATION OR COMPLAINT.

The offence under the Ontario Sheep Protection Act of possessing a dog which has worried sheep is committed in the district in which the owner of the dog resides and where the dog is ordinarily kept, notwithstanding that the sheep worrying may have taken place in another district. A justice of the peace has no jurisdiction to try a charge in respect of such an offence alleged to have been committed in an incorporated town having a police magistrate of its own, except in the event of the latter's illness, absence or request. (R.S.O. 1897, ch. 87, sec. 7.) A summary proceeding under that statute before a justice to recover damages for the killing of sheep by dogs is not ancillary to the proceedings under the same statute for the offence of possessing dogs which have killed sheep, and an order for such damages cannot be made on the trial of the complaint for possessing. Semble, a justice of the peace may try a complaint under that statute for the recovery of damages if he has jurisdiction in the district in which the sheep were killed or injured. The King v. Duering, 5 Can. Cr. Cas. 135.

[Referred to in R. v. Holmes, 12 Can. Cr. Cas. 241; considered in R. v. Ackers (No. 3), 16 Can. Cr. Cas. 226.]

SHIPPING.

See also Seamen; Desertion; Piracy.

FOREIGN SEAMEN ON BRITISH SHIP; LEAVE OF GOVERNOR-GENERAL FOR PROSECUTION.

A foreign seaman on a British ship cannot be summarily convicted for insubordination under the Canada Shipping Act, R.S.C. 1906, ch. 113, sec. 287, unless leave to lay the information has been granted by the Governor-General under sec. 591 of the Revised Criminal Code. The King v. Adolph, 12 Can. Cr. Cas. 413.

[Distinguished in R. v. Tano, 14 B.C.R. 202, 14 Can. Cr. Cas. 442.]

SAILOR; WILFUL DISOBEDIENCE.

(1) It is essential in a conviction of a sailor under the Canada Shipping Act for continued wilful disobedience to state that the act charged was wilfully committed, and the omission to do so is fatal to the validity of the conviction. (2) The defect is not cured by stating the offence in the conviction to be "unlawful" disobedience. The King v. Bridges, 12 Can. Cr. Cas. 548.

FALSE STATEMENT OF SERVICE ON APPLICATION FOR MASTER'S CERTIFICATE.

(1) The offence of making a false representation for the purpose of obtaining a certificate of competency as master of a passenger steamer under the Canada Shipping Act, R.S.C. 1906, ch. 113, is negatived if it appears that there was no guilty knowledge or intent on the part of the accused and that the only error in his application papers was that believing that service as second mate counted in like manner as would service as first mate, he represented that he had served as mate "on a certain boat for a year," whereas a part of the time had been served as second mate and the remainder as mate (i.e., first mate), particularly where the examining officer when called as a witness testified that he would have passed the applicant's papers had the actual facts been shewn. (2) A certificate of discharge furnished by the master of a ship to the second officer under sec. 176 of the Canada Shipping Act, R.S.C. 1906, ch. 113 (Form K.) is not a certificate of service within section 123 of that Act making it an offence for a person to fraudulently make use of a certificate of service to which he was not entitled. The King v. Wright, 20 Can. Cr. Cas. 23, 2 D.L.R. 678.

CRIMES ON HIGH SEAS IN BRITISH SHIPS.

The restrictions of Code, sec. 591 as to obtaining the leave of the Governor-General before taking proceedings for the trial of offences within the Admiralty jurisdiction are specially applicable to offences committed upon foreign ships within British and Colonial territorial waters; they do not apply to prosecutions for offenses committed on British ships on the high seas. Cases as to which sec. 686 of the Merchant Shipping Act confers trial jurisdiction on Canadian courts in like manner as if the offense on the high seas had been committed within Canadian territory are not subject to Code, sec. 591. [R. v. Heckman, 5 Can. Cr. Cas. 242, considered by Longley, J., and Ritchie, E.J.] Sec. 591 of the Criminal Code (1906) having been taken from sec. 3 of the territorial Waters Jurisdiction Act 1878. Imp., it should be construed according to the application and definitions to which the corresponding enactment in the latter Act was subject. (Per Chisholm J.) [R. v. Keyn, 2 Ex. D. 63 (the Franconia case), referred to.] R. v. Neilson, 3[illegible] Can. Cr. Cas. 1, 40 D.L.R. 120.

OFFENCES UNDER SHIPPING LAWS; DESERTION.

Where a summary conviction of a seaman for desertion under the Canada Shipping Act, R.S.C. 1906, ch. 113, sec. 287, as amended by 1907, Canada Statutes, ch. 46, does not show that the ship was registered in one of the provinces at the time of the offence, the defendant will be discharged in habeas corpus proceedings from custody under the commitment following such conviction. It is not a ground for discharge on habeas corpus that the summary conviction and commitment purported to include as one offence the desertion of a seaman and also his refusal to do duty which are declared to be offences by the Canada Shipping Act, R.S.C. 1906, ch. 113, sec. 287, as amended 1907. Re Dalton, 26 Can. Cr. Cas. 142, 30 D.L.R. 659.

SHOOTING WITH INTENT.

ATTEMPT TO MURDER; AMENDMENT OF INDICTMENT; CIRCUMSTANCES DISCLOSING INTENT.

(1) On the trial of a person accused of attempt to murder by shooting, evidence that he had burglar's tools in his possession at the time is admissable, as tending to prove criminal intent. (2) An indictment that "A.B. attempted to kill and murder C.D." sufficiently discloses an indictable offence, and the Court has the power to allow it to be amended so as to read that "A.B. with intent to commit murder, shot at C.D." (3) It is proper for the Judge, in charging the jury in a trial for an attempt to murder, to instruct them that they may draw an inference as to the prisoner's intent to kill from the circumstances of his being a stranger loitering in a street or park, between four and five o'clock in the morning, with a loaded revolver and burglar's tools in his possession. The King v. Mooney, 11 Can. Cr. Cas. 333.

SHOPBREAKING.

ARREST WITHOUT WARRANT; REASONABLE AND PROBABLE CAUSE; SHOPBREAKING.

If a person, with intent to steal something out of a shop or store, opens a door leading into it by lifting the latch or turning the knob and then enters the store, although during business hours, for the purpose of carrying out his unlawful intention, he may be convicted of shopbreaking under sec. 461 of the Code. The King v. Smith, 13 Can. Cr. Cas. 326.

SMUGGLING.

COMMITMENT; CUSTOMS ACT.

(1) A warrant of commitment by justices in default of payment of a fine imposed under the Customs Act for smuggling, and under which the accused is required to pay also the expenses of being conveyed to goal before he can obtain his liberty, is invalid if the amount of such expenses are not stated therein. (2) A conviction under sec. 192 of the Customs Act (Can.) for clandestinely landing spirits in Canada should shew on its face that the goods were subject to duty. R. v. Thomas McDonald, 2 Can. Cr. Cas. 504.

BEING ON ABROAD SMUGGLING VESSEL "IF KNOWINGLY CONCERNED" IN SMUGGLING OPERATIONS.

(1) It is essential to the offence of participation in smuggling operations by being on board a boat engaging therein that the defendant should have been knowingly concerned in the prohibited acts and such guilty knowledge must be charged and proved by the prosecutor. (2) The words "if he has been knowingly concerned" contained in sec. 216 of the Customs Act, R.S. C. ch. 48, constitute a condition precedent to the completion of the offence and are not merely an exemption, exception or proviso not necessary to be alleged under Code sec. 717 (amendment of 1909). (3) Where the charge to which the prisoner pleaded guilty did not allege that he had been "knowingly concerned" in the prohibited acts, a warrant of commitment in like terms in sufficient and the prisoner is entitled to be discharged on habeas corpus. The King v. McDonald, 16 Can. Cr. Cas. 505.

SODOMY.

See Assault.

SOLDIERS.

See also Military law.

CONVICTION OF; EFFECT.

A soldier convicted of bigamy is not thereby discharged from the service to which he belonged. Regina v. Creamer, 10 L.C.R. 404.

UNLAWFUL DEALING WITH SOLDIER'S NECESSARIES; CONVICTION FOR BUYING, EXCHANGING, TAKING IN PAWN, DETAINING OR RECEIVING.

A summary conviction under the Army Act for "buying, exchanging, taking in pawn, detaining or receiving" from a soldier his war medal is to be construed under Code, sec. 907 as charging a single offense only, and is not bad for uncertainty. The King v. Brine, 8 Can. Cr. Cas. 54.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 36.]

EXEMPTION FROM CIVIL ARREST; BASTARDY; SOLDIER ON ACTIVE SERVICE; HABEAS CORPUS.

A soldier of the Canadian forces under orders for overseas service is not subject to arrest in proceedings under the Bastardy Act, R.S.N.S., ch. 51, and when held in custody on a remand in such proceedings he will be discharged on habeas corpus. [The Army Act (Imp.), sec. 145, and the Militia Act, R.S.C. 1906, ch. 41, sec. 74, applied.] Ex parte Hughes, 24 Can. Cr. Cas. 222, 24 D.L.R. 898.

SOLICITOR.

TERMINATION OF SOLICITOR'S AUTHORITY.

The authority of the solicitor acting for the accused in the trial proceedings is prima facie to be presumed to have terminated upon the latter's acquittal; and proof of service upon the solicitor of a notice of an application by the Crown for a new trial and of the hearing of a case reserved is insufficient in the absence of evidence rebutting such presumption. R. v. Williams, 3 Can. Cr. Cas. 9.

LICENSE FEE; SUMMARY CONVICTION; STATUTES; INTERPRETATION.

The general language of the City Act, 1915, Sask. ch. 16, sec. 204, as to licensing businesses and callings is to be read as subject to the specific legislation controlling the practice of law contained in the Legal Profession Act, R.S.S. 1909, ch. 104, and to exclude any power by the municipality to impose an annual license fee upon practicing barristers and solicitors; a summary conviction of a barrister for non-payment of a business license tax in respect of his office premises was therefore quashed. [Barker v. Edger, [1898] A.C. 748, referred to.] R. v. MacDonald, 28 Can. Cr. Cas. 311, 33 D.L.R. 770.

SPEEDY TRIAL.

Note on electing speedy trial without jury. 5 Can. Cr. Cas. 126.

Speedy trial by consent without jury; Power of adjournment; Cr. Code, sec. 777. 2 Can. Cr. Cas. 142.

Procedure after committal; Election of speedy trial. 9 Can. Cr. Cas. 483.

Election of speedy trial; 10 Can. Cr. Cas. 290.

SURRENDER BY DEFENDANT OUT ON BAIL; ELECTION TO SUMMARY TRIAL; EFFECT ON SUBSEQUENT INDICTMENTS.

The surrender of defendants out on bail, including the surrender by a defendant him-

self out on his own bail, committed to gaol for trial, has the effect of remitting them to custody, and enables them to avail themselves of the Speedy Trials Act, 52 Vict. ch. 47 (D.), and to appear before the County Judge and elect to be tried summarily; and where defendants had so elected, indictments subsequently laid against them at the Assizes, were held bad and quashed even after plea pleaded were done through inadvertence, sec. 143 of R.S.C. ch. 174, not being in such case any bar. Regina v. Burke et al. (1893), 24 O.R. 64.

ADJOURNMENT OF TRIAL.

An adjournment of a speedy trial to permit the Crown to obtain better evidence, that a witness examined on the preliminary hearing was absent from Canada in order to admit his deposition, refused as contrary to the spirit of the Act. Regina v. Morgan, 2 B.C.R. 329.

CHARGE OF ASSAULT; ACQUITTAL; JURISDICTION OF MAGISTRATE TO CONVICT FOR SECOND CHARGE.

Defendant was committed for trial by the stipendiary magistrate for the city of Halifax charged with an assault upon LeP. He elected to be tried under the Speedy Trials Act by the County Court Judge for the district of Halifax, and was tried and acquitted. The prosecuting attorney thereupon, under sec. 12 of the Act, preferred a charge of an assault upon M. Objection was taken to the jurisdiction of the Court to try the defendant upon this charge, but the objection having been overruled, defendant consented to be tried, and was tried, and convicted:—Held, following, The Queen v. Lonar, ante p. 124, that the Judge had no jurisdiction to try the defendant for the offence for which he was convicted. The Queen v. Smith, 25 N.S.R. 138.

MAGISTRATE'S COURT AS COURT OF RECORD; REVIEW OF JUDGMENT ON HABEAS CORPUS.

A district magistrate acting under the Speedy Trials Act acts as a Court of Record for all the purposes of the trial, and the proceedings connected therewith or relating thereto, although he does not retain the record, but files it in the Court of General Sessions, really before this Court in the rural districts. Being a Court of Record his judgment cannot be enquired of on habeas corpus. It may on writ of error which the Court of Queen's Bench has, by statute, authority to grant, as also it has, as an incident of its general powers, the right to issue a certiorari to bring up the record. Ex parte O'Kane, Ramsay's Cas. (Que.) 188.

ADMISSION TO BAIL.

The admission to bail under Cr. Code, sec. 601, does not deprive the accused of the right to a speedy trial under Cr. Code, sec. 765. R. v. Lawrence, 1 Can. Cr. Cas. 295.

[Disapproved in R. v. Vian, 7 Que. K.B. 381; R. v. Smith, 3 Can. Cr. Cas. 469; discussed in R. v. Phinney (No. 1), 36 N.S.R. 272; followed in Attorney-General v. Midland R. Co., 3 O.R. 511; questioned in R. v. Hammond, 29 O.L.R. 211; distinguished in R. v. Clark, 3 O.L.R. 176; R. v. Smith, 31 N.S.R. 414; approved in R. v. Thompson, 17 Man. L.R. 612, 14 Can. Cr. Cas. 27, 31.]

(See subsequent amendment of sec. 765 in 1900.)

CHANGE OF ELECTION FOR.

A prisoner who has elected for a jury trial has no further option to elect in favour of a speedy trial, although the election made by him was made under mistake. R. v. Ballard, 1 Can. Cr. Cas. 96.

FINDING OF FACT; REVIEW.

Where the trial takes place by consent without a jury the finding by the trial Judge of an intent to steal should not be interfered with unless there is no evidence thereon which could properly be submitted to a jury. R. v. Gibbons, 1 Can. Cr. Cas 340.

WAIVER; PLEA IN JURY COURT.

If the accused, after electing in favour of a speedy trial, his right to which is disputed by the Crown, takes no further steps to obtain that right and is then indicted at the next jury Court his plea to such indictment will conclude him as to the mode of trial, and he cannot afterwards elect for a speedy trial without a jury under Cr. Code, sec. 765. R. v. Lawrence, 1 Can. Cr. Cas. 295.

ADJOURNMENT; ELECTION TO PROCEED IN ABSENCE OF MATERIAL WITNESS.

An adjournment of a speedy trial may be made under Cr. Code, sec. 777 in order to obtain the attendance of a material witness, although the party applying for the same had elected to proceed without such witness, and although the trial had commenced. R. v. Gordon, 2 Can. Cr. Cas. 141.

CHARGES TRIED CONSECUTIVELY; FINDING RESERVED.

(1) Notwithstanding Cr. Code, sec. 777 authorizing the adjournment of a trial, it is not competent for a judge trying a charge without a jury under the Speedy Trials clauses of the Code to postpone his decision on the first charge until he has heard the evidence on several other charges against the same accused party, and to then decide the question of guilt in all. (2) To inject one trial into another trial of the same accused person for another offence is proceeding which prejudices his defense and entitles him to a new trial upon both charges. (3) If time be required in the first case for deliberation on the question of guilt after hearing the evidence, an ad-

journment may be made, but the trial of the subsequent charges must likewise be postponed. R. v. McBerny, 3 Can. Cr. Cas. 339.

[Referred to in Ex parte Monahan, 17 Can. Cr. Cas. 53; R. v. Sing, 6 Can. Cr. Cas. 156, 9 B.C.R. 254; Re Cross, 3 Can. Cr. Cas. 177; followed in R. v. Burke, 8 Can. Cr. Cas. 15, 36 N.S.R. 411; R. v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210; considered in R. v. Bullock, 8 Can. Cr. Cas. 13; discussed in R. v. Iman Din, 18 Can. Cr. Cas. 88; relied on in R. v. Bigelow, 8 Can. Cr. Cas. 134.]

ADMISSION TO A BAIL WITHOUT A COMMITTAL.

Where upon a preliminary enquiry the justice finds that the evidence is sufficient to put the accused on his trial, and that it does not furnish such a strong presumption of guilt as to warrant a committal for trial (Cr. Code, sec. 601) and the accused is in consequence admitted to bail upon finding sureties for his appearance to answer an indictment, but is subsequently rendered to the gaol by the sureties under Cr. Code, sec. 910, the person so rendered is not "committed to gaol for trial" within the meaning of Cr. Code, sec. 765, and cannot be tried under the Speedy Trials clauses at the County Judge's Criminal Court. (But see Code Amendment Act 1900, 3 Can. Cr. Cas. 588.) R. v. James Gibson, 3 Can. Cr. Cas. 451.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 289; R. v. Wener, 6 Can. Cr. Cas. 406, 12 Que. K.B. 320; R. v. Doherty, 32 N.S.R. 236; R. v. Doherty, 3 Can. Cr. Cas. 506, 29 N.S.R. 4; followed in R. v. Smith, 3 Can. Cr. Cas. 467, 31 N.S.R. 415; applied in R. v. Weir, 2 Que. P.R. 403; discussed in R. v. McDougall, 8 O.L.R. 30; relied on in R. v. Poirier, 31 Que. S.C. 71.]

ELECTION OF, BY ACCUSED; ADMISSION TO BAIL WITHOUT A COMMITTAL.

(1) In order that an accused should have the right to elect to be tried without a jury at the County Judge's Criminal Court, he must have been "committed to gaol for trial" (Cr. Code, sec. 765), and the County Judge's Criminal Court has no jurisdiction in a case where the magistrate admitted the accused to bail in the first instance under Cr. Code, sec. 601, without an order of committal. (2) The committal referred to in sec. 765 of the Criminal Code is a committal by the magistrate and does not include a Judge's order made under Cr. Code, sec. 910 for the render of the accused to gaol at the instance of his bondsmen. R. v. Smith, 3 Can. Cr. Cas. 467.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 289.]

CHARGE NOT FOUNDED ON DEPOSITIONS.

A reserved case upon an objection taken before pleading, that the charge, upon which the accused was arraigned for a "speedy trial," was not founded upon the evidence adduced at the preliminary enquiry should not be heard by the Appellate Court to which it is referred until after the trial has been concluded, and then only in case of conviction. R. v. Trepanier, 4 Can. Can. Cr. Cas. 259.

[Referred to in R. v. Lynn (No. 2), 19 Can. Cr. Cas. 132, 4 Sask. L.R. 324; discussed in R. v. Phinney (No. 1), 36 N.S.R. 269.]

ELECTION OF TRIAL WITHOUT JURY; NO RIGHT TO RE-ELECT.

Where a prisoner on arraignment before the County Court Judge elects in favour of a speedy trial under Part LIV. of the Code, he cannot withdraw the election so made and obtain a trial by jury. Sub-sec. 5 of Code, sec. 767, as amended, 1900, gives the accused the right of re-election only in case his first election was for trial by jury. The King v. Keefer, 5 Can. Cr. Cas. 122.

[Referred to in R. v. Hebert 10 Can. Cr. Cas. 290.]

SENTENCE RESPITED PENDING RESERVED CASE.

Where the conviction and sentence of a prisoner tried under the speedy trials, Part LIV., is respited pending the hearing of an appeal by way of case reserved, and the conviction is affirmed on the appeal, another Judge may, in the absence of the trial Judge from the province, give effect to the respited judgment by virtue of sec. 770. The King v. Brooks, 5 Can. Cr. Cas. 372.

THEFT; FORM OF "CHARGE"; RECORD ON SPEEDY TRIAL.

A charge of theft preferred under the Speedy Trials clauses of the Code is sufficient if it states that the accused "unlawfully did steal," etc., without specifically averring a taking or converting "fraudulently and without colour of right and with intent," etc., in the words of sec. 305 of the Criminal Code. As the statutory form of record under the Speedy Trials clauses (Code forms MM and NN) framed in respect of a charge of theft, does not contain such particulars, the description of the offence following such form must be held sufficient in the "charge" and in all the proceedings prior thereto. The King v. George, 5 Can. Cr. Cas. 469, affirmed in 8 Can. Cr. Cas. 401.

PREFERRING DIFFERENT CHARGE.

Notwithstanding the provisions of sec. 773 of the Criminal Code, a Judge should not, against the wish of a prisoner, give his consent, at the trial before him, under the Speedy Trial clauses without a jury, to any other charge being preferred than that upon which the prisoner was committed for

trial, unless it is clear that, while it may be more formally or differently expressed, it is substantially the same charge as the one which he was committed for trial. The King v. Carriere, 6 Can. Cr. Cas. 5.

[Referred to in R. v. Sylvester, 19 Can. Cr. Cas. 310, 1 D.L.R. 186, 192; R. v. Lacelle, 10 Can. Cr. Cas. 233, 11 O.L.R. 74; followed in R. v. Douglas, 12 Can. Cr. Cas. 122.]

ADDING NEW CHARGE; PREVIOUS LEAVE OF JUDGE NECCESSARY.

(1) When the accused has elected a "speedy trial" under Part LIV. of the Code upon charges in respect of which he has been found over to answer an indictment, a new charge cannot be added in the County Court Judge's Criminal Court without the leave of the Judge, although founded upon the same depositions. (2) The consent of the Judge under the Speedy Trial clauses to prefer another charge against the accused must be obtained before the charge is preferred. (3) Upon a "speedy trial" upon several charges of perjury in respect of one affidavit, the trial Judge is bound to regard the whole affidavit as the sworn statement in respect of each charge, and should not treat each paragraph of the affidavit as an entire statement independently of the other paragraphs. The King v. Cohon, 6 Can. Cr. Cas. 386.

[Distinguished in R. v. Sylvester, 1 D.L.R. 186, 19 Can. Cr. Cas. 302, 45 N.S.R. 525.]

OPTION FOR SPEEDY TRIAL; IN WHAT CASES IT CAN BE EXERCISED; WHEN ACCUSED MUST ELECT; ADDING OR SUBSTITUTING ANOTHER CHARGE.

(1) In order to waive a trial by jury and to elect to be tried by a Judge of Sessions, an information must have been laid before a justice of the peace and a preliminary enquiry had thereon and the accused must have been committed for trial. (2) If an accused party neglects to take the necessary steps to elect in favour of a "speedy trial" without a jury in the special Court for speedy trials, before he has pleaded to an indictment preferred by leave of the Judge of a jury Court his plea to such indictment will conclude him from electing against said jury trial. (3) The charge which may be added or substituted with the Judge's consent at a "speedy trial" under Code, sec. 773, must be cognate to the one for which the accused was committed or bailed, and it is not permissible to add or substitute a charge wholly disconnected therewith. The King v. Wener, 6 Can. Cr. Cas. 406.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 289; followed in R. v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.]

ELECTING TRIAL WITHOUT A JURY; ACTUAL CUSTODY A PREREQUISITE; EFFECT OF RETURN OF TRUE BILL BY GRAND JURY; EXCLUSIVE JURISDICTION OF JURY COURT.

(1) An accused person who has been committed for trial at the preliminary enquiry, or who has been bailed under Code, sec. 601 to appear for trial has no right to elect a speedy trial without a jury unless he is in actual custody at the time of electing. (2) The surrender and election in favour of speedy trial of a person who, at the preliminary enquiry, was bailed to appear for trial, must take place before a true bill has been found by the grand jury and filed of record in the jury Court, and unless so made the jury Court will have exclusive jurisdiction. (3) Sub-sec. 5 of Code, sec. 767 confers the right to re-elect in favour of a speedy trial, notwithstanding a pending indictment, only in case the accused has been arraigned under the speedy trials procedure, and has thereupon elected against a speedy trial. The King v. Komiensky (No. 1), 6 Can. Cr. Cas. 524.

[Distinguished in R. v. Thompson, 14 Can. Cr. Cas. 27, 30, 17 Man. L.R. 611; followed in R. v. Hebert, 10 Can. Cr. Cas. 289; referred to in R. v. Sovereen, 20 Can. Cr. Cas. 109, 4 D.L.R. 356.]

TRIAL WITH A JURY; ORDER FOR NEW TRIAL; NO RIGHT TO RE-ELECT FOR SPEEDY TRIAL WITHOUT A JURY.

(1) When a new trial has been ordered under Code, sec. 746 by the Court of Appeal, upon an appeal from a trial with a jury, the prisoner is not entitled to re-elect in favour of a speedy trial without a jury. (2) Sec. 767 (5) of the Criminal Code (amendment of 1900) does not apply to such a case. The King v. Coote, 7 Can. Cr. Cas. 92.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 290.]

NO SPEEDY TRIAL WITHOUT PRELIMINARY ENQUIRY, EVEN BY CONSENT.

(1) A district magistrate in the Province of Quebec may hold a "speedy trial" under Part LIV. of the Code, but his jurisdiction does not attach until the accused has either been committed for trial under Code, sec. 596 or has been bailed to appear for trial under Code, sec. 601, and is in actual custody. (2) A district magistrate in Quebec may, under his powers as a justice of the peace, hold a preliminary enquiry and commit for trial, and upon the accused electing in favour of a "speedy trial" in pursuance of Code, sec. 765, the same magistrate may hold the "speedy trial;" but where, on the return of a summons in the preliminary enquiry before such magistrate, the accused consented to be then tried by him without a jury and without a preliminary enquiry or committal for trial, and

was tried and convicted, the conviction must be set aside for want of jurisdiction. (3) The statutory conditions upon which jurisdiction depends cannot be waived by the accused. The King v. Breckenridge, 7 Can. Cr. Cas. 116.

[Followed in R. v. McDougall, 8 Can. Cr. Cas. 238, 8 O.L.R. 30; R. v. Hebert, 10 Can. Cr. Cas.]

LIMITED ELECTION FOR TRIAL ONLY BY JUDGE THEN PRESENT, INVALID; WAIVER OF DEPOSITIONS.

(1) An election for speedy trial under Part LIV. of the Criminal Code must be a general one to be tried by a Judge having jurisdiction thereunder, and is invalid if restricted to trial only by the Judge before whom the arraignment takes place. (2) The waiver by the accused upon a preliminary enquiry of the taking of depositions and his consent to be committed for trial without any depositions deprives him of the right of speedy trial, as the charge upon a speedy trial must be stated under Code, sec. 767 to the accused from the depositions on which he was committed. (3) The information is not a deposition within the meaning of Code, sec. 767. (4) A County Court Judge's Criminal Court has no jurisdiction to proceed with a trial in the absence of the accused without his consent unless the accused has misconducted himself by so interrupting the proceedings as to render their continuance in his presence impracticable. (5) Sec. 660 of the Code, providing for the personal attendance of the accused upon his trial and for permitting the accused at his own request to be out of Court during the trial, applies as well to speedy trials in the County Court Judge's Criminal Court as to trials upon indictment. The King v. Alfred McDougall, 8 Can. Cr. Cas. 234.

[Referred to in R. v. Hebert, 10 Can. Cr. Cas. 289.]

SEPARATE CHARGES AGAINST ACCUSED FOR DISTINCT OFFENSES; INTERMIXING OF TRIALS.

A speedy trial at a County Judge's Criminal Court and a conviction thereon are not invalidated by the Judge having taken evidence upon another charge against the same accused pending an adjournment of the hearing of the principal charge and after part of the evidence therein had been taken, if the charges were different as to time and place and the Judge certifies that he was not influenced as to the principal charge by the evidence in the other. The King v. Bullock, 8 Can. Cr. Cas. 8.

[Discussed in R. v. Iman Din, 18 Can. Cr. Cas. 88.]

WARRANT OF COMMITMENT; STATING PLACE OF OFFENCE; COMPUTATION FROM DATE OF SENTENCE.

(1) A warrant of commitment of a convict to a penitentiary after a trial under the Speedy Trials clauses is sufficient without further specification of the place of the offence than the marginal reference to the county in which the trial took place. (2) It is unnecessary in a sentence of imprisonment to a penitentiary, or in the warrant issued in pursuance thereof, to state a date from which the imprisonment is to run, as under the Penitentiaries Act the term of imprisonment counts from the date of sentence unless otherwise ordered. The King v. Smitheman (No. 1), 9 Can. Cr. Cas. 10, affirmed in 9 Can. Cr. Cas. 17.

OFFENCE BEYOND JURISDICTION DISCLOSED ON DEPOSITIONS TRANSMITTED BY MAGISTRATE.

Where the accused has been committed to gaol for trial upon a charge otherwise within the jurisdiction of the County Court Judge's criminal Court under Part LIV. of the Criminal Code, the jurisdiction of that Court in regard to the charge laid is not ousted by the fact that a more serious offence which that Court cannot try is disclosed by the depositions upon which the charge was founded. The King v. De Wolfe, 9 Can. Cr. Cas. 38.

[Referred to in Dufresne v. R. 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

WHEN AMENDMENT OF CHARGE NOT PERMISSIBLE; LOCUS STANDI OF INFORMANT'S COUNSEL; AUTREFOIS CONVICT; PROOF OF PLEA.

(1) An amendment of a charge under the Speedy Trials clauses, Part LIV. of the Criminal Code, should not be allowed if it involves the investigation of entirely new facts not disclosed in the depositions. (2) Upon a "speedy trial" for an indictable offence the informant at whose instance the prosecution was begun, has no locus standi and is not entitled to prosecute through his counsel unless authorized so to do by the Attorney-General. (3) A conviction upon a summary trial by two justices under Code, secs. 782 and 783 for keeping a disorderly house at a specified address from the 3rd day of May to the 3rd day of November, is a bar under a plea of autrefois convict, to a conviction under Code, sec. 198 upon a speedy trial for the like offence charged for the 3rd day of November only. (4) Where the name of the accused, the place of the offence and the character of the offence are the same in the certificate of conviction produced in proof of a plea of autrefois convict and in the charge then being

tried, it will be presumed that the accused is the party named in such certificate without parol evidence of identity. The King v. Clark, 9 Can. Cr. Cas. 125.

COMMITMENT FOR TRIAL ON CHARGE OF UNLAWFUL ASSAULT WITH INTENT TO CARNALLY KNOW; OPTION OF SPEEDY TRIAL REFUSED.

(1) After a commitment upon a charge of "unlawful assault with intent to carnally know," the accused cannot insist upon a trial without a jury under the Speedy Trial clauses, Part LIV. of the Code, if the Crown express an intention of indicting him for an attempt to commit rape, which latter offence is beyond the jurisdiction of a County Court Judge's Criminal Court and is disclosed on the depositions returned. (2) The charge set forth in the warrant of commitment might be either under Code, sec. 268 for an attempt to commit rape or under Code, sec. 263 (a) for an assault with intent to commit an indictable offence. The King v. Preston, 9 Can. Cr. Cas. 201.

NO RESIDENT COUNTY JUDGE; ELECTION OF PRISONER; POWER OF PROSECUTING OFFICER TO RECEIVE; DEPOSITIONS; IRREGULARITY.

(1) Where there is no Judge of the County Court residing in a county the prosecuting officer or counsel for the county appointed under the provisions of R.S.N.S. (1900), ch. 165, sec. 1, is empowered to take the election of a prisoner to be tried before the Judge of the County Court without a jury in Nova Scotia. (2) The power given to such officer to conduct "all criminal business" on behalf of the Crown includes all process necessary to bring the prisoner to trial, and the prisoner's election for or against a speedy trial is a part of such process. (3) Depositions to which the magistrate had affixed his signature, although such signature was not placed at the foot or end thereof (Code, sec. 590) are sufficiently signed for the purposes of a "charge" brought thereunder under the Speedy Trials clauses. The King v. Jodrey, 9 Can. Cr. Cas. 477.

[Specially referred to in R. v. Montminy, 20 Can. Cr. Cas. 63, 3 D.L.R. 483.]

IMPROPER RECEPTION OF EVIDENCE; JUDGE'S CERTIFICATE THAT OTHER EVIDENCE SUFFICIENT FOR CONVICTION; RESERVED CASE.

The improper reception of evidence before a County Judge trying a case without a jury under the Speedy Trials clauses will not entitle the prisoner to a new trial upon a case reserved, if the County Judge certifies therein that apart from the evidence objected to there was sufficient evidence to compel him to find the prisoner guilty. The King v. Tutty, 9 Can. Cr. Cas. 544.

SEDUCTION; SUBSTITUTING NEW CHARGES; AMENDMENT AS TO DATE OF OFFENCE; ANOTHER OCCURRENCE TO WHICH A DIFFERENT DEFENCE MIGHT APPLY; RIGHT TO ELECT ON SUBSTITUTED CHARGE; RE-ARRAIGNMENT.

(1) A County Judge holding a speedy trial upon a charge of seduction may substitute a new charge to conform to the evidence of the prosecution by stating it as of prior date upon which a different occurrence is sought to be proved, but such substitution is subject to the right of the accused to re-elect the mode of trial. (2) As regards the offence of seduction the change of the date of the alleged offence by an amendment of the indictment or charge is in substance the laying of a new charge to which a different defence might be applicable. (3) Code, sec. 723 applies to authorize an amendment as to time or place in a speedy trial charge without re-election, only where the act or transaction which forms the foundation of the charge is the same, and a mistake was made in the evidence or charge as to the true date of the occurrence. The King v. Lacelle, 10 Can. Cr. Cas. 229.

[Referred to in R. v. Sylvester, 19 Can. Cr. Cas. 310, 1 D.L.R. 192; R. v. Dunn, 11 Can. Cr. Cas. 246; Dufresne v. R. 19 Can. Cr. Cas. 415, 5 D.L.R. 501.]

RIGHT OF; EXCLUSIVE JURISDICTION UPON ELECTION; ESCAPE OF PRISONER BEFORE ARRAIGNMENT; NO SPEEDY TRIAL WITHOUT A PRELIMINARY ENQUIRY.

(1) A prisoner committed for trial who has elected in favour of a speedy trial under Code, sec. 766, but breaks gaol before a day is fixed for such trial for the offence for which he was committed, and this notwithstanding that the grand jury has in the meantime found an indictment against him for such offence. (2) Where an indictment for breaking gaol has been found without a preliminary enquiry before a magistrate, the accused cannot upon his recapture elect for a speedy trial without a jury upon that charge, although prior to his escape he had elected for a speedy trial upon the principal charge for which he had been committed. The King v. Hebert, 10 Can. Cr. Cas. 288.

[Referred to in R. v. Thompson, 14 Can. Cr. Cas. 30.]

BINDING OVER FOR APPEARANCE TO ANSWER INDICTMENT; ADDING OTHER CHARGES NOT CONTAINED IN RECOGNIZANCE TO APPEAR AND PLEAD; RIGHT TO ELECT ON NEW CHARGES IF FOR SUBSTANTIALLY DIFFERENT OFFENCES.

After an election for speedy trial without a jury, leave should not be granted to add other charges substantially different from those upon which his election was made, unless the accused is willing to elect

speedy trial in respect also of such additional charges. The King v. Douglas, 12 Can. Cr. Cas. 120.

[Referred to in The King v. Sylvester et al. 1 D.L.R. 192.]

SENTENCE DEFERRED.

Where writs of habeas corpus and certiorari in aid had been improperly issued in respect of a conviction by an Inferior Court of record and the prisoner remanded thereunder for sentence which had been deferred in the Court below, leave to appeal will not be granted to question the validity of the sentence afterwards passed on the accused on an objection that the record of proceedings which had been transmitted in accordance with the writ of certiorari, but not filed, had not been returned to the Inferior Court when sentence was passed. The King v. Harrison, 13 Can. Cr. Cas. 108.

COUNTY COURT JUDGE; AUTHORITY OF COUNTY JUDGE PRO TEM. TO HOLD "SPEEDY TRIALS."

On a vacancy occurring by death, and before the appointment of a new Judge, the Judge so designated by the Provincial Lieutenant-Governor-in-Council has authority to hold "speedy trials" under the Criminal Code. The King v. Brown, 13 Can. Cr. Cas. 133.

COMMITMENT OF ACCUSED BY JUSTICE OF THE PEACE; ELECTION OF SPEEDY TRIAL BEFORE COMMENCEMENT OF TRIAL ON INDICTMENT.

Where the accused has been committed for trial by a justice of the peace not being a magistrate qualified to hold summary trials under Part XVI. of the Code, and has been admitted to bail, he may surrender himself into custody and elect a "speedy trial" without a jury, at any time before the commencement of the jury trial although a true bill has meanwhile been returned by the grand jury. The King v. Foulkes, 13 Can. Cr. Cas. 370.

ELECTION OF; JURISDICTION NOTWITHSTANDING TRUE BILL FOUND AFTER ELECTION.

(1) On a committal for trial by a magistrate and admission of the accused to bail, if the sureties surrender the accused into custody and he is brought before a County Court Judge and elects speedy trial without a jury, such election is good notwithstanding the finding of a true bill on the same charge by the grand jury while the accused was out on bail. (2) On arraignment in the jury Court on the indictment, the accused may object to plead on the ground of his prior election of speedy trial, and the jury Court should thereupon postpone the arraignment to the next sittings pending the speedy trial before the County Court Judge so that the accused may plead the result of the speedy trial in answer to the indictment. The King v. Thompson, 14 Can. Cr. Cas. 27.

[Disapproved in R. v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.]

THEFT; SEPARATE FORMAL CHARGES; ACQUITTAL ON PART OF CHARGE AS TO OMISSION TO PAY.

(1) An indictment charging the offence of theft by a person required to account under Code, sec. 355 is valid if the offence is stated as combining fraudulent conversion, fraudulent omission to account and fraudulent omission to pay over money, although the offence would be complete with one of these elements. (2) After an election of speedy trial upon a charge of theft containing particulars of many separate offences of theft, the Judge may permit the prosecution to substitute separate charges for each offence and call upon the accused to elect in each case for or against speedy trial. (3) The provisions of Code, secs. 856 and 857 as to joinder of counts and as to orders for separate trials apply to proceedings under the Speedy Trials Part as well as to proceedings by indictment. (4) Where many separate charges of theft are brought against a person arraigned for speedy trial and it appears that each might properly have been treated at a jury trial as a separate count in an indictment for a continuous embezzlement or theft from one corporation, the Judge holding a speedy trial without a jury on the prisoner electing against a jury, may deal with each charge as the counts in one indictment might be dealt with, and is not bound to proceed with a separate trial upon each formal "charge." The King v. Cross, 14 Can. Cr. Cas. 171.

CONSPIRACY; ELECTION OF SPEEDY TRIAL.

An election of speedy trial without a jury in the County Court Judge's Criminal Court does not confer jurisdiction in a case in which there would be no jurisdiction over the accused if the trial were upon indictment before a jury. The King v. O'Gorman, 15 Can. Cr. Cas. 173.

[Referred to in Fournier v. Attorney-General, 19 Que. K.B. 436.]

ELECTION OF ACCUSED OF TRIAL WITHOUT JURY; SUBSEQUENT APPOINTMENT FOR TRIAL; RE-ELECTION UNNECESSARY.

(1) On the accused electing trial without a jury under the Speedy Trials clauses (Code, sec. 827), the County Court Judge's Criminal Court acquires jurisdiction over the person and the offence, and this jurisdiction continues notwithstanding the failure to proceed with or adjourn the trial at the date first appointed. (2) If the County Court Judge, through illness or other cause, fails to attend to hold the trial at the time appointed when the accused made his election, the Judge may appoint another date

for the trial without a re-election by the accused. The King v. Stewart, 15 Can. Cr. Cas. 331.

FORMAL CHARGE; AMENDMENT BY ADDING SECOND COUNT FOR DISTINCT OFFENCE; ELECTING AGAINST JURY.

(1) On a charge of theft preferred under the Speedy Trials clauses of the Code following a committal for that offence, the Judge may permit an amendment by adding a count for false pretences in respect of which a preliminary enquiry had been begun, but abandoned, and if the accused elects a speedy trial on the amended charge, a conviction on the added count will not be quashed because of failure of the prosecution to establish the first count on which alone the commitment for trial was made. (2) An amendment to include an additional charge for a wholly distinct offence from that disclosed in the depositions before the magistrate is permissible under Code, sec. 834 (as amended, 1909) upon a written charge in a County Court Judge's Criminal Court, but the accused cannot be tried in that Court upon the added charge unless he consents to trial without a jury in respect thereof. (3) A second count for the additional offence will not be quashed because of a finding that the evidence does not support the first count, the jurisdiction to add a new offence under Code, sec. 834 (amendment of 1909) not being dependent upon proof of the offence originally charged. The King v. Stickler, 16 Can. Cr. Cas. 45.

ELECTION; DISCHARGE FROM DETENTION UPON ILLEGAL SENTENCE.

(1) The place of election of speedy trial by a District Judge without a jury is the district to the gaol of which the accused has been legally committed on the preliminary enquiry and an election taken before the prosecuting officer of another district while the accused was in custody under the commitment and was being conveyed to gaol, is not sufficient to confer jurisdiction, even although the latter district was the place of the offence. (2) Where a speedy trial has been held upon an election invalid in law, the Court of Appeal on a case reserved will order the discharge of the accused from custody under the sentence, and direct a new trial. The King v. Tetreault, 17 Can. Cr. Cas. 259.

SPEEDY TRIAL WITHOUT A JURY BY COUNTY JUDGE.

(1) Where a trial had been begun in a County Court Judge's Criminal Court and decisions reserved upon a motion to dismiss at the close of the case of the prosecution whereupon the accused elected speedy trial before the same Court on another charge of a similar offence, and the second charge was proceeded with and a conviction made by the County Judge before concluding the first trial in which the accused was afterwards acquitted on the ground that it was not safe to convict on the testimony of the complainant therein, the Court of Appeal of British Columbia was equally divided on the question whether such intermixing of the trials invalidated the conviction so made, although the County Judge certified that, in convicting on the second charge, he was not influenced by the evidence previously given on the first. (2) Where there are two or more charges against the same person to be tried before the same County Judge under the Speedy Trials clauses, it is desirable that the practice should be to dispose of one before taking evidence in the other. (Per Macdonald, C.J.A., and Irving, J.) (3) The fact that evidence was adduced on a trial under the Speedy Trials clauses upon a second charge before the first charge pending before the same County Judge was finally disposed of, is not of itself ground for setting aside the first conviction. Whether or not the trials have been intermixed so as to invalidate a conviction is a question depending upon the special circumstances relied upon to shew that the accused has been prejudiced by that mode of procedure. (Per Macdonald, C.J.A., and Irving, J.) (4) It is an unlawful proceeding prejudicial to the accused to put him on his trial on one charge before a County Judge under the Speedy Trials clauses until after a decision on the question of guilt has been reached by that Judge in another case against the same person in which evidence has already been taken before him. (Per Martin and Galliher, JJ.A.) (5) The Court of Appeal under the Criminal Code has no power to receive evidence to shew what operated on the mind of the County Judge presiding at the "speedy trial," as the County Judge is then exercising the functions of a jury as well as those of Judge. (Per Martin and Galliher, JJ.A.) [R. v. McBerny, 3 Can. Cr. Cas. 339, and R. v. Bullock, 8 Can. Cr. Cas. 8, discussed.] The King v. Imas Din, 18 Can. Cr. Cas. 82.

[Referred to in R. v. Faulkner, 19 Can. Cr. Cas. 50; R. v. Whistnant, 20 Can. Cr. Cas. 322.]

TRIAL BY CONSENT WITHOUT JURY; SEPARATE FINDINGS ON EACH POINT UNNECESSARY.

(1) On a speedy trial before a County Judge without a jury, it is not incumbent on the Judge to sum up each point of the case and make a finding upon it; it is sufficient if he takes into consideration all of the evidence that was before him. (2) On a charge of assault, where the accused pleads self-defence and justifies the force used by him in preventing the prosecutor from dispossessing him of his lands or goods, it should be shewn that the force so used by the accused was not greater than

was reasonably necessary to accomplish the lawful purpose intended to be effected; a conviction is properly made if the blow was unnecessarily severe and was vindictive rather than preventative. The King v. Kinman, 18 Can. Cr. Cas. 139.

SUBSTITUTION OF CHARGE; FORMAL CONSENT OF JUDGE.

It is not necessary that the consent of the Judge required by sec. 834 of the Criminal Code as amended by chapter 9 of 8 and 9 Edw. VII. (Can. 1909), should be formally expressed, either verbally or in writing before proceeding with the trial of the prisoner on a substituted charge; such consent may be inferred from the fact that the Judge himself drew attention to the new charge, put the prisoner to his election, and proceeded with the trial. [The King v. Cohon, 36 N.S.R. 240, 6 Can. Cr. Cas. 386, distinguished.] The King v. Sylvester et al., 19 Can. Cr. Cas. 302, 1 D.L.R. 186.

WHEN RIGHT TO ELECT TRIAL WITHOUT A JURY EXISTS.

(1) The Criminal Code does not prescribe that an accused can elect to be tried without a jury when without a preliminary enquiry, or a committal, or an admission to bail, a bill of indictment has been preferred against him by the Crown Attorney with the written consent of a Judge of a Court of criminal jurisdiction. [The King v. Wener, 6 Can. Cr. Cas. 406, followed.] (2) If no election has been made before an indictment is returned founded on the facts disclosed by the depositions taken at the preliminary enquiry, the accused has no statutory right to demand a trial before a Judge of Sessions without a jury and avoid a trial on the indictment. [The King v. Wener, 6 Can.. Cr. Cas. 406; Rex v. Thompson (1908), 14 Can. Cr. Cas. 27, 17 Man. L.R. 608, dissented from.] The King v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356.

TRIAL WITHOUT JURY ON CONSENT; ELECTION OF SPEEDY TRIAL; ENTRY OF CONSENT UPON RECORD.

(1) Where an accused person who is out on bail after commitment for trial voluntarily appears at a County Judge's Criminal Court and there elects a speedy trial without a jury, such election of the mode of trial may be accepted, although the accused was not brought in by the sheriff for election (Cr. Code, sec. 826), nor was any written notice given to the Judge by the sheriff under sec. 826 of the Criminal Code. (2) An election of speedy trial under Cr. Code, secs. 826 and 827 (amendment of 1909) is not invalid because of the absence of the sheriff from the County Judge's Criminal Court at which such election is accepted. (3) The entry on the Court records required to be made under Cr. Code, sec. 825 of the consent of the accused to be tried without a jury for an indictable offence under the Speedy Trials clauses (Cr. Code, Part XVIII.) at a County Judge's Criminal Court may be made by the clerk of the peace acting as clerk of such Court and need not be made by the Judge in person. The King v. Day, 20 Can. Cr. Cas. 325.

SPEEDY TRIAL PROCEDURE; ELECTING TRIAL WITHOUT JURY; EFFECT OF INDICTMENT.

A person sent up for trial for an indictable offence within the scope of the speedy trials clauses of the Criminal Code and against whom, while out on bail allowed by the magistrate, a true bill is found by the grand jury on the same charge, is entitled, on being taken into custody under a bench warrant in respect of such indictment, to the benfit of the speedy trials clauses and to elect thereunder for trial without a jury before the county court judge's criminal court if he has not pleaded to the indictment; and a mandamus will lie to the latter court to enforce such right where the county judge before whom the prisoner was brought had ruled that he had no jurisdiction because of the indictment to permit the accused to elect for trial without a jury. [R. v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356, distinguished; R. v. Wener, 6 Can. Cr. Cas. 406; and R. v. Komiensky, 6 Can. Cr. Cas. 528, discussed; R. v. Thompson, 14 Can. Cr. Cas. 27, 17 Man. L.R. 608, approved.] R. v. County Court; Re Walsh, 23 Can. Cr. Cas. 7, 16 D.L.R. 500.

[Considered in R. v. Price, 23 Can. Cr. Cas. 285, 19 D.L.R. 229; referred to in R. v. Giroux, 30 Can. Cr. Cas. 101; R. v. Price, 23 Can. Cr. Cas. 285, 19 D.L.R. 229.]

ELECTION AGAINST SUMMARY TRIAL; SPEEDY TRIAL.

The option which under Code, sec. 778, as amended 1909, is given the accused under Part XVI. of the Code to be tried by the magistrate without the intervention of a jury or to remain in custody or under bail to be tried "in the ordinary way by the Court having criminal jurisdiction" includes upon an election of the latter alternative the prisoner's right after having been brought before the County Court Judge or other officer under the speedy trials clauses (Part XVIII.) to decide whether he will take a "speedy trial" without a jury or be tried at the jury Court; and, since the amendment of 1909, this right is not affected by Code, sec. 830 as the election against summary trial by the magistrate is no longer an election "to be tried by a jury." (Code, sec. 830.) [R. v. Thompson, 14 Can. Cr. Cas. 27, 17 Man. L.R. 608; R. v. Sovereen, 20 Can. Cr. Cas. 103, 4 D.L.R. 356; R. v. County Judge's Criminal Court, 23 Can. Cr. Cas. 7, 16 D.L.R. 500, considered.] R. v. Price and

Burnett, 23 Can. Cr. Cas. 285, 19 D.L.R. 229.

SPEEDY TRIAL WITHOUT JURY; ELECTION.

If the accused has regularly consented to a "speedy trial" without a jury under Part XVIII. of the Code, he has no right afterwards to change his option by re-electing for a jury trial. [R. v. Keefer, 5 Can. Cr. Cas. 132, referred to; and see R. v. Hebert, 10 Can. Cr. Cas. 290.] An election of speedy trial without a jury under Part XVIII. of the Cr. Code must be a general one so as to include any Judge or official who may legally preside under Cr. Code, sec. 823, and must not be limited by making it a consent to be tried only by the particular Judge before whom the accused is arraigned. [R. v. McDougall, 8 Can. Cr. Cas. 234; R. v. Stewart, 15 Can. Cr. Cas. 331, referred to.] R. v. Guay, 23 Can. Cr. Cas. 243, 19 D.L.R. 820.

INCEST; INFERENCES BY COURT TRYING CASE WITHOUT JURY.

On a speedy trial without a jury under Part XVIII. of the Criminal Code, the trial Judge is entitled to make the same inferences from the facts as a jury might make had the accused elected for a jury trial, and his finding will not be disturbed if the evidence shewed a prima facie case which on a jury trial could not have been withdrawn from the jury. R. v. Ward, 24 Can. Cr. Cas. 75.

JURY TRIAL AFTER ELECTING SPEEDY TRIAL.

A prisoner who has duly elected in favor of a speedy trial before a county Judge without a jury has no right thereafter to re-elect in favor of a jury trial. [R. v. Keefer, 5 Can. Cr. Cas. 122, 2 O.L.R. 572, followed; R. v. Ballard, 1 Can. Cr. Cas. 96, 28 Ont. R. 489, and R. v. Prevost, 4 B.C.R. 326, referred to.] R. v. Howe, 24 Can. Cr. Cas. 215.

ELECTING TRIAL WITHOUT JURY; STATUTORY INFORMATION.

On taking the prisoner's election to be tried before a judge, without a jury, under the "Speedy trials," part of the Criminal Code, it is essential under Cr. Code, sec. 827, that the prisoner should be informed that he may remain in gaol or under bail if the court should so decide, in the event of his electing a jury trial, but if the conviction returned to a writ of habeas corpus recites in conformity with Code, form 60, that the prisoner, "on being brought before the judge and asked if he consented to be tried before such judge without the intervention of a jury, consented to be so tried," and the conviction further shows that the prisoner pleaded guilty of an offence, which was properly triable under Part XVIII (Speedy trials), it is not an objection to same on habeas corpus, that it did not further recite the giving of the statutory information; the effect of Code, form 60 and of Cr. Code, sec. 1152, as to forms is to make the conviction sufficient in that respect to show jurisdiction, without reciting therein all of the requisites of jurisdiction under Code, sec. 827; the prisoner's remedy if he desired to show that the statutory information under Code, sec. 827, was not given is to appeal by way of reserved or stated case under Cr. Code, sec. 1014, et seq. [R. v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256; R. v. Mali (No. 2), 19 Can. Cr. Cas. 188, 1 D.L.R. 484, followed; R. v. Howell, 16 Can. Cr. Cas. 178, 19 Man. L.R. 317; R. v. Crooks, 19 Can. Cr. Cas. 150, 4 S.L.R. 335, approved.] R. v. Therrieu, 25 Can. Cr. Cas. 275, 28 D.L.R. 57. See also 26 Can. Cr. Cas. 309.

SPEEDY TRIAL ON CONSENT.

The validity of a speedy trial at a County Court Judge's Criminal Court at which the counsel professed to act for the Crown is not affected by the lack of proof that he had been appointed "prosecuting officer" and was therefore entrusted with the statutory duty under Cr. Code, sec. 827 (amendment of 1909), of preferring the charge on which the accused had been committed for trial; the maxim omnia præsumunter, etc., applies where the contrary does not appear; and (per Martin and McPhillips, JJ. A), it is to be assumed notwithstanding the unnecessary signature of a Crown counsel to the written charge that the same is being prosecuted by the duly appointed clerk of the peace for the county whose duty it is, under the provincial statute constituting the court, "to issue all process, arraign prisoners, record verdicts," etc. R. v. Jun Goon, 25 Can. Cr. Cas. 415, 28 D.L.R. 374.

SPEEDY TRIAL WITHOUT JURY; ELECTION; PRESUMPTION; PLEA OF GUILTY.

A conviction on a "speedy trial" (Part XVIII. of the Criminal Code), need not recite that the presiding Judge on taking the prisoner's election of trial without a jury had stated to him that he had the alternative of remaining in gaol until the jury Court or being admitted to bail as the Court might decide; in the absence of any proof appearing in the record that this statutory statement had been made to the prisoner in conformity with Cr. Code, sec. 827 (Amendment of 1909), the presumption is that the statement was regularly made. A district Judge or other official, qualified under Cr. Code, sec. 823 to hold a "speedy trial" under Part XVIII. of the Criminal Code after a committal for trial, acquires jurisdiction to hear and determine the case if the accused has given his consent under Code, sec. 827, notwithstanding that the accused had, when arraigned before a city magistrate with jurisdiction of "summary trial" under Code, sec. 777,

offered a plea of guilty without being put to his election under Cr. Code, sec. 778 of trial before the magistrate. R. v. Therrieu (No. 2), 26 Can. Cr. Cas. 309, 28 D.L.R. 462. See also 25 Can. Cr. Cas. 275, 28 D.L.R. 57.

DISTRICT OTHER THAN THAT OF OFFENCE; CR CODE, SECS. 577, 825.

An accused person committed for trial, and who on arraignment before a District Judge under the Speedy Trials Part of the Criminal Code has elected to take jury trial, may be permitted to re-elect to be tried without a jury by the District Judge's Criminal Court holding speedy trials in the district in which the gaol is situated to which he was committed and is in custody, although that is a different judicial district from that in which the alleged offence was committed. R. v. Harrison, 29 Can. Cr. Cas. 159, 41 D.L.R. 381.

[Applied in R. v. Anderson, 29 Can. Cr. Cas. 176.]

REMAND TO PLACE OF OFFENCE.

Where the offence was committed in another judicial district and the accused was there committed for trial, the Judge of another District Judge's Criminal Court taking the election of the accused to be tried without a jury may properly remand the accused for trial before the District Judge's Criminal Court of the place of the offence. [R. v. Harrison, 29 Can. Cr. Cas. 159, 41 D.L.R. 381, applied.] R. v. Anderson and Sparks, 29 Can. Cr. Cas. 176.

SPEEDY TRIAL; ELECTION TO.

An accused person against whom an indictment has been found under Cr. Code, sec. 873, without any preliminary enquiry or committal for trial by a magistrate is competent to elect a speedy trial without a jury under Part XVIII. of the Criminal Code; he may so elect even after plea and the giving of a recognizance to appear in the jury court if the prosecutor assents, and after taking his trial without a jury in the mode he has himself elected, the accused cannot attack the conviction on the ground that the indictment still remained against him in the jury court; the conviction and sentence in the speedy trial court barred any further proceedings on the indictment, and semble (per Fitzpatrick, C.J.), the indictment might then have been quashed on motion. Giroux v. The King, 29 Can. Cr. Cas. 258, 39 D.L.R. 190.

ELECTION OF SPEEDY TRIAL BY PERSON INDICTED WITHOUT PRELIMINARY COMMITTAL.

A person under an indictment preferred by leave of the judge and against whom there has been no preliminary committal for trial may even after pleading to the indictment and obtaining a continuance be permitted, with the consent of the Crown, to elect for a speedy trial without a jury (Cr. Code, sec. 828); and if he does so he cannot attack the conviction in the speedy trial court for want of jurisdiction. The preliminary condition to jurisdiction is that the accused shall have consented to be tried and that an entry of such consent shall have been made (Cr. Code, sec. 827). The procedure of committal and preliminary enquiry (Code, sec. 825) does not go to the jurisdiction. [Rex v. Walsh (Rex v. County Judges Criminal Court), 23 Can. Cr. Cas. 7, 16 D.L.R. 500, referred to.] R. v. Giroux, 30 Can. Cr. Cas. 101, affirmed in 39 D.L.R. 190, 56 Can. S.C. R. 63. See also 27 Can. Cr. Cas. 366, 34 D.L.R. 642.

SPREADING FALSE NEWS.

FALSE PLACARD AS TO FOREIGNERS NOT DESIRED AS SETTLERS IN CANADA.

The publication of a placard stating that settlers from the United States are not wanted in Canada is an injury to the public interests and under sec. 136 of the Revised Criminal Code the person wilfully and knowingly publishing such false statement is properly convicted of spreading false news. The King v. Hoaglin, 12 Can. Cr. Cas. 226.

STATED CASE.

Note on abandonment of, as affecting subsequent appeal. 5 Can. Cr. Cas. 28.

Note on stated cases; Conditions precedent; Cr. Code, sec. 900 (4). 5 Can. Cr. Cas. 156.

Practice of appeals by, made applicable to Ontario provincial offences. 5 Can. Cr. Cas. 567.

Summary conviction; Review by stated case or appeal; Option; Note. 6 Can. Cr. Cas. 523.

Practice under Ontario provincial laws. 6 Can. Cr. Cas. 547.

Appeal from summary conviction; "Stated case" an alternative mode of appeal on the law. 8 Can. Cr. Cas. 206, 207.

Stated case; Formalities as to written request therefor; Territories Rules, 34-45. 10 Can. Cr. Cas. 337.

STATED CASE DISMISSED FOR NON-COMPLIANCE WITH STATUTORY CONDITIONS; SUBSEQUENT APPEAL FROM CONVICTION.

A person "appeals" when he formally gives notice to the opposite party of his intention to appeal, although he does not in fact comply with the conditions precedent required to bring the appeal on for hearing. (Code, sec. 900.) Under a provincial enactment, similar to sub-sec. 15 of Code, sec. 900, providing that a person appealing by way of stated case to a Superior Court shall be taken to have abandoned

his right of appeal to a County Court, the appellant by obtaining a case to be stated elects that mode of appeal and cannot revert to an appeal to the County Court on the stated case being dismissed for non-compliance with statutory conditions. Cooksley v. Toomaten Oota, 5 Can. Cr. Cas. 26.

B.C. SUMMARY CONVICTIONS ACT; TRANSMITTING CASE TO DISTRICT REGISTRY.

The provision in sec. 87 of the B.C. Summary Convictions Act, that the appellant shall, within three days after receiving the case stated, transmit it to the District Registry, is a condition precedent to the jurisdiction of the Court to hear the appeal. Cooksley v. Nakashiba, 5 Can. Cr. Cas. 111.

RECOGNIZANCE IMPERATIVE; CASH DEPOSIT NOT GOOD.

A cash deposit cannot be accepted in lieu of a recognizance on an appeal by way of "stated case" from a summary conviction. The recognizance required by Code, sec. 900 is a condition precedent to the jurisdiction of the Court to hear the appeal. The King v. Geiser, 5 Can. Cr. Cas. 154.

[Distinguished in R. v. Tucker, 10 Can. Cr. Cas. 217, 10 O.L.R. 506.]

APPLICATION TO MAGISTRATE AFTER UNSUCCESSFUL APPEAL FROM SUMMARY CONVICTIONS; RES JUDICATA.

(1) Where an appeal has been taken to a County Court under Cr. Code, sec. 879 from a summary conviction and the County Court has affirmed the conviction, it is not open to the accused to afterwards have the convicting magistrate refer a "stated case" to a Superior Court. (2) The decision of the County Court being res adjudicata between the parties is a bar to the application for a "stated case." The King v. Townshend (No. 2), 6 Can. Cr. Cas. 519.

TWO OFFENCES INCLUDED; DISCRETION ON APPEAL TO HEAR OBJECTION NOT RAISED BELOW.

(1) On an appeal by way of stated case from a summary conviction, it is discretionary with the Court to hear an objection not taken before the justice. (2) A single conviction for two separate offences may be quashed although the accused did not appear before the justice, if it cannot be ascertained from the proceedings for which separate offence the justice intended to convict, but the appellant will not be allowed his costs of the appeal. Simpson v. Lock, 7 Can. Cr. Cas. 294.

QUESTIONS RAISED BEFORE MAGISTRATE.

Only questions of law which have first been raised before the magistrate and which are specified in the formal "case" he has stated to the Appellate Court, are to be determined upon a stated case under sec. 900 of the Criminal Code. The King v. Nugent, 9 Can. Cr. Cas. 1.

ALIEN LABOUR ACT; SUMMARY PROSECUTION.

A police magistrate hearing a summary prosecution under the Alien Labour Act is not persona designata, and a case may be stated by him for the opinion of a Superior Court under Cr. Code, sec. 900. The King v. Breckenridge, 10 Can. Cr. Cas. 180.

[Followed in R. v. Johnson & Carey, 20 Can. Cr. Cas. 319.]

CASE STATED BY JUSTICES; REQUEST TO JUSTICES FOR STATED CASE; INVALID REQUEST; JURISDICTION.

(1) The provisions of Code, sec. 900, subsecs. 2 and 3, as to the procedure to obtain a stated case from justices for review by a Superior Court, are not directory only but conditions precedent to the hearing of the appeal. (2) A request to the justices to state a case under Code, sec. 900 (2) must ask for a case setting forth "the facts of the case and the grounds on which the proceeding is questioned;" and where by rules of Court the request is required to be in writing and to be made within a limited time, a written request specifying only that the stated case shall set forth "the grounds on which the conviction is supported," is insufficient. (3) Objection may be taken on the hearing of the stated case to the invalidity of the request therefor, and, if allowed, the appeal must be quashed for want of jurisdiction. The King v. Earley (No. 1), 10 Can. Cr. Cas. 280.

[Followed in R. v. Earley (No. 2), 10 Can. Cr. Cas. 336.]

CASE STATED BY JUSTICES; REQUEST TO JUSTICES FOR STATED CASE; INVALID REQUEST; OBJECTION AT HEARING.

Where by rules of Court a written request is required for a case stated by justices, such request must be in strict accordance with Code, sec. 900, sub-secs. 2 and 3. Where by rules of Court the request must be in writing within a limited time, and they require that a writen request to justices for a "stated case" must ask that the facts of the case and the grounds on which the proceedings are questioned be set forth in the case stated, a request which is in form a mere request to state and sign a case under the provisions of sub-sec. 2 of sec. 900 of the Criminal Code is insufficient. Objection may be taken on the hearing of the stated case to the invalidity of the request therefor, and, if allowed, the appeal must be quashed for want of jurisdiction. The King v. Earley (No. 2), 10 Can. Cr. Cas. 336.

PROVINCE IN WHICH TIME NOT FIXED BY RULES OF COURT; REASONABLE TIME.

(1) In the absence of rules of Court fixing the time within which a case shall be

stated by a magistrate under Code, sec. 900, the proceedings by way of stated case may be prosecuted within a reasonable time after the order or ruling. (2) The time limited for appeals from summary convictions has no application to a stated case. The King v. Ferguson, 11 Can. Cr. Cas. 277.

CASE STATED BY A JUSTICE; SUMMARY CONVICTION.

Upon a case stated by a justice under the Nova Scotia Summary Convictions Act, the Court hearing the stated case may, under sub-sec. 6 of sec. 73 of that statute (similar to Criminal Code, sec. 765) amend a conviction in respect of excessive imprisonment awarded in default of paying the fine by reducing the term to the legal limit. The King v. Power, 14 Can. Cr. Cas. 264.

SUMMARY CONVICTIONS; APPEAL BY STATED CASE; RULING ON ADMISSIBILITY OF EVIDENCE NOT THE SUBJECT OF A STATED CASE; EVIDENCE NOT TO BE TRANSMITTED.

(1) Code, sec. 761 enabling a justice to state a case to a Superior Court on the ground that a "conviction order, determination or other proceeding" before the justice is erroneous in point of law, does not enable the justice to state a case to decide whether or not certain evidence excluded by the magistrate at the hearing should have been admitted and, if so, its effect on the case. (2) The collection by an incorporated club from such of its shareholders as used the club billiard tables and bowling alleys of charges based on the number of games played, the receipts from which were applied in payment of club expenses, does not prove a "keeping for hire or gain" by the club. (3) An incorporated club to the privileges of which only its shareholders are admitted, is not a house of public entertainment or resort within a licensing by-law passed under the Ontario Municipal Act. (4) A justice stating a case in summary conviction proceedings under Code sec. 761 should state his findings of fact without making the whole evidence a part of the case or transmitting the same to the Appellate Court. (Per Riddell, J.) The King v. Dominion Bowling and Athletic Club, 15 Can. Cr. Cas. 105.

STATED CASE BY MAGISTRATE IN SUMMARY MATTER.

Under Cr. Code, sec. 761, a magistrate may state a case in a summary conviction matter in respect of an offence under Federal jurisdiction, although the statute under which the prosecution is taken was passed before Confederation and applies only to one province. The King v. Weatheral, 18 Can. Cr. Cas. 372.

SETTLING STATED CASE; FORMAL SIGNATURE WAIVED.

On a case directed to be stated under Cr. Code, sec. 1016 following the refusal of a reserved case, the Court of Appeal may proceed with the hearing of the questions which it has directed to be stated without sending them to be formally signed by the Judge below if the Crown waives technical objections; the Court of Appeal may in such case direct that the record and evidence may be referred to by the Crown in contradiction of any fact incorrectly set forth in the stated case submitted by the accused. R. v. Belyea, 24 Can. Cr. Cas. 395.

STIFLING PROSECUTION.

Note on agreements for stifling prosecutions. 2 Can. Cr. Cas. 559.

MISAPPROPRIATION; SECURITY FOR PAYMENT.

All agreements to suppress criminal prosecutions are illegal in the absence of any statuory provision to the contrary. A covenant for the payment of money, given by the accused and others for the purpose of stifling a prosecution for the alleged embezzlement, prior to the Criminal Code, of partnership property under the Larceny Act, R.S.C. ch. 164, sec. 58 (see Criminal Code 311), is not enforceable. The Imperial Act 20 and 21 Vict. ch. 54, sec. 12, if it be still in force in British Columbia, which it did not become necessary to decide, applies only to trustees guilty of misappropration of property held upon express trusts, and validates an agreement or security given by such a defaulting trustee himself, having for its object the restoration or repayment of any trust property misappropriated, but not an agreement or security given by third parties under no civil obligation to the party wronged, for the purpose of stifling the prosecution. Major v. McCraney, 2 Can. Cr. Cas. 547.

STRIKES.

See also Trade Combinations.

INDUSTRIAL DISPUTES ACT; INCITING STRIKE BEFORE APPLICATION FOR A BOARD OF CONCILIATION.

(1) Inciting a strike of mines employees is an offence under the Industrial Disputes Act (Can.) 1907, although no application had then been made for the appointment of a conciliation board. (2) The term of imprisonment for default in payment of a fine for such offence is controlled by Code, sec. 739 (b), and must, therefore, not exceed three months. The King v. McGuire, 13 Can. Cr. Cas. 312.

AIDING CONTINUANCE OF MINERS' STRIKE: AGENT OF TRADE UNION SUPPLYING FOOD AND CLOTHING TO STRIKERS.

(1) Where a representative of a trade union at the instance of which a strike has been declared by coal miners, gave cheques

to merchants for goods supplied on his order as such representative to the striker for the purpose of enabling the latter to continue on strike, he is properly convicted of aiding the persons so assisted to continue on strike within the meaning of the Industrial Disputes Investigation Act (Canada). (2) A mining employee who has gone out on strike with others in protest against certain authorized deductions from their wages to pay membership dues in an employee's association but has not been discharged and is still privileged to return to his work, is an "employee" of the mines within the terms of the Industrial Disputes Investigation Act, and inciting or aiding him to remain away from his employment prior to a reference of the dispute to a board of conciliation, is an offence under that Act. The King v. Neilson, 17 Can. Cr. Cas. 298.

INCITING TO GO ON STRIKE; INDUSTRIAL DISPUTES ACT.

To constitute the criminal offence of inciting to strike under the Industrial Disputes Investigation Act, 1907, Can. ch. 20, secs. 56 and 60, there must have been a "dispute" under sec. 2 (e) on account of which the strike was incited; the offence may consist of inciting miners to go on strike after the strike has started although there had been no previous demand by the miners upon their employers for different conditions or wages, but it is not made a crime under that Act to incite the commencement of a strike before any demand for better terms of employment. R. v. Holowaskawe, 24 Can. Cr. Cas. 224.

SUBORNATION.

See Perjury.

SUBSTITUTIONAL SERVICE.

Summary proceedings; Defendant out of jurisdiction. 4 Can. Cr. Cas. 466.

Summary proceedings; Substitutional service of summons; "Last or most usual place of abode." 10 Can. Cr. Cas. 135.

PROOF OF SUBSTITUTIONAL SERVICE.

The proof of service of a magistrate's summons served substitutionally must shew that the defendant could not be conveniently served in person, and that the adult person substitutionally served for him at the defendant's place of abode is an inmate thereof. Where proof of the substitutional service becomes necessary in order to enable the magistrate to proceed with the trial, and is defective in both of such particulars, the conviction will be quashed on certiorari. Evidence will not be received in the certiorari proceedings to supplement the proof of service given before the magistrate. Re Barron, 4 Can. Cr. Cas. 465.

LEAVING AT USUAL PLACE OF ABODE; DEFENDANT NOT APPEARING; DISTINCT OFFENCE.

Upon a summons for illegally selling liquor contrary to the Canada Temperance Act, the magistrate has no jurisdiction to convict for the offence of keeping for sale if the summons was served substitutionally by being left at the defendant's last known place of abode and he does not appear. The King v. Lyons, 10 Can. Cr. Cas. 130.

EVIDENCE OF REASONABLE NOTICE; HOUR OF SERVICE ON PRECEDING DAY; DISTANCE FROM PLACE OF HEARING.

(1) A magistrate has no jurisdiction to proceed in the absence of the accused in a summary proceeding, without evidence that the summons was served a reasonable time before the hearing. (2) Where the proof of servce of the summons was that it had been left with an adult person at defendant's house on the date preceding the hearing, such does not constitute evidence upon which the magistrate could adjudicate upon the question of reasonable notice, without proof of the hour of service and the distance from the place of hearing. Re O'Brien, 10 Can. Cr. Cas. 142.

[Referred to in Re Kennedy, 17 Can. Cr. Cas. 345.]

SUMMARY CONVICTION; NOTICE OF APPEAL, NO SUBSTITUTIONAL SERVICE PERMITTED

A notice of appeal from a summary conviction (Revised Cr. Code, sec, 751) cannot be served substitutionally on the respondent by mailing it to his last known address or leaving it at his last known place of abode. Olson v. Cameron, 12 Can. Cr. Cas. 193.

SUMMARY CONVICTION; DELIVERY TO INMATE OF LAST PLACE OF ABODE.

The jurisdiction of the magistrate to proceed ex parte on the return of a summons attaches only on proof of service and where service was made substitutionally upon a brother of the accused at the defendant's hotel upon failure to find the defendant himself, proof that the brother served "stayed at the hotel most of the time" is insufficient to shew that he was an "inmate" of the defendant's last or most usual place of abode within Code, sec. 658, and the conviction was made in defendant's absence was set aside. The King v. Franey, 16 Can. Cr. Cas. 441.

SUMMARY CONVICTION.

I. Generally.
II. Jurisdiction and Duty of Magistrate.
III. Procedcure.
IV. Effect.
V. Penalties and Costs.
VI. Record of Conviction and Proceedings.
VII. Amendment.

VIII. Duplicity and Uncertainty.
IX. Variance.

Liability of corporation to. 4 Can. Cr. Cas. 115.

Summary proceedings; Substitutional service of summons; "Last or most usual place of abode." 10 Can. Cr. Cas. 135.

Defendant out of jurisdiction; Summary proceedings; Substitutional service. 4 Can. Cr. Cas. 466.

Jurisdiction of; Irregular process cured by appearance. 4 Can. Cr. Cas. 539.

Shewing justice's jurisdiction on the face of the conviction. 8 Can. Cr. Cas. 84.

Ontario Summary Convictions Act; Note on procedure under. 5 Can. Cr. Cas. 301.

Procedure for provincial offences in Ontario; Statute of 1901 respecting. 5 Can. Cr. Cas. 566-569.

Dispensing with warrant of distress to realize fine. 7 Can. Cr. Cas. 441.

Depositions in writing; Summary conviction clauses. 10 Can. Cr. Cas. 314.

Amendment of, not to be made to interfere with exercise of magistrate's discretion. 1 Can. Cr. Cas. 132.

Return of amended conviction to writ of certiorari. 1 Can. Cr. Cas. 219.

Wilful injury to property; Describing the offence; Uncertainty. 8 Can. Cr. Cas. 141, 142.

Note on variance between minute of adjudication and the conviction. 6 Can. Cr. Cas. 59.

Variance from minute of adjudication. 7 Can. Cr. Cas. 314.

Variance from minute of adjudication; 8 Can. Cr. Cas. 20.

Orders for further detention on quashing conviction; Cr. Code, sec. 1120; 24 Can. Cr. Cas. 360.

Summary proceedings for obstructing peace officers; Cr. Code, sec. 169; 25 Can. Cr. Cas. 379.

I. Generally.

CONVICTION FOR SELLING LIQUOR WITHOUT LICENSE; WHAT TO CONTAIN.

It is not necessary, in a conviction for selling liquor without license, to mention the statute under which the conviction took place; nor that it should appear on the face of the conviction that the prosecution commenced within twenty days of the commission of the offence, nor to specify that it is a first or second offence; nor to whom the liquor was sold; neither is it illegal to award imprisonment in default of distress, etc. Regina v. Strachan (1870), 20 U.C.C.P. 182.

CONVICTION OF MINOR UNDER 16; NOT NECESSARY TO STATE AGE OR RELIGION.

Defendant was convicted before the stipendiary magistrate of the city of Halifax of the offence of stealing the sum of $30 and was sentenced to be imprisoned for the term of three years in the Halifax Industrial School, a reformatory for boys of the Protestant faith. His discharge was sought upon habeas corpus on the grounds that the conviction did not shew that defendant was a Protestant or that he was under the age of 16 years:—Held, dismissing the application, that neither the age nor the religion of the defendant had anything to do with the offence of which he was convicted and that it was not necessary that they should be stated in the conviction. The Code, sec. 820, provides that "the justices before whom any party is summarily convicted of any offence hereinbefore mentioned may cause the conviction to be drawn up in the form UU. in schedule 1 hereto, or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes." Held, that the intention no doubt was to dispense with recital and averments in the particulars mentioned, and that the words "shall be good and effectual to all intents and purposes" might be regarded as the equivalent of a legislative declaration that it should not be necessary to refer the conviction to the age of the party, or to the justice's opinion on that subject. Held, that the power of determining the age or apparent age of the party before him was given exclusively to the justices, and following, Rex v. Simpson, 1 Str. 46, that it must be assumed that he exercised it. The Queen v. Quinn (1900), 36 C.L.J. 644.

NECESSITY TO STATE ABSENCE OF ASSENT IN CONVICTION OF MAGISTRATES.

Held, that an objection that the conviction did not shew upon its face the absence of either of the justices before whom the information was laid, nor the assent of the other of them that another justice should act or take part in the prosecution was one of form merely, against which secs. 117 and 118 of the Canada Temperance Act sufficiently provided; and, even without the aid of such sections, it was doubtful whether the objection could prevail. Regina v. Collins (1887), 14 O.R. 613.

CONVICTION UNDER CANADA TEMPERANCE ACT.

A conviction for a first or second offence under the Canada Temperance Act should be a complete judgment, and the Court should thereby award distress in default of payment of the penalty, and for want of sufficient distress imprisonment of the defendant. The jurisdiction of the justice does not terminate with the imposition of the fine. [Regina v. Porter, 20 N.S.R. 352, dissented from.] Regina v. White; In re Perry (1889), 28 N.S.R. 216.

ASSAULT OF OFFICER; SUMMARILY TRYING ASSAULT; REQUEST TO SO PROCEED.

A justice of the peace has no jurisdiction to try an assault summarily unless it is given by statute, and he must strictly pursue the authority given; and in order to give him jurisdiction under the statute of Canada 32 and 33 Vict. ch. 20, sec. 43, it is necessary that the complainant should request him to proceed summarily; and this request should be made at the time of the complaint. Where the proceedings did not shew 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. Quære, whether a conviction by a justice for an unlawful assault should shew a request to proceed summarily. A conviction for an unlawful assault may adjudge defendant to be imprisoned in the first instance, under sec. 43 of 32 and 33 Vict. ch. 20. Reg. v. O'Leary, N.B.R. 264.

[See Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

OFFENCE UNKNOWN TO THE LAW.

A conviction for "procuring" a pistol with intent unlawfully to do injury to another person, is not to be held a sufficient conviction for "having on his person a pistol, etc.," and is bad as not disclosing an offence known to the law. R. v. Mines, 1 Can. Cr. Cas. 217.

FOR PROFANE LANGUAGE; OMISSION TO SET OUT THE WORDS.

A conviction for using profane language on a public street is invalid unless the words complained of are therein set out. R. v. Sarah Smith, 2 Can. Cr. Cas. 485.

FOR PRACTISING MEDICINE, MUST STATE THE PARTICULARS.

A conviction for illegally practising medicine must shew the exercise of that calling upon more than one occasion within the prescriptive period within which a prosecution must be brought. The conviction must set out the particular acts of the accused which are held to constitute the illegal practising. R. v. Whelan, 4 Can. Cr. Cas. 277.

[Referred to in R. v. Von Norman, 19 O.L.R. 477, 14 O.W.R. 659; R. v. Lee, 4 Can. Cr. Cas. 489.]

OBSTRUCTING A PEACE OFFICER.

The provisions of Cr. Code, sec. 144 fixing the punishment for which anyone guilty of obstructing a police officer shall be liable "on summary conviction" is not controlled by Code, secs. 783 and 786 as to "summary trial," and the charge may be summarily adjudicated upon by a magistrate without the consent of the accused. R. v. Nelson, 4 Can. Cr. Cas. 461.

[Explained in Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 9 Que. K.B. 241.]

TWO SIMILAR CHARGES ON DIFFERENT INFORMATIONS TRIED CONSECUTIVELY; RESERVING JUDGMENT ON FIRST UNTIL EVIDENCE HEARD ON SECOND.

(1) Where a magistrate trying two charges against the same defendant for similar offences, reserved judgment in the first case until after the trial of the second, and then dismissed the first charge and convicted on the second, such conviction will not be set aside on certiorari if it is shewn that the magistrate was governed in each case solely by the evidence therein given. (2) Semble, evidence would not be admissible to shew what operated on a Judge's mind with reference to the conduct of the trial, had such proceedings taken place at a "speedy trial" before a County Court Judge. The King v. Sing, 6 Can. Cr. Cas. 156.

[Referred to in Ex parte Monahan, 17 Can. Cr. Cas. 53, 9 B.C.R. 256; R. v. Iman Din, 18 Can. Cr. Cas. 97.]

WHO IS A "PERSON AGGRIEVED;" QUASHING CONVICTION FOR DISQUALIFICATION OF PROSECUTOR.

Where a prosecution under a special Act may be brought only by "a person aggrieved," a summary conviction will be quashed unless the informant be a person who has sustained a loss or liability recognized by law by reason of the alleged offence. The King v. Frankforth, 8 Can. Cr. Cas. 57.

STATING TIME OF OFFENCE IN GENERAL TERMS; VALIDATING STATUTE; WITHIN SIX MONTHS BEFORE THE INFORMATION; "LAST PAST," MEANING OF.

A summary conviction alleging the offence as having been committed "within the space of six months last past previous to the information" does not disclose an offence within the period of six months before the laying of the information, and is not within the terms of a statute which makes the latter a sufficient specification as to time and which limits prosecutions to the same period. The King v. Boutilier, 8 Can. Cr. Cas. 82.

[Followed in R. v. Wambolt, 14 Can. Cr. Cas. 160.]

INTERMIXING OF TRIALS; THREE CONSECUTIVE TRIALS FOR SIMILAR OFFENCES.

Where three separate charges for similar offences each committed within a few days of the other are consecutively tried by a magistrate on the one day and the magistrate announces a conviction or acquittal at the conclusion of each case, it is no objection to the validity of the trials that they were intermixed by the reservation of

the question of punishment until after the conclusion of all three trials. The King v. Bigelow, 8 Can. Cr. Cas. 132.

STATING TIME OF OFFENCE IN GENERAL TERMS; WITHIN SIX MONTHS BEFORE THE INFORMATION.

A summary conviction alleging the offence as having been committed "within the space of six months last past previous to the information" does not disclose an offence within the period of six months before the laying of the information, and is not within the terms of a statute which makes the latter a sufficient specification as to time and which limits prosecutions to the same period. [R. v. Boutilier, 8 Can. Cr. Cas. 82, followed.] The King v. Wambolt, 14 Can. Cr. Cas. 160.

WEIGHT OF EVIDENCE NOT A GROUND TO QUASH ON CERTIORARI IF ANY EVIDENCE SUPPORTS CONVICTION.

(1) If there is any evidence upon which a summary conviction can be based, the Court, upon an application to quash in certiorari proceedings will not consider the weight of conflicting evidence, but will affirm the conviction if otherwise unobjectionable. (2) Where the magistrate hearing a prosecution under a liquor license law reserved judgment and sent for the license inspector who was the informant and held a private conference with him as to the witnesses' costs, their conduct although to be deprecated is not sufficient to quash the conviction but is ground for depriving not only the magistrates but the informant of their costs of opposing the certiorari proceedings. The King v. McArthur, 14 Can. Cr. Cas. 343.

[Referred to in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

KEEPING DISORDERLY HOUSE; DEFENDANT'S OWN EVIDENCE PROVING GUILT.

(1) A summary conviction finding the accused guilty of being the keeper of "a disorderly house of prostitution or house for the resort of prostitutes" discloses one offence only, the alternative being a mere restatement of the same charge. (2) The accused cannot claim an adjournment as a matter of right to enable him to obtain counsel to conduct the defence. (3) Where the magistrates presiding at a summary hearing under the Vagrancy clauses for keeping a bawdy house refused an adjournment, asked for the purpose of obtaining counsel, on the accused being first brought before them and forthwith proceeded with the trial at which the accused gave evidence in her own behalf sufficient to sustain a conviction, no injustice can be said to have been occasioned by the refusal to adjourn and the accused will not be released on habeas corpus. The King v. Irwing, 14 Cr. Cas. 489.

REMOVAL OF BY CERTIORARI.

The Attorney-General has an absolute right to demand the removal of summary conviction proceedings into a Superior Court by certiorari. The King v. Nelson, 15 Can. Cr. Cas. 10.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 201.]

ADJOURNMENT FOR JUDGMENT; DELIVERY BY ONE OF TWO JUSTICES IN THE OTHER'S ABSENCE; SUMMARY CONVICTION SIGNED BY BOTH JUSTICES PENDING ADJOURNMENT.

(1) Where the defendant after summary conviction gave notice of appeal therefrom and then applied for and took out an order for certiorari, the certiorari proceedings will be dismissed if it appears that after their institution the applicant took another step in his appeal by serving reasons of appeal. (2) When justices holding summary proceedings adjourn the same to consider the evidence, both justices should attend on the delivery of judgment and a conviction signed by both during the adjournment and read by one of them in the other's absence on the day to which adjournment had been made is irregular. (Per Gregory, J.) Ex parte McCorquindale, 15 Can. Cr. Cas. 187.

[Referred to in Pakhala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 255.]

IRREGULARITY IN INFORMATION FOR SEARCH WARRANT; EXECUTION OF SEARCH WARRANT OUTSIDE OF CITY WHERE ALLEGED KEEPING FOR SALE IS CHARGED.

(1) The invalidity of the information for a search warrant issued under the Canada Temperance Act cannot be raised on certiorari in respect of a conviction under a separate information against the same person for illegally keeping liquor for sale. (2) If the evidence is sufficient to prove the keeping of liquor for sale, the conviction will not be quashed because the liquor in question was seized under a search warrant under the Canada Temperance Act outside of the city limits and the information and conviction for keeping are expressed to be for an offence within the city, if the magistrate had jurisdiction both in the city and at the place of seizure. Ex parte Wilson, 15 Can. Cr. Cas. 264.

[Referred to in Ex parte Horsman, 15 Can. Cr. Cas. 281.]

SEARCH WARRANT FOR LIQUOR; CONVICTION BASED ON EVIDENCE OBTAINED UPON THE SEARCH; VALIDITY.

The fact that the informant as chief of police laid the information for and executed a search warrant under the Canada Temperance Act, will not invalidate a summary conviction for keeping liquor for sale although based upon the result of the search

under the warrant. Ex parte Dewar, 15 Can. Cr. Cas. 273.

[Distinguished in R. v. LeBlanc, 21 Can. Cr. Cas. 221.]

READING OVER DEPOSITIONS TO WITNESSES; CERTIORARI WHERE NO APPEAL; SPECIFIED DATE AND "BEFORE AND SINCE."

(1) Where there is no appeal from a summary conviction made by justices under a provincial statute, the reading over of the depositions to the witnesses in conformity with Cr. Code, sec. 682 is not essential to the validity of the conviction. (2) A statutory provision for release from imprisonment on paying the fine and costs up to conviction and "subsequent costs" includes under the latter head the costs of arrest and commitment and conveying to goal. (3) Where the right of appeal from a summary conviction has been taken away by statute, the Court will not on certiorari consider the weight of evidence or revise the decision of the magistrate as to guilt unless there was a complete absence of evidence as to some essential element of the offence. (4) A summary conviction under the Quebec Liquor License Act in respect of a single offence of selling without a license on or about a specified date "and at divers times before and since" is not bad for uncertainty where by statute the time of the offence is sufficiently proved if shewn to be within the four months' limitation allowed for prosecution. (5) Such conviction would be an answer to another charge for an offence committed on or about the date specified. The King v. Dubuc, 15 Can. Cr. Cas. 353.

WARRANT IN FIRST INSTANCE; HEARING ON SAME DAY AS ARREST; APPLICATION TO ADJOURN; MISTRIAL ON REFUSAL.

(1) An application for an adjournment of the trial of a summary conviction matter should be granted to procure the attendance of witnesses for the defence resident within a short distance of the place of trial, where the accused was arrested on a warrant in the first instance on the same day as the hearing and could be required to renew his bail during the adjournment asked. (2) A summary conviction will be quashed if, by the refusal of a reasonable adjournment, the accused has been deprived of an opportunity to make his full answer and defence to the charge. The King v. Lorenzo, 16 Can. Cr. Cas. 19.

[Distinguished in R. v. Luigi, 16 Can. Cr. Cas. 27.]

OPPORTUNITY TO MAKE FULL ANSWER AND DEFENCE; FAIR TRIAL.

(1) The granting of an adjournment in a summary conviction matter is in the discretion of the magistrate, but such discretion is not to be exercised in such a way as will deprive the accused of a fair trial. (2) Where an application for an adjournment was made at the close of the case for the prosecution on a trial for selling liquor without a license after evidence that the accused was personally present when the sale was made on his premises, but without tendering the evidence then available for the defence, the refusal of the adjournment asked to procure the attendance of another witness present at the time of the alleged sale does not deprive the accused of a fair trial and is not a ground for quashing the conviction. The King v. Luigi, 16 Can. Cr. Cas. 25.

MAGISTRATE PERMITTING WITHDRAWAL OF CHARGE; NEW INFORMATION BEFORE ANOTHER MAGISTRATE.

Where the hearing of a summary conviction matter was adjourned after the taking of formal evidence only, and no one appeared for the accused on the adjourned hearing, the prosecutor may be permitted to withdraw the information because of doubt as to the magistrate's jurisdiction, and a certificate of such withdrawl will not be equivalent to a dismissal and will not bar a subsequent prosecution before another magistrate for the same offence. Ex parte Mitchell, 16 Can. Cr. Cas. 205.

AFFIRMANCE ON APPEAL; SENTENCE SEVERABLE.

(1) If a person sentenced to imprisonment upon summary conviction gives a recognizance and is liberated under sec. 750 (c) pending an appeal from the summary conviction, the interval until his return to custody will not count on the term of imprisonment, as affirmed on the appeal. (2) If a person sentenced to imprisonment upon summary conviction remains in goal pending his appeal therefrom, the time so served counts on the term of imprisonment as affirmed on the appeal. (3) Where the accused sentenced on summary conviction to three months' imprisonment served seven days thereunder and then obtained his release under Code, sec. 750 pending an appeal, but the conviction was afterwards affirmed, a fresh commitment erroneously issued for the whole term of three months instead of for the remainder of such term is not bad in toto and may be amended under Code, secs 1121 and 1124 on habeas corpus. (4) Where an appeal from a summary conviction is dismissed without any variance of the order made by the justice, the enforcement of the conviction so affirmed should proceed under warrant of the convicting justice or of some other justice for the same territorial division, and not under warrant issued from the Appellate Court expect for the costs of appeal. (5) If instead of an affirmance, a different judgment has been pronounced on the appeal, the judgment so substituted for that appealed from may be enforced either by the process of the Court appeal to (Code, sec.

751) or by process issued by the convicting justice. (6) When the costs of an unsuccessful appeal are awarded against the defendant, the payment of such costs may be enforced either by process of the Appellate Court or by a justice's warrant upon certificate of default under Code, sec. 759. (7) Code forms 53 and 54 of warrants by justices in default of payment of the costs of appeal from a summary conviction may be varied under Code, sec. 1152 so as to apply to warrants issued for the same purpose by the Appellate Court. (8) A commitment in respect both of the imprisonment imposed in a summary conviction for the offence and of the costs of an unsuccessful appeal therefrom is severable, and if the unexpired term under either has been legally awarded it will constitute an answer in habeas corpus. (9) Where there is a valid summary conviction, but the commitment issued to enforce the same is irregular, the Court on habeas corpus may, under Code, sec. 1120, order a proper commitment to be issued by the justice to supersede the prior warrant, and may direct the prisoner's detention until the new warrant has been issued. Collette v. The King, 16 Can. Cr. Cas. 281.

SUMMONS STATING DIFFERENT OFFENCE TO THAT IN INFORMATION.

(1) A variance between the summons and the information and evidence in a summary conviction matter is cured by Code, sec. 724, subject to the right of the accused, if prejudiced by the variance and appearing on the summons to ask an adjournment; but, if the accused fails to appear, a new charge cannot be substituted in his absence. (2) Where by mistake a summons following an information for keeping liquor for sale in a proclaimed district contrary to Code, sec. 150 stated the charge as unlawfully selling which is also an offence under the same section, but the magistrate presiding at the trial ordered the summons amended and refused an adjournment asked by the defence to answer the amended charge, the Court declined to quash the conviction on certiorari. (3) The granting of an adjournment because of the summons not conforming with the information is wholly in the discretion of the magistrate, and its refusal does not go to the jurisdiction. Ex parte LeBel, 16 Can. Cr. Cas. 363.

APPLICATION OF SUMMARY CONVICTIONS CLAUSE OF CODE.

(1) Under a provincial statute declaring that all the provisions of the Criminal Code respecting summary convictions shall apply to prosecutions for a specific offence under provincial law, secs. 754 to 760 as to appeals from summary convictions will be applicable as well as the clauses regulating the practice to be followed in proceedings before the magistrate. (2) Where an appeal was so taken by the prosecutor from the magistrate's dismissal of a complaint under sec. 3562 (a) of the Revised Statutes of Quebec for unlawful practice as an attorney, and an application to quash had been refused to the Court of King's Bench, appeal side, for leave to apeal from such refusal was dismissed. Montreal Bar Association v. Dominion Mercantile Protective Association, 16 Can. Cr. Cas. 371.

WANT OF JURISDICTION TO PROCEED.

(1) A justice of the peace hearing a summary conviction matter may accept as proof of service of the summons a constable's affidavit of service endorsed thereon prior to the return date. (2) Where a warrant of commitment includes unauthorized costs to be paid as a condition of release, the Court will not discharge the prisoner on that ground alone, but will remand him for a sufficient time to have the erroneous judgment corrected. (3) Sec. 655 of the Criminal Code (as amended, 1909) makes it imperative that a justice shall before issuing either a summons or a warrant in a summary conviction matter, take down the evidence of the complainant's witnesses (if any) and consider the same on the ex parte application for the issue of a summons or warrant; and the justice's omission to do so will invalidate a conviction pronounced at the hearing in the absence of the accused. [But see Ex parte Archambault, 16 Can. Cr. Cas. 433.] (4) Where the defendant summoned on a summary conviction charge fails to appear, an adjournment of the hearing must nevertheless be to a time and place appointed and publicly stated at the time the adjournment takes place. The King v. Smith, 16 Can. Cr. Cas. 425.

[Disapproved in R. v. Mitchell, 19 Can. Cr. Cas. 114].

TWO CONCURRENT CHARGES; SEPARATE OFFENCES OF A SIMILAR CLASS; MIXING THE TRIALS.

Where two prosecutions against the defendant for illegally selling liquor are brought before the same magistrate and at the conclusion of the evidence in the first charge he reserves judgment and proceeds with the evidence in the second, and each charge is for a separate and distinct transaction, it will not be presumed that the magistrate was influenced to convict in either case by the evidence in the other, and both convictions will stand unless the first conviction would be an answer to the other charge. Ex parte Monahan, 17 Can. Cr. Cas. 53.

PROOF OF OFFENCE A MATTER OF FACT FOR THE MAGISTRATE.

Whether the offence for which a summary conviction has been made by a magistrate was or was not proved, is a question of fact which is not open upon an application on certiorari to quash the conviction. Ex

parte O'Regan (No. 2), 17 Can. Cr. Cas. 160.

IRREGULAR IN PROCEEDINGS.

A summary conviction will not be quashed because the depositions signed by the witnesses were not also signed by the presiding justice in conformity with Code, sec. 682, sub-sec. 4. Ex parte Budd, 17 Can. Cr. Cas. 235.

MILITARY LAW; APPEAL FROM SUMMARY CONVICTION.

(1) Where the alleged obstruction of a regiment on parade by an electric car of which the accused was the motorman, appears on the rehearing on appeal to have been accidental, the Court will reverse the summary conviction. (2) A County Court Judge hearing an appeal from a summary conviction has no power to state a case to the Court of Appeal in respect of points of law arising on the appeal before him. (Per Court of Appeal.) The King v. McIntosh, 17 Can. Cr. Cas. 295.

APPLICATION FOR SUMMONS OR WARRANT; PRELIMINARY HEARING OF WITNESSES OTHER THAN COMPLAINANT.

Sec. 655 of the Criminal Code and the amendment thereof by Canada Statutes, 1909, as to the justice hearing the evidence of complainant's witnesses on an application for a summons or warrant, apply only to indictable offences and not to prosecutions under the Summary Convictions clauses. The King v. Neilson, 17 Can. Cr. Cas. 298.

SUMMONS TO ANSWER BEFORE A MAGISTRATE.

(1) A summons in summary proceedings is by Code, sec. 658 to be served by a constable or other peace officer, but this does not abrogate the common law rule that a constable cannot perform official functions in a proceeding in which he is the complainant. (2) The service of a summons for trial of a summary conviction matter is invalid if made by a constable or peace officer who is himself the prosecutor. (3) The defect in the manner of service goes to the jurisdiction of the magistrate if the defendant does not appear and thereby dispense with the necessity of service. (4) The defendant may shew the invalidity of the service upon a certiorari application to quash the conviction, although he did not appear or have counsel appear to raise the objection before the magistrate. Re Kennedy, 17 Can. Cr. Cas. 342.

QUASHING ON GROUND NOT TAKEN AT TRIAL.

(1) Where a prosecution is brought under by-laws passed under statutory authority such as the by-laws of the Board of Railway Commissioners and provision is also made for their publication in the Canada Gazette, the by-law may be operative before such publication, but it will be necessary in order to support a conviction thereunder for an offence taking place between the times of the passing of the by-law and of the official publication in the Gazette, such by-law must be proved before the trial Court and it must also be shewn that defendants had notice of it. (2) Although no objection of want of notice or of proof of notice was taken before the justices trying the case, a summary conviction in the absence of notice of the by-law would be so contrary to natural justice that the Court on certiorari will quash the conviction for want of evidence of same. The King v. Canadian Northern Railway Company, 18 Can. Cr. Cas. 170.

COMMENCEMENT OF TRIAL.

(1) Where a summary proceeding before a Recorder's Court was after partial trial adjourned to a legal holiday on which the Court did not sit and in consequence the Recorder on an intervening day and in the absence of the accused ordered the adjournment changed to an earlier day and on that day again adjourned the trial in the absence of the accused to a date more than eight days from the date of the partial trial, such subsequent adjournments are irregular and in contravention of Criminal Code, sec. 722, unless notice is given to the accused of the date of the renewed hearing and the Recorder's Court may be prohibited from proceeding further with the case. (2) Where prohibition is granted because of an adjournment of the trial of a summary matter having been made for more than eight days contrary to sec. 722 of the Criminal Code, and it appears that an adjournment of the hearing was moved by defendant's counsel, costs of the prohibition motion will be refused the defendant petitioning for the prohibition. Donohue v. Recorder's Court of Quebec, 18 Can. Cr. Cas. 182.

COMPLAINANT'S DEFAULT IN APPEARANCE AT TRIAL; FRESH INFORMATION AND SUMMONS FOR SAME CAUSE; PLEA OF AUTREFOIS ACQUIT.

(1) The dismissal of an information under the Summary Convictions clauses upon the failure of complainant to attend is not a bar to the issue of a new summons upon a fresh complainant for the same cause where the default was due to a misunderstanding with the magistrate as to the date of trial. (2) The certificate of dismissal provided by Code, sec. 730 applies only to the cases which have been "considered" by the magistrate (Code form XXXVIII.) and the section does not apply to bar the reopening for good cause of an information which had been dismissed upon default. Hall v. Pettingell, 18 Can. Cr. Cas. 196.

NO REVERSAL BY AGREEMENT BETWEEN COMPLAINANT AND ACCUSED.

(1) It is not competent for the complainant and the defendant in a summary conviction matter to vacate the conviction by

consent. (2) On an appeal from a summary conviction the Court will not quash the conviction upon consent unless it appears on the face of the proceedings or upon a rehearing that the conviction was wrong. The King v. McCabe, 18 Can. Cr. Cas. 217.

SECOND OFFENCE; PROOF OF PREVIOUS CONVICTION BEFORE SAME MAGISTRATE.

The production of a certificate of a summary conviction before the same magistrate giving the name and address of the person convicted similar to the name and address of the defendant now charged with a second offence is some evidence of identity on proving that the accused had been previously convicted, without oral evidence to shew that the same individual was the defendant in both cases. The King v. Atkinson, 18 Can. Cr. Cas. 279.

APPEAL; RECOGNIZANCE; PRIOR OFFENCE.

(1) On an appeal from a summary conviction a preliminary motion may be made to quash the conviction appealed from upon grounds appearing on the face of the proceedings, ex. gr., the lack of any evidence as to an essential part of the offence. (2) On an appeal from a summary conviction imposing a fine and, in default of payment, imprisonment, the Appellate Court is not deprived of jurisdiction to hear the appeal by a clerical error in the recognizance whereby the amount of appellant's personal obligation was omitted although filed in as to the sureties. (3) Where there is no proof, either by admission or certificate, of the prior offence upon a charge of a third offence of selling intoxicating liquor without a license under the Liquor License Act (Sask.), the conviction imposing a larger penalty than is authorized for a first offence must be quashed. [R. v. Brook, 7 Can. Cr. Cas. 216, and R. v. Nurse, 8 Can. Cr. Cas. 173, followed.] The King v. Koogo, 19 Can. Cr. Cas. 56.

ADJOURNMENT; DELAY IN APPLYING.

The magistrate has a discretion to grant an adjournment of the hearing in order that the defendant may obtain counsel, but where the accused failed to ask for counsel or for an adjournment until after the evidence for the prosecutor was closed, the magistrate's refusal to adjourn will not invalidate the conviction. The King v. Püster, 19 Can. Cr. Cas. 92.

COSTS; WAIVER OF IRREGULARITIES; SUMMONS OR WARRANT; SECOND OFFENCE.

(1) Where a defendant fined on summary conviction under the Liquor License Act (Ont.) and ordered to be imprisoned in default delivers himself up at the place of imprisonment before the warrant is made out, and the magistrate is made aware of that fact, no expenses of conveying the defendant to gaol should be ordered as a condition of release nor included in the warrant, but the warrant, being subject to the Ontario Summary Convictions Act, may be amended by striking out such costs. [R. v. Townsend (No. 3), 11 Can. Cr. Cas. 153; R. v. Gow, 11 Can. Cr. Cas. 81, and R. v. Smith, 16 Can. Cr. Cas. 425, referred to.] (2) An appearance in a summary conviction matter waives all irregularities in the summons and even the want of a summons. [Geller v. Loughrin, 24 O.L.R. 18, 18 Can. Cr. Cas. 461, specially referred to.] (3) Upon an application by the informant for process in a summary conviction matter calling upon the accused to answer the charge, the magistrate need not first hear other evidence than that of the informant in swearing to the information if that satisfies him that the process should issue without hearing other witnesses for the complainant under Cr. Code 1906, sec. 655, as amended by 8 and 9 Edw. VII. ch. 9. [Ex parte Archambault, 16 Can. Cr. Cas. 433, approved; R. v. Smith, 16 Can. Cr. Cas. 425, disapproved.] (4) It is only when the allegations of the complainant do not convince the magistrate that a summons should issue, that there is any need of witnesses for the complainant, and until that time there are no persons who can be termed "his witnesses" under Cr. Code 1906, sec. 655, as amended in 1909, which directs the justice to hear and consider the allegations of the complainant "and the evidence of his witnesses if any," and, on a case for same being made out, to issue a summons or warrant. [Ex parte Archambault, 16 Can. Cr. Cas. 433, approved.] (5) A second summary conviction for unlawful sale of liquor under the Ontario Liquor License Act is not invalid because it charges an offence prior in time to the date of conviction for the first offence. The King v. Mitchell, 19 Can. Cr. Cas. 113.

OFFENCE UNDER ONTARIO MOTOR VEHICLES ACT.

A summary conviction under sec. 18 of the Ontario Motor Vehicles Act, 2 Geo. V. ch. 48, providing that if an accident occurs to any vehicle in charge of any person owing to the presence of a motor vehicle on the highway, the person in charge of such motor vehicle shall return to the scene of the accident and give in writing to anyone sustaining loss or injury, the name and address of himself and of the owner of the motor vehicle and the number of the permit, will be quashed, though the motor vehicle driven by the convicted person grazed the wheel of a passing buggy with sufficient force to loosen two spokes in its wheel, if it appeared at the trial that the person in charge of the motor vehicle did not know or have reason to know that such an injury had resulted to the buggy. [Core v. James, L.R. 7 Q.B. 135; Nicholls v. Hall, L.R. 8 C. P. 322; Reg. v. Sleep,

1 L. & C. 44; Hardcastle, Statutory Law, 3rd ed., 465, (5th ed.—the 2nd ed. of Craies-Hardcastle—468); Maxwell's Interpretation of Statutes, 2nd ed., 115 (5th ed., 157), specially referred to.] Robertson v. McAllister, 19 Can. Cr. Cas. 441, 5 D.L.R. 476.

RIGHT OF PARTY MOVING TO QUASH A CONVICTION TO DISCONTINUE HIS APPLICATION.

It should be only where there is absolutely no doubt, that a party litigant, invoking the aid of the Court to get rid of a conviction, should, after going a certain length, and being likely to fail, be permitted to stop short and deny the right of the Court to go further. Rex v. Hamlink, 19 Can. Cr. Cas. 495, 5 D.L.R. 733.

SUMMARY CONVICTION OR SUMMARY TRIAL.

Obstructing a peace officer is an offence under Cr. Code, sec. 169 which may be prosecuted either under the Summary Convictions Clauses (Pt. XV. of the Code) with a limit of six months' imprisonment of $100 fine, or as an offence punishable on indictment at the option of the Crown; a police magistrate, who would have jurisdiction to summarily try the indictable offence under Part XVI. of the Code, secs. 773, 781, with the consent of the accused, may nevertheless try the case, without his consent where the proceedings are taken under Part XV. as for an offence punishable on summary conviction, but subject to the limit of punishment under that mode of procedure instead of that provided by Part XVI. [R. v. Nelson (1901), 4 Can. Cr. Cas. 461, approved; and see R. v. Jack (1902), 5 Can. Cr. Cas. 304; R. v. Crossen, 3 Can. Cr. Cas. 152, and R. v. Carmichael (1902), 7 Can. Cr. Cas. 167, not followed.] R. v. West, 24 Can. Cr. Cas. 249, affirmed in 25 Can. Cr. Cas. 145.

II. Jurisdiction and Duty of Magistrate.

JURISDICTION AND DUTY OF MAGISTRATE; SIGNED DEPOSITIONS.

Non-compliance with sec. 590 of the Criminal Code which requires that depositions taken before a magistrate in summary proceedings shall be signed by the witness is not matter affecting the jurisdiction of the magistrate. Ex parte Doherty, 3 Can. Cr. Cas. 310.

[Followed in R. v. Dubue, 15 Can. Cr. Cas. 358; R. v. Wells, 15 Can. Cr. Cas. 224; Ex parte Gallagher, 14 Can. Cr. Cas. 42; disapproved in R. v. L'Heureux, 14 Can. Cr. Cas. 103; referred to in R. v. Warlow, 14 Can. Cr. Cas. 118; R. v. Leach, 14 Can. Cr. Cas. 386.]

JURISDICTION AND DUTY OF MAGISTRATE; CERTIFICATE OF DISMISSAL; FAILURE TO PROSECUTE.

The certificate of dismissal provided for by the 43rd section of the Summary Convictions Act may be granted as well where the informant neglects to appear, and the complaint is dismissed on that ground, as where he does appear and the information is dismissed on the merits:—Held, also (Weldon and Wetmore, JJ., dissenting), that the magistrate or other officer before whom an information for an offence against the Canada Temperance Act 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 inquire whether the previous prosecution was real and bona fide, or was instituted fraudulently and collusively. Ex parte Phillips (1884), 24 N.B.R. 119.

JURISDICTION AND DUTY OF MAGISTRATE; SUPPLYING CREAMED MILK; REVIEW ON CERTIORARI.

The defendant was tried at Belleville before the police magistrate of the county of Hastings and convicted, for, amongst other things, supplying milk from which the cream or strippings had been taken or kept back. The factory was in Hastings, but the defendant resided and the milk was supplied in the county of Lennox and Addington:—Held, that the police magistrate of Hastings had no jurisdiction to try the offence and the conviction must be quashed:—Held, also, that certiorari has not been taken away in such cases; but, even if it had, the Court would not be justified in refusing to examine the evidence to see of the magistrate had jurisdiction. Regina v. Dowling (1889), 17 O.R. 698.

SUMMONS; INCONVENIENT PLACE OF RETURN.

The fixing of an inconvenient place for hearing is improper but within the jurisdiction of the justice of the peace and therefore not reviewable on motion for prohibition. The Queen v. Chipman, 1 Can Cr. Cas. 81.

[Distinguished in Simpson v. Lock, 7 Can. Cr. Cas. 295.]

INTERMIXING OF TRIALS; SEPARATE CHARGES AGAINST ACCUSED FOR SIMILAR OFFENCES.

Where two separate charges for similar offences are pending before a magistrate, either of which by an amendment could have been tried under the process for the other, the magistrate should not after hearing evidence on the one offence adjourn the trial thereof and hear evidence upon the other offence; and a conviction in the second is made without jurisdiction if the evidence in the first was likely to influence the magistrate against the accused in the second charge, although the first charge was dismissed. The King v. Burke (No. 2), 8 Can. Cr. Cas. 14.

[Referred to in Ex parte Monahan, 17 Can. Cr. Cas. 53; relied on in R. v. Reid, 12 Can. Cr. Cas. 354; discussed in R. v. Iman Din, 18 Can. Cr. Cas. 88; followed in R. v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210.]

SUMMONS TO APPEAR; DEFAULT; PROCEEDING WITH EVIDENCE WITHOUT PROOF OF SERVICE; SUBSEQUENT ARREST.

(1) On default of appearance to a summons in a summary conviction matter, a justice of the peace cannot legally proceed to take evidence and adjudicate without proof being made of service of the summons. (2) Where the accused failed to attend in pursuance of the summons, and the magistrate, without proof of service, took evidence in support of the charge and issued a warrant for the defendant's arrest to answer the charge, the magistrate has no jurisdiction to convict the accused when brought before him without again taking evidence. The King v. Levesque, 8 Can. Cr. Cas. 505.

LOCALITY OF OFFENCE; SPECIFYING ONLY THE COUNTY OR DISTRICT FOR WHICH THE MAGISTRATE HAS JURISDICTION.

A summary conviction is not necessarily bad because the particular part of the county in which the offence was committed is not specified, provided the offence is stated to have been committed in the county and the convicting magistrate had jurisdiction throughout the whole county. The King v. Meikleham, 10 Can. Cr. Cas. 382.

[Referred to in R. v. Toy Moon, 19 Can. Cr. Cas. 38.]

INFORMATION UPON SUSPICION; EXAMINING COMPLAINANT AND HIS WITNESSES; PROVING GROUNDS OF SUSPICION AND BELIEF TO OBTAIN WARRANT.

(1) A magistrate has no jurisdiction to issue a warrant of arrest in the first instance in proceedings under the Summary Convictions clauses of the Code (Part XV. of the Revised Code) upon an information pledging the informant's suspicions and belief, but not stating the grounds therefor, without first examining the informant or his witnesses as to the grounds of suspicion. (2) Where the attendance of the accused before the magistrate has been compelled by his illegal arrest upon a warrant issued without jurisdiction, and objection is taken on the hearing but overruled, the summary conviction will be quashed. Ex parte Grundy, 12 Can. Cr. Cas. 65.

[Referred to in The King v. Sweeny, 1 D.L.R. 477; followed in R. v. Lorrimer, 14 Can. Cr. Cas. 432; inapplicable in Ex parte Archambault, 16 Can. Cr. Cas. 434.]

MINISTERIAL AND JUDICIAL FUNCTIONS OF MAGISTRATE; DUTY NOT TO DELAY COMMITMENT ORDERED BY CONVICTION.

(1) The issue of a warrant of commitment in execution of a summary conviction is a ministerial and not a judicial act. (2) Where a summary conviction has been made under a special statute and the statute is afterwards repealed, a commitment in execution may be issued notwithstanding the repeal. (3) It is the duty of a magistrate making a summary conviction and imposing a penalty of imprisonment to follow up his judgment with a commitment, and it is doubtful whether he has any discretion to suspend the issue of the warrant of commitment. Re Thomas Lynch, 12 Can. Cr. Cas. 141.

[Referred to in R. v. McKinnon, 12 Can. Cr. Cas. 422.]

JURISDICTION NOT APPEARING ON FACE OF PROCEEDINGS; CERTIORARI NOTWITHSTANDING A PENDING APPEAL.

(1) A magistrate's jurisdiction to make a summary conviction must appear on the face of the proceedings or he will be presumed to have acted without jurisdiction. (2) Certiorari will lie in respect of a magistrate's jurisdiction upon a summary conviction, notwithstanding sec. 1122 of the Revised Criminal Code and the service of a notice of appeal. Johnston v. O'Reilly, 12 Can. Cr. Cas. 218.

HOLIDAY; CONVICTION AFFIRMED.

(1) Easter Monday is not a statutory holiday and a magistrate may proceed to try a summary conviction matter upon that day. (2) Semble, Sundays are the only dies non juridici under Dominion laws. Ex parte Cormier, 12 Can. Cr. Cas. 339.

VALIDITY OF JUDICIAL PROCEEDINGS TAKEN ON SUNDAY.

(1) A warrant of arrest to answer a charge for an offence punishable on summary conviction may be issued and executed on a Sunday. (2) If the magistrate before whom the accused in a summary conviction matter is brought on a Sunday upon a warrant of arrest to answer the charge, accepts bail or security for the defendant's appearance on another day and the defendant appears accordingly, the magistrate has jurisdiction to proceed with the case whether the taking of bail and the continuance of the case on a Sunday were invalid or not. Re McGillivray, 13 Can. Cr. Cas. 113.

PROCEDURE; VARIANCE BETWEEN INFORMATION AND SUMMONS.

(1) Where the summons issued under the summary convictions procedure is for an offence different from that set out in the information, the magistrate acquires no jurisdiction over the accused on his failure to attend on the return of the summons and a conviction made in default of appearance will be set aside. 2) Secs. 669 and 724 of the Cr. Code (1906) which validate proceedings notwithstanding certain irregularities and variances, do not apply where jurisdiction has not been acquired over the accused either by the service of process or by his personal attendance before the magistrate. Ex parte Melanson, 13 Can. Cr. Cas. 251.

INFORMATION FOR WARRANT TO APPREHEND; POSITIVE STATEMENT OF OFFENCE.

(1) Where there is an absolute and posi-

tive statement by the informant in the sworn information of the commission of the offence by the accused, a warrant of arrest may be issued without an examination of the informant or of his witnesses. (2) Failure to serve at the time of arrest, a copy of the warrant to apprehend, does not go to the jurisdiction of the magistrate and is not a ground for setting aside a conviction. [Ex parte Coffon, 11 Can. Cr. Cas. 48, 37 N.B.R. 122, distinguished.] Ex parte Madden, 13 Can. Cr. Cas. 273.

LOCALITY OF OFFENCE; TERRITORIAL JURISDICTION OF MAGISTRATE.

Where the information upon which a summary conviction is based charges that the offence was committed at a named locality stated to be within the province for which the magistrate has jurisdiction, a conviction in the same terms will be presumed to have been made for an offence within the same territorial jurisdiction although no evidence was given to shew that the locality specified is within the limits of that province. The King v. Canadian Pacific R. Co., 14 Can. Cr. Cas. 1.

OMISSION TO READ OVER WITNESSES DEPOSITIONS; MAGISTRATE'S JURISDICTION NOT AFFECTED.

(1) On a trial under the Summary Convictions clauses, the omission to read over to the witnesses their respective depositions does not go to the jurisdiction of the magistrate. (2) Service upon the magistrate of a notice of action by the accused in respect of the enforcement of a prior summary conviction against him made by the same magistrate is not alone a ground of disqualification. Ex parte Gallagher et al., 14 Can. Cr. Cas. 38.

[Referred to in Ex parte McCleave, 14 Can. Cr. Cas. 19; R. v. Lorrimer, 14 Can. Cr. Cas. 434; followed in R. v. Wells, 15 Can. Cr. Cas. 224; R. v. Dubue, 15 Can. Cr. Cas 358; Ex parte Budd, 17 Can. Cr. Cas. 236.]

INFORMATION ON DEPONENT'S INFORMATION AND BELIEF ONLY; MAGISTRATE TO INVESTIGATE CHARGE BEFORE ISSUING WARRANT OF ARREST.

(1) Code, sec. 655 (1) is applicable under sec. 711 to an information leading to a summary conviction, and if the sworn information be upon mere information and belief of the deponent without stating the facts upon which such belief is founded, the justice must examine the informant and decide whether or not his statements justify the arrest of the accused before he issues a warrant of arrest. (2) Non-compliance with the provisons of Code, sec. 655 (1) goes to the jurisdiction of the magistrate (3) The onus is upon the defendant attacking a summary conviction in habeas corpus proceedings to prove the alleged neglect to comply with Code, sec. 655 (1). The King v. Lorrimer, 14 Can. Cr. Cas. 430.

POWER OF ADJOURNMENT BY THE JUSTICE RECEIVING THE INFORMATION.

(1) An irregular adjournment of summary proceedings before a magistrate is waived by the accused afterwards appearing for trial without taking objection thereto and adducing evidence. (2) Code, sec. 708 enables the justice before whom the information was laid, to adjourn the hearing of a summary conviction matter although he would not alone have jurisdiction to try the case. (Per Riddell, J.) (3) A justice other than the one who took the information or the two justices or police magistrates having jurisdiction to try the charge may not legally intervene to grant an adjournment of the trial, but his doing so is a mere irregularity which is waived by the subsequent appearance and consent to trial before a magistrate having general jurisdiction over the offence. (Per Riddell, J.) The King v. Miller, 15 Can. Cr. Cas. 87.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 345.]

TIME LIMIT FOR PROSECUTION; PERIOD FOR LAYING INFORMATION.

Where the time of the offence is stated in a summary conviction as being between two dates and includes a period prior to the time limit for which information could be laid, the conviction will be quashed for want of jurisdiction if the evidence does not shew that the offence was in fact committed within the time limit. Ex parte Hebert, 15 Can. Cr. Cas. 165.

MAGISTRATE AUTHORIZED BY STATUTE TO TAKE PLACE OF ANOTHER WHO LATTER DISQUALIFIED.

(1) A summary conviction made by a magistrate acting in place of another magistrate under a statue authorizing him to do so when the other magistrate is disqualified, need only recite that he is acting because the other is disqualified and need not state the ground of disqualification. (2) The onus of shewing that such recital of disqualification is erroneous is upon the person attacking the conviction. Ex parte Gallagher, 15 Can. Cr. Cas. 239.

ASSAULT WITH INTENT; AMENDMENT OF INFORMATION TO CHARGE COMMON ASSAULT; NO POWER TO PROCEED TO SUMMARY CONVICTION.

Where an information is laid before a maisgtrate for the indictable offence of assault with intent to do grievous bodily harm, the magistrate has no power, even with the consent of counsel for the Crown, to reduce the charge to one of common assault and to thereupon convert the preliminary investigation into a summary hearing and to make a summary conviction in

the same proceeding. Goodwin v. Hoffman, 15 Can. Cr. Cas. 270.

CERTIORARI; LIQUOR LAW; EVIDENCE TO SUPPORT CONVICTION OPPOSED TO PREPONDERANCE OF TESTIMONY.

(1) A summary conviction will not be quashed on certiorari if there was any evidence to support it, although the preponderance of evidence may have been against the magistrate's finding of fact. (2) Where the evidence for the prosecution under the Canada Temperance Act shewed that the alleged nonalcoholic beverage in question had intoxicated, the jurisdiction of the magistrate to convict on crediting such testimony is not displaced by expert evidence that the percentage of spirits on analysis of liquor was about one half of one per cent. Ex parte Horsman, 15 Can. Cr. Cas. 280.

JURISDICTION OF DEPUTY STIPENDIARY MAGISTRATE; ILLNESS OR ABSENCE FROM TOWN OF THE STIPENDIARY; LIMITED JURISDICTION IN NOVA SCOTIA.

(1) A deputy stipendiary in Nova Scotia appointed by a town council under R.S.N.S. ch. 71, sec. 115, has jurisdiction only in the event of the stipendiary's absence from town or of incapacity, through illness, interest or otherwise, of the stipendiary. (2) A prisoner held under a summary conviction purporting to be made by the deputy stipendiary, acting at the request of the stipendiary but when, in fact, there was no incapacity to prevent the stipendiary from acting, must be discharged on habeas corpus. The King v. Morris, 16 Can. Cr. Cas. 1.

JURISDICTION OF JUSTICES ACTING AT REQUEST OF POLICE MAGISTRATE.

Where justices make a summary conviction which they have jurisdiction to make only if acting at the request of the police magistrate or in case of his absence or illness, the conviction should shew on its face the fact on which their jurisdiction depends. The King v. Ackers (No. 3), 16 Can. Cr. Cas. 222.

STATING THE OFFENCE; SETTING OUT THE PARTICULAR ACT.

A summary conviction for an offence in the magisterial district is not supported by evidence which designates the locality of the offence by a name which applies to a section of country extending partly within the limits of the magisterial district and partly outside of such limits; and semble, it will not be presumed that the portion of the designated locality within the magistrate's jurisdiction was intended. The King v. Oberlander, 16 Can. Cr. Cas. 244.

[Referred to in R. v. Picard, 21 Can. Cr. Cas. 250, 11 D.L.R. 423.]

SUMMARY CONVICTION UNDER LIQUOR LAW; THIRD OFFENCE; IRREGULAR CONVICTION FOR A PRIOR OFFENCE ON PLEA OF GUILTY BY DEFENDANT'S SOLICITOR IN HIS ABSENCE.

(1) The Court hearing a habeas corpus motion may, subject to statutory restrictions, examine the proceedings anterior to the conviction and warrant; and if the proceedings are insufficient to justify the detention may release the prisoner, although the conviction on its face is regular. (2) A summary conviction made without evidence in the absence of the accused on a plea of guilty entered by a solicitor for the accused, but without proof of the solicitor's authority, is bad for want of jurisdiction. (3) A commitment for a third offence under a liquor law may be declared invalid on habeas corpus if the conviction for the first offence appears on the papers returned to have been made without jurisdiction. (4) The power of summary conviction is in derogation of the common law and is to be strictly construed. The King v. Broadfoot, 17 Can. Cr. Cas. 71.

JURISDICTION; REVIEW OF A SUMMARY CONVICTION MADE UNDER PROVINCIAL LAW.

The general rule is that where jurisdiction is conferred by statute upon inferior tribunals they are to exercise it within the territorial limits of their jurisdiction, but where a statute confers a power of review of summary convictions upon application "to a Judge of the Supreme or County Court," any County Court Judge to whom application is made and with whom the certified copy of the proceedings below are deposited in conformity with the statute (C. S.N.B. 1903, ch. 123, sec. 44) has jurisdiction, whether the trial was before justices of his county or elsewhere in the same province. [Ex parte Graves, 35 N.B.R. 587, followed.] Re Braithwaite, 17 Can. Cr. Cas. 309.

ADJOURNMENT FOR JUDGMENT.

If on the hearing of a summary conviction matter, counsel for the complainant and for the accused agree that judgment may be reserved without fixing a date for same, other than that the decision shall be given within one week, and shall be notified to the respective solicitors, and the magistrate acquiesces in and conforms to such arrangement, he does not thereby lose jurisdiction and a conviction made within the week should not be set aside. The King v. McKenize, 17 Can. Cr. Cas. 372.

APPEAL FROM; JURISDICTION.

The Court to which an appeal may be taken from a summary conviction upon compliance with the statutory requirements as to notice and security (Cr. Code, sec. 750, as re-enacted 1909) has no jurisdiction to extend the time for service of notice of ap-

peal. The King v. White, 19 Can. Cr. Cas. 156.

SUFFICIENCY OF THE DESCRIPTION OF THE OFFENCE CHARGED; BY-LAW PROHIBITING THE USE OF ABUSIVE, ETC., LANGUAGE ON THE STREET.

A summary conviction under a by-law which prohibits the use of "abusive, insulting and provoking language" upon a public street sufficiently designates the offence under the Summary Convictions Act, R.S.N.S. 1900, ch. 161, if the conviction sets out the words used and declares their use to be contrary to such by-law, although the conviction does not in terms state that the words were "abusive, insulting and provoking." [Re Peckham, 5 H. & N. 30, specially referred to.] The King v. Elderman, 19 Can. Cr. Cas. 445.

TERRITORIAL JURISDICTION OF MAGISTRATE; LOCALITY OF OFFENCE.

A summary conviction will be quashed where there was no evidence before the magistrate that the locality at which the offence was committed was within his territorial jurisdiction, the only reference to the place of the offence being in such general terms as "the landing" and the "coal company's offices." [R. v. Oberlander, 16 Can. Cr. Cas. 244, 15 B.C.R. 134, referred to.] R. v. Picard, 21 Can. Cr. Cas. 250, 11 D.L.R. 423.

QUASHING; BIAS OF MAGISTRATE.

Uncontradicted affidavits filed on a motion to quash a summary conviction under a liquor law that the magistrate had stated he would convict any parties charged with selling liquor whether the evidence proved it or not, if he believed them to be guilty, shews a disqualifying bias on the part of the magistrate, and the conviction on a liquor selling charge will be quashed. R. v. Rand, 22 Can. Cr. Cas. 147, 15 D.L.R. 69.

JURISDICTION; INFORMANT ALSO OFFICER IN CHARGE OF ACCUSED; TEMPERANCE ACT.

Where the defendant has had an opportunity of entering upon the full defence of the charge brought against him of selling intoxicating liquor in contravention of law, the fact that the officer who laid the information and the officer to whose custody the accused was committed pending the determination of the charge was one and the same person does not go to the jurisdiction of the magistrate so as to invalidate the conviction under a statute under which certiorari is expressly taken away, ex. gr., the Canada Temperance Act. Ex parte Richard; R. v. Steeves, 24 Can. Cr. Cas. 183.

CONVICTION WITHOUT JURISDICTION; ORDER FOR FURTHER DETENTION ON QUASHING CONVICTION.

Where a magistrate has proceeded to convict in a case in which he had jurisdiction only to hold a preliminary enquiry and commit for trial, the Court on quashing the conviction may, if the ends of justice require it, direct the further detention of the accused in custody until he can be brought up for the preliminary enquiry although there was no habeas corpus application. [R. v. Frejd, 18 Can. Cr. Cas. 110, 22 O.L.R. 566, applied; and see Annotation on "Orders for further detention," at the end of this case.] R. v. Manzi, 24 Can. Cr. Cas. 359, 25 D.L.R. 648.

JURISDICTION; ABSENCE OF ACCUSED; SUBSTITUTIONAL SERVICE.

The Court will quash a summary conviction as made without jurisdiction on being satisfied by affidavit that the defendant was out of the province from a date prior to the laying of the information until after the hearing and had not authorized the appearance of counsel who had applied on his behalf for an adjournment, although the summons had been served substitutionally on defendant's wife at his last place of abode (Cr. Code, sec. 658). [Ex parte Donovan, 3 Can. Cr. Cas. 286, applied.] R.v. Dimond, 25 Can. Cr. Cas. 317.

OBSTRUCTING JUSTICE; "SUMMARY CONVICTION," OR "SUMMARY TRIAL;" JURISDICTION.

The offence of obstructing a peace officer in the execution of his duty (Cr. Code, sec. 169), is one of which may be prosecuted under the "summary convictions" procedure of Part XV. of the Code, or under the "summary trials" procedure of Part XVI., if taken before a magistrate having jurisdiction under both procedures; if the procedure of Part XVI. is followed his jurisdiction will be subject to the consent provided for in Cr. Code, sec. 778, in a province where consent is not dispensed with; but if the procedure of Part XV. (summary convictions), is followed throughout, the magistrate has jurisdiction to try the case, and impose the punishment applicable to a "summary conviction," without asking the consent of the accused under Cr. Code, sec. 778. [R. v. Crossen, 3 Can. Cr. Cas. 152, R. v. Carmichael, 7 Can. Cr. Cas. 167, and R. v. Van Koolberger, 16 Can. Cr. Cas. 228, dissented from; R. v. Nelson, 4 Can. Cr. Cas. 461, and R. v. Jack, 5 Can. Cr. Cas. 304, considered; and see Annotation at end of this case on "Summary proceedings for obstructing peace officers."] Ex parte McAdam; R. v. Folkins, 25 Can. Cr. Cas. 365, 27 D.L.R. 32.

DISORDERLY HOUSE; JURISDICTION; IRREGULARITY OF ARREST; QUASHING.

It is not a ground for quashing a conviction on summary trial for keeping a disorderly house that the accused was arrested without warrant, if he pleaded to the charge without raising the objection, and,

semble, had he objected and had the objection been overruled, it could not be raised on certiorari. [R. v. Hurst, 23 Can. Cr. Cas. 389, 20 D.L.R. 129, followed; but see R. v. Miller, 25 Can. Cr. Cas. 151.] R. v. Pudwell, 26 Can. Cr. Cas. 47.

[Followed in R. v. Carter, 26 Can. Cr. Cas. 51, 28 D.L.R. 606.]

JURISDICTION; PLEA OF GUILTY FOLLOWED BY DENIAL; SHOWING CAUSE; CR. CODE, SEC. 721.

Although the Opium and Drug Act, 1-2 Geo. V., Can. ch. 17, takes away the right to certiorari proceedings by way of certiorari may be allowed to quash a summary conviction purporting to be made on a plea of guilty of "having opium in his possession without lawful or reasonable excuse" if the accused forthwith after pleading guilty, and before a conviction was recorded, said to the magistrate that he did not know the contents of the package which he had just received at the time of his arrest. Such statement of the accused was, in effect, a statement of "sufficient cause why he should not be convicted" (Cr. Code, sec. 721) and qualified his previous answer of "guilty," and thereafter the magistrate had no jurisdiction to proceed to conviction without taking evidence. [Colonial Bank v. William, L.R. 5 P.C. 417, specially referred to.] R. v. Richmond, 29 Can. Cr. Cas. 89, 39 D.L.R. 117.

[Referred to in R. v. Barlow, 29 Can. Cr. Cas. 381.]

JURISDICTION; PRESENCE OF ACCUSED; IRREGULAR ARREST.

Summary conviction proceeding before a justice are not invalidated by the circumstance that the accused was arrested to be brought before the justice without a warrant in a case where there was no right of arrest without a warrant. [R. v. Hughes, 4 Q.B.D. 614, applied.] R. v. Hanley, 30 Can. Cr. Cas. 63.

JURISDICTION IN DEFAULT OF APPEARANCE; REGULARITY OF SUMMONS.

In order to give the magistrate jurisdiction to proceed in default of appearance in a summary conviction matter, there must have been service of a "summons" in conformity with Part XV. of the Criminal Code; service at different times of a copy of the complaint and of a written notice of the time and place of hearing the same is not sufficient although the notice was signed by both the magistrate and the complainant. Lacasse v. Fortier, 30 Can. Cr. Cas. 87.

JURISDICTION; EFFECT OF PENDING CHARGE AGAINST ACCUSED.

A summary conviction will be quashed for want of jurisdiction if the magistrate, at the time he made the same, had pending before him another information against the accused for a similar offence arising out of the same circumstances and partly tried, and did not dispose of the same before entering upon the hearing. R. v. McManus, 30 Can. Cr. Cas. 122.

III. Procedure.

REQUEST TO PROCEED SUMMARILY.

The defendant was convicted of a common assault, upon the complaint of the prosecutor, who verbally requested the magistrate to proceed summarily:—Held, that the request to proceed summarily need not be in writing. Reg. v. Smith, 46 U.C.Q.B. 442.

PROCEDURE; JURISDICTION TO QUASH CONVICTIONS; FORUM.

The jurisdiction to quash convictions was at the time of the passing of the Ontario Judicature Act in the Courts of Queen's Bench and Common Pleas respectively, and was exercised and exercisable by them respectively sitting in term; the Courts or Divisions of the High Court of Justice mentioned in sub-sec. 3 of sec. 3 of the Act can respectively exercise all the jurisdiction of the High Court of Justice in the name of the High Court of Justice; the sittings of these respective Courts or Divisions are analogous to and represent the sittings of the former Courts of Common law in term, and it is to the sittings of the former Courts or Divisions that applications to quash convictions must now be made having regard to sec. 87 and Rule 484 of the O.J. Act, and of R.S.C. ch. 174, sec. 2, sub-sec. 1 and sec. 270. These Courts or Divisions are not to be confounded with the Divisional Courts, which are a distinct organization under the Judicature Act, and invested thereby with special functions. Sec. 28 of the Act, upon which the supposition that a single Judge sitting in Court had jurisdiction to quash a conviction was founded, refers to civil actions and proceedings only. And where a single Judge sitting in Court heard and determined a motion to quash a conviction, an appeal to the Judges of the Queen's Bench Division from his decision, refusing to quash such conviction, was treated as a substantive motion to quash the conviction. Regina v. Beemer (1888), 15 O.R. 266.

PROCEDURE; APPEAL TO SESSIONS FOR QUASHING; WANT OF RECOGNIZANCE: WAIVER.

Defendant applied to quash an order of the General Sessions quashing a conviction, made on appeal on the ground that it was not shewn at the Court that defendant had entered into the necessary recognizance. It was not denied that notice of appeal had been duly given or that recognizance had been duly entered into and filed with the clerk of the peace; but the objection was that it had not been proved at the trial of the appeal:—Held, under the circumstances

of the case, set out below, that the respondent's counsel, by his conduct, must be assumed to have waived any objection to the recognizance. Regina v. Crouch, 35 U.C. Q.B. 433.

RULE NISI TO QUASH; CERTIORARI OR HABEAS CORPUS.

A rule to quash a conviction may, in the first instance, be to shew cause why a writ of habeas corpus should not issue, "and why, in the event of the rule being made absolute, the prisoner should not be discharged out of custody without the issuing of the said writ, and without his being brought before the Court." The rule may at the same time ask for a writ of certiorari as well as of habeas corpus. Reg. v. Collins, 5 Man. L.R. 136.

MORE THAN ONE ADJOURNMENT; OBJECTION BY PLAINTIFF.

Plaintiff was summoned to appear as a witness for the prosecution on the trial of an information for a violation of the Canada Temperance Act of 1878. He was served with the summons, and was 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 plaintiff arrested and brought before him to testify, and adjourned the hearing of the cause from time to time for that purpose. Plaintiff 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. On his refusal to give bail he was placed in gaol:—Held, that sec. 46 of the Summary Convictions Act is not intended to prevent more than one adjournment, or, if so, the plaintiff could not take objection. **Messenger v. Parker et al.** (1885), 18 N.S.R. 237.

CONVICTION AS A "MINUTE OF ADJUDICATION."

A conviction in extended form if drawn up at the time when the "minute of adjudication" should be made and in lieu of it, is a sufficient compliance with a statutory requirement of a minute of adjudication. Ex parte Flannagan, 2 Can. Cr. Cas. 513.

[Referred to in R. v. Grafton, 17 Can. Cr. Cas. 327.]

FORM OF, FOR SEVERAL OFFENCES.

Where a liquor license statute expressly provides that several charges may be included in the one information, and the magistrate adjudges the accused guilty upon each charge, it is not necessary that separate convictions should be drawn up; and the fines may be imposed in and by the one conviction adjudging a forefeiture in respect of each offence. R. v. Whiffin, 4 Can. Cr. Cas. 141.

FINDING ON QUESTION OF FACT.

The magistrate's finding in a summary conviction upon a question of fact within his jurisdiction will not be reviewed upon certiorari, and the same can be attacked only by a way of appeal from the conviction. R. v. Urquhart, 4 Can. Cr. Cas. 256.

ABSENCE; TAKING THE DEPOSITIONS IN WRITING; WAIVER OF RIGHT OF APPEAL.

(1) Where the hearing of a complaint, under the provisions respecting summary convictions, has been duly adjourned by the justice or justices of the peace, the hearing may take place at the time fixed, notwithstanding the absence of the defendant. (2) The failure of the justices in a summary conviction matter to take down in writing depositions of the witnesses, both for the complainant and the accused, is a ground for quashing the conviction on certiorari. (3) The taking of a writ of certiorari is a waiver on the part of the petitioner of his right of appeal. Denault v. Robida, 8 Can. Cr. Cas. 501.

[Referred to in R. v. Leach, 14 Can. Cr. Cas. 386; R. v. Harris, 18 Can. Cr. Cas. 395; Dion v. Champagne, 18 Can. Cr. Cas. 491; R. v. Janneau, 12 Can. Cr. Cas. 361; followed in Re Lacroix, 12 Can. Cr. Cas. 299; R. v. L'Heureux, 14 Can. Cr. Cas. 102.]

RE-EXAMINATION OF WITNESS ON NEW MATTER; APPLICATION TO CROSS-EXAMINE THEREON.

If upon a summary hearing the justice permits the prosecution, in re-examination of a witness, to open up new matter although objection was taken by the defence, he must also allow the accused to cross-examine upon such new matter; but if permission to again cross-examine is not applied for, the proceedings are not objectionable because of such re-examination. The King v. Perras, 9 Can. Cr. Cas. 364.

HEARING; MAGISTRATE ABSENT; CLERK OF COURT PURPORTING TO FURTHER ADJOURN.

An adjournment of the hearing of a complaint under the Summary Convictions clauses (Part LVIII. of the Code) cannot be made by the clerk of the Court in the absence of the magistrate to a date more than eight days after that when the last adjournment of the case was ordered by the magistrate. Paré v. Recorder of Montreal, 10 Can. Cr. Cas. 295.

OMISSION TO REDUCE EVIDENCE TO WRITING.

(1) In matters of summary conviction falling under the Criminal Code the depositions must be taken in writing, otherwise the conviction will be quashed. (2) The irregularity is not a mere defect of form and is not cured by sec. 1129 of the Revised Code. **Re Lacroix,** 12 Can. Cr. Cas. 297.

[Followed in R. v. L'Heureux, 14 Can. Cr. Cas. 102; referred to in R. v. Warlow, 14 Can. Cr. Cas. 118; R. v. Leach, 14 Can. Cr. Cas. 386; R. v. Harris, 18 Can. Cr. Cas. 395.]

PLEA OF GUILTY; PLEA DISPENSING WITH NECESSITY FOR WRITTEN DEPOSITION.

(1) In a summary conviction matter in which the accused pleads guilty whether before or after the examination of the informant, the failure to take down the depositions in writing is not a ground for quashing the conviction. (2) Where a person summarily convicted is in custody under the conviction, habeas corpus is the appropriate remedy by which to obtain his discharge for an irregularity appearing on the face of the proceedings and an order for discharge will not be made in certiorari proceedings taken without a writ of habeas corpus. The King v. Goulet, 12 Can. Cr. Cas. 365.

[Referred to in R. v. Dagenais, 18 Can. Cr. Cas. 290.]

LIMITATION OF TIME FOR PROSECUTION; AMENDING INFORMATION AT HEARING; WAIVING RIGHT OF ADJOURNMENT.

(1) Where the limitation of time for bringing a prosecution is contained in a separate section of the statute creating the offence, it is not essential to the validity of the conviction that it should shew on its face that the limitation has not been exceeded. (2) Neither the summary conviction nor the warrant of commitment for a third offence against the Canada Temperance Act need shew that the information leading to a prior conviction was laid within the statutory period of three months after the offence. (3) If an amendment is made to the information at the trial of a summary conviction matter and the defendant then consents to have the trial proceed on the amended information rather than have the trial adjourned, he thereby waives any right he may have had to an adjournment on the ground of a material variance in the charge and cannot afterwards object that he had not sufficient time to prepare his defense. The King v. Clark (No. 2), 12 Can. Cr. Cas. 485.

CONSENT TO TAKE EVIDENCE IN SHORTHAND; STATUTE REQUIRING EVIDENCE TO BE REDUCED TO WRITING.

(1) The taking of depositions in shorthand by a stenographer in the presence of the justice and with the consent of the parties, is a sufficient compliance with a statutory provision that the justices shall reduce to writing the evidence of the witnesses. (2) A statutory provision that the justices shall read over to each witness his deposition and that the witness shall sign the same, is one of procedure only, and is waived by the express consent of the accused to the depositions being taken in shorthand by a stenographer. [The King v. Janneau (1907), 12 Can. Cr. Cas. 360, approved.] The King v. Warilow, 14 Can. Cr. Cas. 117.

[Referred to in R. v. Bond, 19 Can. Cr. Cas. 97; considered in The King v. Coote, 17 Can. Cr. Cas. 211, 231.]

PROCEEDINGS IN ABSENCE OF ACCUSED; CONSENT OF DEFENDANT'S COUNSEL TO TAKE DEPOSITIONS IN SHORTHAND.

(1) Counsel for the accused in a summary conviction matter has implied authority to consent that the evidence may be taken in shorthand by a sworn stenographer and that the shorthand notes shall for all purposes stand in the place of signed depositions. (2) An agreement or undertaking to that effect signed by counsel for the prosecutor and for the accused respecting accused, is binding on the accused although the latter is not present and the case is being tried in his absence. (3) Under Code, sec. 718 the magistrate proceeding to try a summary conviction matter in default of personal appearance by the accused may also hear evidence and make an adjudication as to whether there are any chattels whereon to levy a distress (Code, sec. 744), and if there are none he may dispense with the issue of a distress warrant and a return of no goods and may issue a commitment in the first instance. The King v. Degan, 14 Can. Cr. Cas. 148.

[Followed in R. v. Graves (No. 1), 16 Can. Cr. Cas. 152; referred to in R. v. Mitchell, 19 Can. Cr. Cas. 119.]

SUMMARY CONVICTION OF FOREIGNER; CLAIM THAT EVIDENCE AND PROCEEDINGS NOT UNDERSTOOD.

A foreigner has no absolute right at his trial for a criminal offence to have the evidence interpreted in a language which he understands, and a magistrate's conviction and commitment is not subject to attack on habeas corpus on a claim that the attempted interpretation was defective or inefficient. The King v. Mecceklette, 15 Can. Cr. Cas. 17.

[Followed in The King v. Sylvester, 1 D.L.R. 186; referred to in R. v. Walker, 16 Can. Cr. Cas. 97; R. v. Pfister, 19 Can. Cr. Cas. 93.]

OMISSION TO READ OVER WITNESS'S DEPOSITIONS; MATTER OF PROCEDURE AND NOT OF JURISDICTION.

(1) On a trial under the Summary Convictions clauses, the omission to read over to the witnesses their respective depositions does not go to the jurisdiction of the magistrate. (2) Where the return to a certiorari certifies that a certified copy of a by-law was put in at the trial and is accompanied by an uncertified copy, a summary conviction under the by-law will not be quashed for defect of proof thereof if no objection was taken before the magistrate.

(3) The uncertified copy was good evidence if not objected to. (Per Barker, C.J.) (4) Affidavits will not be heard on certiorari to contradict the magistrate's return as to what evidence was given before him. (Per Barker, C.J.) Ex parte Steeves, 15 Can. Cr. Cas. 160.

STATUTORY EXCEPTIONS NEED NOT BE NEGATIVED BY PROSECUTOR IN SUMMARY CONVICTION PROSECUTION.

Since the amendment of 1909 to Code, sec. 717, it is no longer necessary in a summary conviction matter for the prosecution to negative exceptions in the statute creating the offence, even if they are specified in the same section of the statute and are negatived in the information. Ex parte McIntyre, 16 Can. Cr. Cas. 38.

STATED CASE UNDER ONTARIO SUMMARY CONVICTIONS ACT.

A case stated by a magistrate in a summary conviction matter is to be heard by the High Court and not by the Court of Appeal in Ontario, whether the summary conviction is under Part XV. of the Criminal Code for an offence under a Dominion law or under the Ontario Summary Convictions Act for an offence under a provincial law. The King v. Henry, 16 Can. Cr. Cas. 73.

SUMMONS OR WARRANT; SUMMONS MAY ISSUE TO OUTSIDE COUNTY.

(1) A summons for an offence punishable on summary conviction may be served outside as well as within the territorial limits of the justice by whom it is issued. (2) A summons may be validly served by a constable or peace officer of the county where the defendant is found requiring his attendance before the issuing justice in another county, and the justice may proceed ex parte if the defendant fails to appear either in person or by solicitor or counsel. (3) Prior to the amendment of 1909 made to Code, sec. 655, it was not necessary for the justice on issuing a summons in a summary conviction matter to have more than the sworn information and belief of the informant that the offence had been committed, although the ground of suspicion would have to be enquired into to justify a warrant. Quære, whether that amendment, which requires the justice to hear not only the complainant, but, "the evidence of his witnesses, if any," has made any alteration as to the requirements for a warrant or a summons. Ex parte O'Regan, 16 Can. Cr. Cas. 110.

[Referred to in Ex parte Archambault, 16 Can. Cr. Cas. 435.]

APPEAL BY CONSENT OF ATTORNEY-GENERAL TO COURT OF APPEAL FROM ORDER OF REMAND; NO APPEAL TO DIVISIONAL COURT FROM JUDGE IN CHAMBERS.

(1) A defendant in custody pursuant to a summary conviction under the Ontario Liquor License Act has no right of appeal to a Divisional Court from a Judge's order refusing his discharge; his only appeal is direct to the Court of Appeal and by consent of the Attorney-General as provided in the Liquor License Act. (2) Habeas corpus proceedings in respect of a conviction under the Ontario Liquor License Act do not constitute an "action" within the definition of that term contained in the Ontario Judicature Rules, and Consolidated Rule 777 does not apply to confer a right of appeal to a Divisional Court. (3) On a charge of a second offence of selling liquor without a license, the prior summary conviction must be proved by the record or a certificate of conviction, and oral testimony of witnesses present at the trial of the first offence and purporting to prove what conviction was then made is insufficient. (Per Britton and Riddell, JJ.) [R. v. Teasdale (1910), 16 Can. Cr. Cas. 53, not followed.] The King v. Graves (No. 2), 16 Can. Cr. Cas. 318.

[Considered in R. v. Coote, 17 Can. Cr. Cas. 331; followed in R. v. Matheson, 20 Can. Cr. Cas. 154.]

APPEAL.

(1) Where the jurisdiction to make a summary conviction under the particular statute, is given only to two justices of the peace sitting together, a notice of appeal from the conviction must be served on both justices, and the appeal will be quashed if only one justice was served. (2) The words "justice who tried the case" in sec. 750 of the Criminal Code are to be construed in cases where two justices must sit, as referring to both justices. (3) The proper service of notice of appeal under Code, sec. 750 is a condition precedent to the hearing of an appeal from a summary conviction. (4) Costs are to be allowed to the respondent under Code, sec. 755 only upon proof of notice of the appeal having been given to the persons entitled, and therefore will not be granted where the appeal is quashed for failure to serve all parties. The King v. Edelston, 17 Can. Cr. Cas. 155.

[Disapproved in Pahkala v. Hannuksela (No. 1), 20 Can. Cr. Cas. 247.]

RESWEARING SAME INFORMATION OR LAYING FRESH INFORMATION.

(1) A defendant, pleading a former acquittal in answer to a summary proceeding for an offence, must shew that the two charges are identical and where the offence is that of keeping liquor for sale between certain dates, the mere fact that the prior charge was for keeping liquor for sale between the same dates will not alone prove the identity of the offences. (2) The second charge may be properly based either upon the information in the first charge resworn after the dismissal of that charge

for irregularity in the summons or upon a fresh information. The King v. Johnson, 17 Can. Cr. Cas. 172.

SUMMARY CONVICTION UNDER PROVINCIAL STATUTE.

(1) A provision in a provincial statute as to summary conviction that "prosecutions" thereunder shall be "governed" by Part XV. of the Criminal Code (1906), has the effect of conferring the like right of appeal from a summary conviction under such provincial law as would be permissible under Part XV. of the Criminal Code in respect of summary convictions under Federal laws. (2) An appeal lies to the Court of King's Bench of Quebec from a conviction under the Motor Vehicles Act (Que.) by virtue of such incorporation of Part XV. of the Criminal Code as governing prosecutions under the provincial statute. The King v. Hyndman, 17 Can. Cr. Cas. 469.

MOTION TO QUASH; CONSIDERATION OF EVIDENCE; EVIDENCE PRO AND CON NOT REVIEWABLE AS ON AN APPEAL.

On a motion to quash a summary conviction, the Court will look at the evidence to see if there was any evidence to shew an offence, and if there was none, will quash the conviction as made without jurisdiction, but if there was evidence to shew an offence as well as evidence contra, the Court will not review the case as on an appeal and and will not quash the conviction on the ground that the justice did not properly weigh the evidence and that he should have believed the witnesses for the defence, rather than those for the prosecution. The King v. Barber Asphalt Paving Co., 18 Can. Cr. Cas. 261.

REMEDY BY CERTIORARI.

(1) An objection to a summary conviction that the same is made under a statute or part of a statute, claimed to be no longer effective because of subsequent legislation, is properly raised by a certiorari proceeding. (2) Costs will not be granted against the informant and the magistrate on quashing a summary conviction in certiorari proceedings, unless misconduct is proved against them. Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495.

DEPOSITIONS IN SHORTHAND BY UNSWORN STENOGRAPHER; GROUND FOR QUASHING.

(1) The omission to swear the stenographer appointed to take down the evidence at the hearing of a prosecution under the Summary Conviction Clauses of the Criminal Code (1906), as required by Code, sec. 683, is a matter of jurisdiction and not a mere defect of form, and the depositions taken by the unsworn stenographer are invalid. [The King v. L'Heureux, 14 Can. Cr. Cas. 100, followed.] (2) It is a good ground for quashing a summary conviction that the stenographer who took down the depositions was not sworn as required by Code, sec. 683. [The King v. L'Heureux, 14 Can. Cr. Cas. 100, followed.] The King v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548.

PROCEDURE BEFORE SUMMONS OR WARRANT.

The provisions of Cr. Code, sec. 655 as to a preliminary hearing of the allegations of "the complainant and his witnesses" apply only to cases of indictable offences and not to cases punishable on summary conviction. [R. v. Neilson, 44 N.S.R. 488, followed.] The King v. Sweeney, 19 Can. Cr. Cas. 222, 1 D.L.R. 476.

ARREST; ACCUSED ON BAIL PENDING APPEAL; REARREST; APPEAL.

(1) The release under bail pending an appeal under Cr. Code, sec. 797, from a conviction on summary trial for keeping a disorderly house does not prevent the rearrest and detention of the defendant under the original warrant of commitment on the conviction being affirmed. (2) On an appeal taken under sec. 751 of the Criminal Code, 1906, applicable to appeals from summary convictions and to certain appeals from summary trials (Cr. Code, sec. 797) the original warrant of commitment on the conviction appealed from is not vacated by the lodging of the appeal and the granting of bail to the accused and the further enforcement of such warrant may be proceeded with without a fresh warrant after the affirmance of the conviction upon such appeal. The King v. Durlin, 19 Can. Cr. Cas. 392, 4 D.L.R. 660.

DEPOSITIONS; RIGHT TO APPOINTMENT OF A COMMISSIONER TO TAKE FOREIGN COMMISSION.

(1) A person is entitled as a matter of absolute right to the appointment of a commissioner to take depositions of witnesses in another country for use in Canada in a summary proceeding under Part XV., Crim. Code, 1906. (2) Security cannot be required of an applicant for a commission to take depositions of witnesses in another country for use in Canada in a summary proceeding, in the absence of a formal text of law authorizing it, under Part XV., Crim. Code, 1906. (3) An open Commission under art. 385a, Civil Procedure, Quebec, will issue to take the depositions of witnesses in a foreign country for use in a summary proceeding under Part XV., Crim. Code, 1906, where the parties to the application agreed there should be but one commissioner appointed, but did not agree in the first instance that they would not furnish interrogatories and cross interrogatories, and it was alleged that the petitioner had caused the departure of the witnesses from Canada in order to prevent their testifying. Barsky v. Serling et al., 19 Can. Cr. Cas. 463, 5 D.L.R. 638.

HABEAS CORPUS; POLICE MAGISTRATE'S POWERS; OMISSION TO SWEAR STENOGRAPHER.

(1) A summary conviction by a city police magistrate under the Vagrancy clauses, Cr. Code R.S.C. 1906, ch. 146, secs. 238 and 239, may be quashed for irregularity on proceedings in habeas corpus and certiorari in aid taken on behalf of the defendant committed under such summary conviction, and is, in that respect, distinguishable from convictions made by city police magistrates for indictable offences under their extended jurisdiction under Cr. Code, sec. 777. [Rex v. McEwen, 13 Can. Cr. Cas. 346, 7 Man. L.R. 477, distinguished.] (2) The omission of the magistrate on the trial of a summary conviction matter to swear the stenographer before taking the evidence, is a matter of substance and goes to the jurisdiction of the magistrate so as to invalidate a conviction. [Rex v. L'Heureux, 14 Can. Cr. Cas. 100, followed.] The King v. Johnson, 20 Can. Cr. Cas. 8, 5 D.L.R. 523.

SEPARATE INFORMATION; HEARING EVIDENCE IN THREE CASES.

A conviction for selling liquor without a license will be quashed where the magistrate before whom three informations were lodged charging sales to different persons, heard evidence at one time tending to prove sales in three cases, some of which were not relevant to the case in which the accused was convicted. The King v. Lapointe, 20 Can. Cr. Cas. 98, 4 D.L.R. 210.

SALE OF LIQUOR WITHOUT LICENSE; ABSENCE OF ACCUSED; FORMER CONVICTION.

A conviction will not be quashed on the ground that the magistrate did not comply with sub-sec. (a) of 85 of the Liquor License Act of N.B. 1903, by asking accused as to his former conviction of a similar offence where counsel appearing for accused in the absence of the latter was interrogated thereto, but made no answer. [Ex parte Groves, 25 N.B.R. 57, applied.] The King v. Matheson; Ex parte Martin, 20 Can. Cr. Cas. 153, 2 D.L.R. 835.

ILLEGAL METHOD OF COMPELLING ATTENDANCE TO ANSWER CHARGE.

(1) Whether the defendant was illegally arrested or not is not material to the jurisdiction of a magistrate under the Summary Convictions clauses of the Criminal Code when the accused is brought before him to answer a charge as to which an information had been properly laid before such magistrate. (2) The fact that a person charged before a magistrate with an offence punishable on summary conviction had been brought before the magistrate under arrest without warrant, although a warrant was required by law, does not go to the jurisdiction of the magistrate, nor affect the validity of a conviction and commitment made at the hearing. Reg. v. Hughes, 4 Q.B.D. 614, 48 L.J.M.C. 151, applied; McGuiness v. Dafoe, 3 Can. Cr. Cas. 139, 23 A.R. (Ont.) 704, referred to; but see contra, Re Paul (No. 2), 20 Can. Cr. Cas. 161, 7 D.L.R. 25.] Re Baptiste Paul (No. 1), 20 Can. Cr. Cas. 159, 7 D.L.R. 24.

ILLEGAL METHOD OF COMPELLING ATTENDANCE TO ANSWER CHARGE; WAIVER.

(1) Where a statutory offence is made punishable upon summary conviction and a statutory method of compelling the attendance of the accused is provided, an omission of such statutory method and the illegal arrest of the accused as a means of bringing the accused before the magistrate will constitute a valid objection to a summary conviction obtained as a result of the illegal proceedings, where the irregular procedure was objected to by the accused. [Pearks v. Richardson, [1902] 1 K.B. 91, 71 L.J.K.B. 18, applied; and see contra, Re Paul (No. 1), 20 Can. Cr. Cas. 159, 7 D.L.R. 24.] (2) Unless the accused who has been brought before a magistrate to answer a charge punishable on summary conviction objects before the magistrate to the illegal method whereby his attendance has been compelled, ex. gr., by an arrest without warrant where a warrant is essential, the objection is considered as waived. [Regina v. Hughes, 4 Q.B.D. 614, and Dixon v. Wells, 25 Q.B.D. 249, considered.] Re Baptiste Paul (No. 2), 20 Can. Cr. Cas. 161.

WHEN CONVICTION IS MADE; RIGHT TO APPEAL; ARREST WITHOUT WARRANT.

(1) In proceedings by way of summary conviction the conviction consists in the pronouncement of sentence; the drawing up and signing of the conviction according to form 32 of the Criminal Code (1906) only establishes the conviction in proper form and is not a prerequisite to the signing of a warrant of commitment (form 41, Cr. Code). (2) The word "convicted" in Cr. Code, form 41 (warrant of commitment) is not absolutely essential to the validity of a warrant of commitment on summary conviction and other words of the like effect, ex. gr., the words "declared guilty," are sufficient. (3) The fact that a formal summary conviction was not signed until some time after the sentence was pronounced does not deprive the accused of his right of appeal which lies as soon as the sentence is pronounced. (4) When a person has been arrested, has pleaded not guilty, and has been tried and convicted in a summary conviction matter, it is too late for him then to raise the objection that he was illegally arrested without a warrant. The King v. Langlois; City of Montreal, mis-en-cause, 20 Can. Cr. Cas. 183.

ADJOURNMENT AND DELAY FOR RENDERING JUDGMENT.

(1) In proceedings under Part XV. of

Criminal Code (summary convictions) the sentence or judgment does not form part of the hearing and consequently the limit of eight days for adjournment provided by sec. 722 of the Criminal Code 1906, or thirty days under the Quebec license law, art. 1117, R.S.Q. 1909, does not apply to the delay which may elapse after the hearing is finished and before judgment is rendered. (2) The justice is not obliged to fix a date in writing at the conclusion of the hearing for the rendering of judgment, but may render judgment when ready upon giving notice to the parties. Plante v. Cliche (No. 2), 20 Can. Cr. Cas. 186, affirming 17 Can. Cr. Cas. 43.

PROCEDURE ON CHARGE OF SECOND OFFENCE WITH ADDED PENALTY.

As Part XV. of the Criminal Code as to summary convictions contains no provision requiring the magistrate on the trial of a charge for a second offence involving a greater punishment than for a first, to proceed first as to the latter offence charged, and not to ask the defendant whether he had been previously convicted for the like offence until after conviction for the alleged second offence, the prosecutor should allege and prove in a prosecution for a second offence under the Dental Association Act, Alta., 1906, ch. 22, the first conviction as part of his case before conviction of the subsequent offense, for that statute contains no clause to the contrary such as is commonly found in liquor license statutes. R. v. Cruikshanks, 23 Can. Cr. Cas. 23, 16 D.L.R. 536.

NOTICE OF MOTION TO QUASH CONVICTION; TIME; LIQUOR ACT.

The onus is upon the party moving to quash a summary conviction under the Liquor License Act (Ont.) to prove that notice of the motion was served on the magistrates within twenty days from the date of conviction as required by sec. 95 of the revised Act, R.S.O. 1914, ch. 215, formerly 9 Edw. VII. ch. 82, sec. 25. The enlargement by consent of a motion to quash a summary conviction under the Liquor License Act (Ont.) and the demanding by the respondent of copies of affidavits in support, do not operate as a waiver by the prosecutor of a preliminary objection that the notice of motion was served too late, even if it were possible for the prosecutor to waive the statutory requirement. [R. v. Whitaker (1894), 24 O.R. 437, distinguished; R. v. How, 11 A. & E. 159, applied.] Re Elliott 23 Can. Cr. Cas. 162.

TRIAL; APPEARANCE BY COUNSEL.

In a summary conviction matter, the accused may appear by counsel instead of personally and the magistrate has jurisdiction to proceed without requiring the accused to be personally present. [Denault v. Robida, 8 Can. Cr. Cas. 501; Ex parte Doherty, 1 Can. Cr. Cas. 84; Proctor v. Parker, 3 Can. Cr. Cas. 37; and R. v. McDonald, 8 Can. Cr. Cas. 348, referred to; R. v. Thompson, 100 L.T. 970, and R. v. Montgomery, 102 L.T. 325, applied.] R. v. Romer et al. 23 Can. Cr. Cas. 235.

POSTPONEMENT OF DECISION PENDING HEARING OF ANOTHER CHARGE.

In a summary conviction matters the justices are not to mix up two or more criminal charges and convict or acquit in any one of them with any reference to the facts appearing in the others; but the justices may for reasons of justice arising out of the circumstances of the case and for its better determination, postpone their decision in one or more cases and before deciding them proceed with the trial of other similar charges against the same accused so long as their discretion in so postponing is honestly exercised and is not used directly or indirectly with a view of bringing in facts or evidence which have no legitimate bearing upon their decision. [R. v. Fry (1898), 19 C.C. 135, applied; R. v. Bullock, 8 Can. Crim. Cas. 8, 6 O.L.R. 665; R. v. Sing, 6 Can. Crim. Cas. 156, referred to.] Ex parte Richard; R. v. Steeves, 24 Can. Cr. Cas. 183.

DEPOSITIONS IN SHORTHAND; OATH OF COURT STENOGRAPHER; HABEAS CORPUS.

The fact that the stenographer acting at the magistrate's direction, in taking the evidence in a summary conviction matter, makes affidavit that he was sworn to "transcribe" the evidence, while the statute requires that he be sworn to "report" the evidence is not conclusive in support of an objection that the trial was irregular in that respect; and the court on habeas corpus may affirm the conviction where the magistrate could not remember whether the stenographer was sworn or not, and it was not clear that the oath taken by the stenographer was not in substance to "report" the evidence, the stenographer disclaiming that he was sworn other than in the usual form and probably using the word "transcribe" as the equivalent of "report." R. v. Book, 25 Can. Cr. Cas. 89.

ADJOURNMENT; DEPOSITIONS; WAIVER.

The indefinite suspension of proceedings in the trial under the summary convictions clauses (Part XV. of the Code), is prohibited as prejudicial to the accused in his defence; however, if the suspension is by agreement between the Crown and the accused to the effect that the trial should be delayed so long as the accused remains away from a particular place, such suspension constitutes rather an adjournment of which the accused cannot complain, since he himself determines its duration. Donahue v. Recorder's Court, 18 Can. Cr. Cas. 182, distinguished.] The accused, represented by counsel at a justice's trial under Part XV.

of the Criminal Code, tacitly waives the taking of the deposition in writing, if he takes part in the hearing by proceeding with the cross-examinations without objecting to the omission. [Denault v. Robida, 8 Can. Cr. Cas. 501, distinguished; Re Lacroix, 12 Can. Cr. Cas. 297, referred to.] Bedard v. The King, 26 Can. Cr. Cas. 99, 30 D.L.R. 326.

UNCERTAINTY; PARTICULARS; LIQUOR LAW; TAMPERING WITH WITNESS; JUDGMENT.

A summary conviction for attempting to tamper with a witness upon a prosecution for illegally keeping liquors for sale is not invalid because it does not recite what allegations the witness was asked to swear to falsely, if the conviction follows the words of the statute, and there was no prejudice to the accused as to what was the issue being tried. [R. v. Lawrence (1878), 43 U.C.Q.B. 164, referred to.] A conviction by two justices following a reservation of judgment to a fixed date is not invalid because then delivered by one of them in the unavoidable absence of the other, where both had met on a prior day and had then concurred in written reasons for judgment and signed the formal conviction. [Ex parte McCorquindale; R. v. Haines (1908), 15 Can. Cr. Cas. 187, 39 N.B.R. 49, discussed.] R. v. Armstrong, 26 Can. Cr. Cas. 151, 31 D.L.R. 82.

PARTIES; FORMER JEOPARDY.

If a statute provides that summary prosecutions for a certain offence shall be brought only in the name of certain officials, the trial upon a prosecution in contravention of that restriction would be a nullity; the accused in such case has not been placed in jeopardy so as to bar a second prosecution instituted by the proper official after the first prosecutor had consented to the charge being withdrawn. [Davis v. Morton, [1913] 2 K.B. 479, applied.] Ethier v. Minister of Inland Revenue, 27 Can. Cr. Cas. 12, 32 D.L.R. 320.

WAIVER OF PROCESS; SUMMONS FOR ANOTHER OFFENCE.

Where a liquor law permits the issue of a search warrant under which the person charged in the information therefor as being suspected of keeping liquor for sale may be arrested concurrently with the seizure of liquor found on his premises, the defendant, although not arrested but summoned before the magistrate on a charge of keeping liquor for sale on a date prior to the seizure, waives the lack of process in respect of the keeping for sale on the date of seizure by appearing and taking his trial without objection upon evidence directed wholly to the latter date. (Per Graham, C.J., and Longley, J.) [Reg. v. Hughes, 4 Q.B.D. 614, 48 L.J.M.C. 151, and Reg. v. Clarke, 20 O.R. 642, applied; compare Re Paul (No.1), 20 Can. Cr. Cas. 159, 7 D.L.R. 24, and Re Paul (No. 2), 20 Can. Cr. Cas. 167, 7 D.L.R. 25, and R. v. Pudwell (1916), 26 Can. Cr. Cas. 47.] R. v. A. N. Smith, 27 Can. Cr. Cas. 340, 28 D.L.R. 795.

SERVICE OF SUMMONS; PROOF OF SERVICE.

An affidavit of the service of a summons in a summary conviction matter must be taken before a Justice of the Peace (Cr. Code, sec. 658) in order to give the magistrate jurisdiction to proceed ex parte, and a conviction made in the absence of the defendant where the affidavit of the service of the summons was taken before a commissioner of the Supreme Court is bad and will be set aside on certiorari. Service of a summons is good if made by a de facto constable, such as one continuing to act after the expiration of his term and before a new appointment had been made. R. v. Pelley, 27 Can. Cr. Cas. 405.

WRITTEN COMPLAINT; ADJOURNMENT; NOTICE; CERTIORARI.

Where a person is accused of an offence punishable on summary conviction by imprisonment, a complaint in writing should be made against him before he is called upon for his defence; a trial held on the defendant's arrest without warrant and without any information or complaint in writing and without stating to the accused the nature and substance of the charge is irregular and the conviction thereon will be annulled on certiorari. Where the record of proceedings before the magistrate in a summary conviction matter does not shew any adjournment from the hearing to the date of conviction and sentence, nor does it appear that the accused was notified of the time when sentence would be pronounced, a summary conviction and sentence to imprisonment pronounced in his absence and subsequent to the hearing will be set aside on certiorari. Nagazoa v. Niquet, 30 Can. Cr. Cas. 77.

TRIAL ON MERITS AFTER CONVICTION QUASHED ON TECHNICAL GROUNDS; NEW SUMMONS.

When judgment is rendered by a justice of the peace imposing a fine upon a chauffeur for driving his automobile while in a state of intoxication, and this judgment is quashed by the Superior Court on technical grounds the complainant cannot continue the prosecution before a magistrate of the district on giving a mere notice to the accused or to his counsel, since the magistrate has no jurisdiction without the consent or acquiescence of the accused; (a) if there has been no adjournment of the case for several months; (b) if there has been no new summons to the accused, a mere notice not being sufficient; (c) if there has been no proceedings to put him in default and authorizing a trial and the conviction thereon in his absence. Rheaume v. Cliche, 30 Can. Cr. Cas. 112.

IV. Effect.

DISQUALIFICATION OF JUSTICE; RELATIONSHIP; WANT OF KNOWLEDGE OF; FAILURE TO OBJECT AT HEARING.

A summary conviction made by two justices of the peace will not be quashed on the ground that one of them was related to the defendant, within the ninth degree of consanguinity, if the justice was not aware of the relationship, and no objection was taken at the hearing. Ex parte McEwen, 12 Can. Cr. Cas. 97.

COMMON ASSAULT; PUNISHMENT ON SUMMARY CONVICTION.

A summary conviction imposing a sentence of sixty days is not invalid where the statutory maximum is two months, unless there is a reasonable probability of the sixty days' term being in the particular case more than two months. (Per Graham, E.J.) It being possible that the prisoner might be detained in gaol for a longer period than if the sentence had been in for one or two months, the conviction is bad and the prisoner entitled to be discharged on habeas corpus. (Per Russell, J.) The King v. Brindley, 12 Can. Cr. Cas. 170.

STATUTORY PRELIMINARY BEFORE TAKING PROCEEDINGS.

(1) A person arrested on the charge of being a frequenter of a bawdy house (Cr. Code, sec. 238 (k) should first be asked to give an account of his presence in the house and a summary conviction is bad if that statutory requirement has not been complied with. (2) A police officer asking such explanation from a person in a bawdy house should first disclose the fact that he is a police officer if not then in official uniform. The King v. Regan, 14 Can. Cr. Cas. 106.

SUMMARY PROCEEDING; STATUTORY LIMIT OF ADJOURNMENT; OBJECTION NOT RAISED BEFORE MAGISTRATE; CERTIORARI.

(1) Where summary proceedings before a magistrate were adjourned by consent to be taken up on the adjournment of the County Court then in session, at which counsel for both the prosecution and the defence were then engaged in other cases, and the case is afterwards proceeded with without objection, a conviction will not be quashed upon certiorari on the ground that such adjournment lasted for more than eight days contrary to Code, sec. 722. (2) If with knowledge of a defect of jurisdiction, the party entitled to object attends and takes no objection, he is not entitled to a writ of certiorari to raise it. Ex parte Giberson (No. 3), 18 Can. Cr. Cas. 355.

COMMON ASSAULT; TRIAL BY JUSTICE; PROTECTION FROM CIVIL PROCEEDINGS.

Sec. 734 of the Criminal Code applies only to summary convictions, therefore it is only one who has been tried by a justice upon a charge of common assault—which is the only kind of assault punishable on summary conviction (Part XV)—who can claim protection from subsequent civil proceedings at the instance of the same complainant. One who has been tried summarily under Part XVI (Summary trials) for the indictable offence of wounding or of inflicting grievous bodily harm specified in sec. 773 (c) is entitled to immunity under sec. 792 "from all further or other criminal proceedings for the same cause," but not from civil proceedings. [Neville v. Ballard (1897), 28 O.R. 588, followed.] Green v. Henneghan, 30 Can. Cr. Cas. 256, 43 D.L.R. 272.

V. Penalties and Costs.

PENALTIES; ASSAULT; AFFINITY OF MAGISTRATE TO RESPONDENT; QUASHING CONVICTION.

These were appeals form judgments of four J. P.'s fining appellants in assault cases. One of the magistrates was married to a first cousin of D. McIntosh, the respondent in one of the cases. The respondents in the other cases at the time of the alleged assault were not themselves of affinity to any of the magistrates, but were acting as servants of D. McIntosh. Objection was taken to the convictions on the ground of D. McIntosh's affinity to one of the magistrates:—Held, that this objection was fatal, and the convictions must be set aside, and that no distinction could be made between the case of D. McIntosh and those of his servants, but that the convictions in their cases must be set aside on the same ground. (Hensley, J.) Campbell v. McIntosh (1872), 1 P.E.I.R. 423.

PENALTIES; ASSAULT ON POLICE OFFICER; SENTENCE TO FINE AND IMPRISONMENT.

M. was convicted at the County Court sittings of having assaulted a peace officer, and the presiding Judge imposed a fine of $50, and also sentenced M. to one month in jail. Sec. 263 of the Criminal Code provides that "everyone is guilty of an indictable offense and liable to two years' imprisonment who assaults any public or peace officer, etc." A habeas corpus order to shew cause why M. should not be relased on the ground that both fine and imprisonment could not be awarded, was obtained, on the return of the writ it was held that sec. 958 of the Criminal Code gave such power. Ex parte McClements (1895), 32 C.L.J. 39.

DISTRESS WARRANT; MANDAMUS TO ISSUE; REFUSAL.

The Court refused a mandamus to the mayor of a municipality to issue a distress warrant on a conviction made by him, under the Temperance Act of 1864, where the by-law and conviction were open to grave objections, which had been taken on the trial before him. Regina v. Ray (1878), 44 U. C.Q.B. 17

IMPRISONMENT IN DEFAULT OF FINE AND COSTS.

The conviction adjudged payment of a fine and costs, and in default imprisonment:—Held, good; and that it was not necessary to order that a distress warrant to compel payment of the fine should be issued before imprisonment. Reg. v. Smith, 46 U.S.Q.B. 442.

FINE AND COSTS; PAYING COSTS; COMMITMENT FOR NON-PAYMENT OF FINE.

A commitment for part of the sum adjudged by the conviction to be paid is not authorized by the Summary Conviction Act, and is illegal. The plaintiff was convicted under the Canada Temperance Act and was adjudged to pay a fine and costs, to be levied by distress if not paid forthwith, and in default of sufficient distress to be imprisoned, etc. He paid the costs but not the fine and a distress warrant was issued against him. Nothing being made under the distress a warrant of commitment was issued under which he was imprisoned:—Held, that the commitment was bad. [Trigerson v. Board of Police of Cobourg, 6 O.S. 405, approved and followed.] Sinden v. Brown (1890), 17 O.A.R. 173.

COAL MINES REGULATIONS ACT; PAYMENT OF WAGES OF EMPLOYEES OTHERWISE THAN IN MONEY CURRENCY; PENALTIES.

Under the provisions of the Coal Mines Regulations Act, R.S. 1900, ch. 19, sec. 29, "The wages or salary of any employee in a mine shall not be paid otherwise than in money current in the Dominion of Canada," and by sec. 30, "The owner . . . who contravenes or fails to comply" (with the foregoing provision) "shall each be guilty of an offence against this chapter and liable to a penalty of not less, etc." Defendant company, in making payment to one of its employees of an amount due him for wages, deducted therefrom a small sum on account of indebtedness incurred by him for goods purchased at the company's store:—Held, (following Williams v. North Navigation Colliers (1900), A.C. 136), that defendant was within the provision recited respecting the penalty and was liable. Also, a penalty can be enforced against a company under the Summary Convictions Act, and the fact that the form of conviction under the Act provides for imprisonment in default of distress, which would be inapplicable to corportations, does not displace the remedy under the Act. Also, a magistrate in making a conviction and distributing the penalty cannot direct the penalty to be paid to "the person aggrieved" when the provision enabling such payment to be directed has been repealed before the information is laid. R. v. Dominion Coal Co., 41 N.S. R. 137.

IMPRISONMENT FOR NON-PAYMENT OF FINE.

A conviction under the Summary Convictions Act, Consol. Stat. ch. 62, awarding costs and ordering imprisonment for non-payment of the fine, is sufficient under sec. 31, though it does not follow form L. and award costs of commitment and conveying to gaol. Where there is a review a certiorari should not be granted unless under exceptional circumstances. Ex parte Young (1893), 32 N.B.R. 178.

A conviction awarding ninety days' imprisonment as an alternative punishment for non-payment of a fine where the statute authorized three months' imprisonment is bad, as ninety days may possibly be more than three months. Such a conviction under the Canada Temperance Act cannot be amended under sec. 117 because it imposes a "greater penalty than is authorized." The Queen v. Gavin, 1 Can. Cr. Cas. 59.

CONCURRENT SENTENCES.

(1) A prisoner convicted at the one time of two offences and sentenced on each to three months' imprisonment without specification as to the terms being concurrent or otherwise is not entitled to a discharge on habeas corpus after three months' imprisonment. (2) There is no presumption that sentences passed at the one time are to be concurrent. Ex parte Bishop, 1 Can. Cr. Cas. 118.

UNAUTHORIZED PENALTY ADDED.

Whre the only penalty authorized has been imposed, but with an unauthorized addition, the latter may be struck out on amendment after its return under certiorari. Ex parte Nugent, 1 Can. Cr. Cas. 126.

[Referred to in R. v. Whiffin, 4 Can. Cr. Cas. 144.]

FINE; ADJUDICATION OF FORFEITURE.

A summary conviction by a justice of the peace, whereby a fine is sought to be imposed, must adjudge forfeiture of the amount as well as payment thereof; and if a commitment be made in default of payment, the prisoner is entitled to be discharged under habeas corpus if the conviction merely adjudges that he "forthwith pay" a sum named and that in default of payment he be imprisoned. R. v. Crowell, 2 Can. Cr. Cas. 34.

[Followed in R. v. Bustress, 3 Can. Cr. Cas. 536.]

IMPRISONMENT FOR NON-PAYMENT OF FINE.

A magistrate trying a case under the Summary Convictions clauses may, under Cr. Code, sec. 872, award imprisonment in default of payment of the fine without directing that distress shall first be made upon the defendant's goods and chattels. Ex parte Gorman, 4 Can. Cr. Cas. 305.

IMPRISONMENT IN DEFAULT OF DISTRESS; COSTS OF DISTRESS AND CONVEYING TO GAOL; VARIANCE OF CONVICTION FROM MINUTE.

(1) If the justice making a summary conviction adjudges a pecuniary penalty and a distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction. (2) It is unnecessary for the justice to insert in the minute of conviction any provision that the defendant shall pay such costs of distress and conveying to gaol, as a prerequisite to his discharge from custody before the end of the term of imprisonment. (3) The formal conviction may provide under Code, sec. 872 (a) for the payment of the costs both of the distress and of conveying to gaol, although the minute of conviction does not include the costs of distress but merely directs imprisonment unless the penalty and costs, and the costs of conveying to gaol are sooner paid. (4) The expression "costs and charges" used in Code forms WW. and FFF. has the same meaning as the term "expenses" in Code, sec. 782 (a). The Queen v. Vantassel (No.1), 5 Can. Cr. Cas. 128.

[Followed in R. v. Beagan, 6 Can. Cr. Cas. 58; referred to in R. v. Gow, 11 Can. Cr. Cas. 84.]

IMPRISONMENT IN DEFAULT OF DISTRESS; COSTS OF DISTRESS AND CONVEYING TO GAOL.

(1) If the justice making a summary conviction adjudges a pecuniary penalty and distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction. (2) The omission of that provision from the formal conviction in such a case invalidates the conviction. The Queen v. Vantassel (No. 2), 5 Can. Cr. Cas. 133.

[Followed in R. v. Beagan, 6 Can. Cr. Cas. 58; referred to in R. v. Gow, 11 Can. Cr. Cas. 84.]

ONE FINE AGAINST PERSONS JOINTLY CHARGED; SEPARATE OFFENCES.

A summary conviction is invalid if it awards one fine against three persons for their separate acts. Gaul v. Township of Ellice, 6 Can. Cr. Cas. 15.

IMMEDIATE PAYMENT OF FINE; NO RIGHT OF APPEAL.

A defendant fined in a summary conviction proceeding who thereupon pays the fine to the clerk of the Court instead of giving a recognizance or applying to the justice under Code, sec. 880 (c) to fix the deposit on appeal, loses his right of appeal under secs. 879 and 880, notwithstanding that the magistrate afterwards fixed the amount of deposit for the costs only and such deposit was made and transmitted to the Appellate Court with the conviction. The King v. Neuberger, 6 Can. Cr. Cas. 142.

[Considered in R. v. Tucker, 10 Can. Cr. Cas. 221.]

DISPENSING WITH DISTRESS.

(1) Where a fine is imposed by a summary conviction made by two justices and distress in default and imprisonment for want of distress, the discretionary power of dispensing with distress and directing imprisonment if the distress would be ruinous to the accused and his family, is one which belongs to the conviction justices jointly, and one of such justices has no power to commit upon his own finding alone in respect thereof. (2) The accused is entitled to be heard on the question of dispensing with the distress warrant. (3) The want of sufficient distress, necessary for the alternative of imprisonment, can only be proved by the return of nulla bona to a warrant of distress or by hearing the defendant regarding the same. The King v. Rawding, 7 Can. Cr. Cas. 436.

[Referred to in R. v. Skinner, 9 Can. Cr. Cas. 562.]

COSTS ORDERED TO BE PAID TO MAGISTRATE; COSTS OF CONVEYING TO GAOL NOT FIXED; AMENDMENT.

(1) A summary conviction in which the costs awarded are directed to be paid to the magistrate is in that respect invalid. (2) Where a fine is imposed by a summary conviction and in default of payment the commitment of the accused unless the fine and costs and the charges of conveying the prisoner to gaol are sooner paid, the conviction is invalid to support a commitment thereunder, unless the latter costs are fixed by the conviction. The King v. Law Bow, 7 Can. Cr. Cas. 468.

[Applicable in Zimmerman v. Burwash, 29 Que. S.C. 255.]

CONVICTION WITH REDUCED PENALTY; INVALIDITY.

Where a statute imposes a definite penalty for an offence, a summary conviction awarding a lesser fine and, in default of payment, a lesser term of imprisonment than that specified, is bad and must be quashed in a case to which Code, sec. 889 and 890 do not apply. The King v. Hostyn, 9 Can. Cr. Cas. 138.

APPEAL; WHEN IMMEDIATE PAYMENT OF FINE NOT A WAIVER OF APPEAL.

Where the fine and costs imposed by a summary conviction were payable forthwith and in default of distress the immediate payment of same to the magistrate accompanied by a request for information as to the time allowed for appeal, is not a waiver

of the right of appeal. The King v. Tucker, 10 Can. Cr. Cas. 217.

FINE; TENDER TO GAOLER AFTER OFFICE HOURS; REFUSAL; RELEASE ON HABEAS CORPUS; REASONABLE TIME FOR PAYMENT.

(1) Upon tender at a reasonable hour to the gaoler of the sum due under a warrant of commitment in default of payment of a fine, the prisoner is entitled to be released. (2) In the absence of statutory prison regulations on the subject, the gaoler is not justified in refusing a tender of the fine and costs made between seven and eight o'clock in the evening after his office hours. The King v. Colahan, 12 Can. Cr. Cas. 283.

SUMMARY CONVICTION; HARD LABOUR; STATUTE PRESCRIBING IMPRISONMENT.

A summary conviction imposing imprisonment with hard labour will be quashed if the provincial statute upon which it is based merely prescribes imprisonment. Re Gévry, 12 Can. Cr. Cas. 344.

FINE; IMPRISONMENT IN DEFAULT.

(1) Sec. 739 of the Revised Criminal Code 1906, applies to authorize imprisonment forthwith for non-payment of a fine imposed for first offence under the Canada Temperance Act without the necessity of a distress, notwithstanding that the statutory Form T to the latter Act giving a form of conviction for a first offence thereunder is drawn as for a distress in default of payment. (2) Form T to the Canada Temperance Act, R.S.C. 1906, ch. 152, is not to be deemed to be exclusive of all other forms of convictions for a first offence, and the effect of secs. 135 and 151 (formerly 51 Vict. ch. 34, secs. 9 and 14), is to authorize an alternative adjudication of imprisonment without distress and a corresponding form of conviction framed under the Criminal Code. (3) Upon a summary conviction imposing a fine and imprisonment in default of payment forthwith, a delay of twenty-nine days in issuing the warrant of commitment will not affect its validity. The King v. McKinnon, 12 Can. Cr. Cas. 414.

EXCESSIVE TERM OF IMPRISONMENT IMPOSED.

(1) Where upon the return to a writ of certiorari the Court, upon perusal of the depositions, has no doubt as to the commission of the offence for which the defendant has been tried and convicted, but the conviction is defective in awarding a longer term of imprisonment than the statute permits, the Court has power to amend the conviction by reducing the term of statutory limit. (2) The merits of the defence as disclosed by the depositions may be enquired into upon the motion to amend, but the reference in Revised Code, sec. 1124 dealing with certiorari matters to the procedure on appeals from summary convictions does not imply that there shall be a trial de novo for the purpose of fixing an appropriate punishment. The King v. McKenzie, 12 Can. Cr. Cas. 435.

[Applied in R. v. Morris, 16 Can. Cr. Cas. 3; referred to in R. v. Oberlander, 16 Can. Cr. Cas. 250.

IMPRISONMENT IN DEFAULT OF FINE; AMENDING CONVICTION WHERE STATUTORY LIMIT EXCEEDED.

(1) Where the term of imprisonment is improperly in excess of three months in default of payment of the fine, the summary conviction will be amended by reducing the term to three months on the hearing of a motion to quash. (2) No costs will be ordered against the defendant applying to quash a summary conviction if the Court thereupon amends the conviction by reducing a sentence in excess of the statutory limit, although other objections to the conviction were overruled. The King v. McGuire, 13 Can. Cr. Cas. 312.

SEPARATE OFFENCES UNDER VAGRANCY CLAUSES; NO POWER ON CERTIORARI TO APPORTION DISCRETIONARY PENALTY.

(1) Where unauthorized costs are included in a summary conviction, the Court on certiorari has power, under Code, sec. 1124, to amend the conviction by reducing the costs to the proper items. (2) The amount of the costs and charges of conveying the accused to gaol in default of payment of the fine (Cr. Code, sec. 739) need not be fixed and stated in the summary conviction; and quære, whether the warrant of commitment need state the amount since the new Form No. 41 introduced with the Criminal Code of 1906. The King v. Code, 13 Can. Cr. Cas. 372.

[Referred to in R. v. Harris, 13 Can. Cr. Cas. 398; R. v. Turnbull, 15 Can. Cr. Cas. 5; distinguished in R. v. Mah Sam, 14 Can. Cr. Cas. 5.]

HARD LABOUR MADE OBLIGATORY IN DEFAULT OF FINE; COMMITMENT FOR IMPRISONMENT "ACCORDING TO LAW."

Where the statute stipulates the amount of the fine and the obligation for payment of costs, and in default of payment, imprisonment for six months at hard labour, a summary conviction which states that in default of payment of the fine and the costs, the offender shall be "imprisoned for six months, according to law," is void, as not following the terms of the statute and for uncertainty in leaving it to the gaoler to interpret the law. Poulin v. City of Quebec, 13 Can. Cr. Cas. 391.

HABEAS CORPUS; EXAMINING PROCEEDINGS BEFORE MAGISTRATE.

(1) Upon a habeas corpus application in respect of a summary conviction, the Court will examine the depositions and proceedings before the magistrate to ascertain if a

conviction was justified, although the formal conviction returned appears regular on its face. (2) As there are other offences of selling liquor, ex. gr., to a minor or interdicted person, under the Ontario Liquor License Act, an admission by the accused of a previous conviction for selling wthout specifying the nature of such previous offence, will not suffice to sustain a conviction under that Act for a second offence for selling without a license. (3) Sec. 101 of the Liquor License Act (Ont.) which authorizes an amendment of the conviction "where no greater penalty or punishment is imposed than is authorized by the Act," applies only where no greater penalty or punishment than that imposed is authorized for the offence of which the accused might properly have been convicted by the magistrate. (4) A defendant charged and convicted of a second offence under the Liquor License Act (Ont.) without proper proof or admission of the prior conviction, is entitled to be discharged on habeas corpus, as the Court is not authorized to amend the conviction by reducing it to one for a first offence. The King v. Simmons, 14 Can. Cr. Cas. 5.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 196, 19 O.L.R. 238; R. v. Tystad, 15 Can. Cr. Cas. 237; R. v. Pfister, 19 Can. Cr. Cas. 93; R. v. Crooks, 19 Can. Cr. Cas. 155; followed in R. v. Smith, 16 Can. Cr. Cas. 428; R. v. Broadfoot, 17 Can. Cr. Cas. 76.]

IMPRISONMENT; COSTS.

On a summary conviction awarding imprisonment, costs may also be awarded, and in default of payment imprisonment for a further term not exceeding three months. Ex parte Tierney, 14 Can. Cr. Cas. 194.

CHARGE OF SECOND OFFENCE; READING OVER AND SIGNING DEPOSITIONS BEFORE MAGISTRATE.

(1) Sec. 722 (2) of the Criminal Code applies to prosecutions under the Ontario Liquor License Act, and, therefore, a summary conviction awarding imprisonment for a second offence may be made on evidence taken in the absence of the accused at an adjourned hearing of which he was duly notified. (2) In Ontario the High Court disposing of a habeas corpus application in respect of a summary conviction under a provincial statute, e. g., the Liquor License Act, may award costs against the unsuccessful applicant. The King v. Leach et al., 14 Can. Cr. Cas. 375.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 204; R. v. Graves (No. 2), 16 Can. Cr. Cas. 322.]

SELLING LIQUOR WITHOUT LICENSE; ADVANCE PAYMENT OF FINE AND COSTS TO JUSTICE; SUBSEQUENT FORMAL CONVICTION; IRREGULARITY AS TO IMPRISONMENT DIRECTED IN DEFAULT OF PAYMENT; JURISDICTION TO IMPOSE FINE.

Where the person accused of an offence punishable on summary conviction under the Ontario Liquor License Act goes to the justice before the summons is returnable, acknowledges the offence and deposits with the justice the amount of the fine and costs, which are formally imposed afterwards on the return of the summons, an objection taken to the formal conviction that the imprisonment directed in default of payment of the fine (but which by reason of such advance payment could not become operative) was in excess of the statutory limit, is one for which an appeal would afford an adequate remedy and certiorari process is therefore taken away under the Ontario Summary Convictions Act. The King v. Renaud, 15 Can. Cr. Cas. 246.

"SUBSEQUENT COSTS;" COSTS OF CONVEYING TO GAOL.

A statutory provision for release from imprisonment on paying the fine and costs up to conviction and "subsequent costs" includes under the latter head, the costs of arrest and commitment and conveying to gaol. The King v. Dubuc, 15 Can. Cr. Cas. 353.

FINE AND COSTS; WARRANT OF COMMITMENT INCLUDING EXCESSIVE COSTS; AMENDING ON HABEAS CORPUS.

(1) If excessive costs have been included in a warrant of commitment for default in payment of a fine upon summary conviction, the Court may on the return of a habeas corpus amend the conviction and commitment by reducing such costs to the proper amount and may remand the prisoner. (2) A deputy stipendiary in Nova Scotia appointed by a town council under R.S.N.S. ch. 71, sec. 115, has jurisdiction only in the event of the stipendiary's absence from town or of incapacity, through illness, interest or otherwise, of the stipendiary. (3) A prisoner held under a summary conviction purporting to be made by the deputy stipendiary acting at the request of the stipendiary, but when, in fact, there was no incapacity to prevent the stipendiary from acting, must be discharged on habeas corpus. The King v. Morris, 16 Can. Cr. Cas. 1.

COMMON ASSAULT; PAYMENT OF FINE; CIVIL ACTION FOR DAMAGES; BAR.

A summary conviction on complaint of the person assaulted on a charge of common assault followed by payment of the fine imposed is a bar to a subsequent civil action for damages for the same assault instituted by the person assaulted. Hebert v. Hebert (No. 2), 16 Can. Cr. Cas. 199, affirming 15 Can. Cr. Cas. 258.

AMENDED CONVICTION NOT CONFORMING WITH ADJUDICATION; INVALIDITY.

(1) On a summary conviction under Code, sec. 537 for wilfully killing a dog, the whole penalty, which is not to exceed

$100 "over and above the amount of injury done," belongs to the Crown, and there is no jurisdiction to award damages to be paid to the owner of the dog. (2) Where the adjudication was that the defendant pay a fine of $1 and costs and further pay the owner $20 damages for the loss of the dog, the summary conviction will be amended by striking out the award of damages. (3) As amended conviction imposing a fine of $21 is bad as not conforming with the adjudication. (4) Code, sec. 539 which empowers the magistrate in certain cases to award compensation up to $20 to the person aggrieved does not apply to the offence of killing a dog for which Code, sec. 537 provides a punishment. The King v. Annie Cook, 16 Can. Cr. Cas. 234.

ADJOURNMENT FOR JUDGMENT AFTER CONCLUSION OF EVIDENCE.

(1) The "hearing" which under Code, sec. 722 may not be adjourned for more than eight days in a summary conviction proceeding includes only the taking of pleas and the examination of witnesses and the section does not limit the time of adjournment by the magistrate for consideration and judgment. (2) Where a liquor law provides a penalty on summary conviction of either fine or imprisonment, the fact that the information concluded with a demand only for the imposition of a fine does not debar the magistrate from imposing imprisonment instead of a fine. (3) The pronouncement of judgment or sentence in a prosecution under the Liquor License Act of Quebec (R.S.Q. 1909, art. 903 et seq.) forms no part of the hearing or proceedings governed by art. 1117, R.S.Q. and the magistrate can adjourn for the purpose of giving judgment to a date more than thirty days after the conclusion of the evidence, although the statute limits adjournment of the hearing to thirty days. Plante v. Cliche, 17 Can. Cr. Cas. 43, affirmed in 20 Can. Cr. Cas. 186.

CONVICTION REMOVED IN PENDING CERTIORARI PROCEEDINGS.

Where a minimum term of imprisonment in default of paying a fine is imposed by statute, a summary conviction imposing a lesser term will be quashed. (Per Barker and McLeod, JJ.) Ex parte Daigle, 18 Can. Cr. Cas. 211.

COSTS ON QUASHING.

Costs will not be granted against the informant and the magistrate on quashing a summary conviction in certiorari proceedings, unless misconduct is proved against them. Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495.

COSTS; ILLEGALITY OF; AMENDMENT.

A justice's order dismissing an information under the Summary Convictions Act, ordering the informant to pay as costs a sum which included items for "rent of hall," "counsel fee," "compensation for wages" and "railway fare:"—Held, that none of these items could legally be charged as costs, and that, therefore, the order was bad, so far as it awarded any costs; held, also, that the Court could not amend the order by deducting the illegal items; though it could amend by striking out in toto all that part of the order relating to costs. [Regina v. Dunning 14 O.R. 52, considered.] Queen v. Laird (1889), 1 Terr. L.R. 179.

IMPRISONMENT IN DEFAULT OF FINE; DISTRESS WARRANT NOT NECESSARY.

A conviction for a common assault adjudged payment of a fine and costs, and in default imprisonment:—Held, good; and that it was not necessary to order that a distress warrant to compel payment be issued before imprisonment. Reg. v. Smith (1857), 46 U.C.Q.B. 442.

SEIZURE UNDER DISTRESS WARRANT.

A distress to enforce payment of a fine upon a conviction under the Canada Temperance Act, is not a proceeding in right of the Crown, the fine being payable, by the Dominion Statute 49 Vict. ch. 48, and the order-in-council made thereunder, to the local authority bearing the expense of enforcing the law. Goods seized under a distress warrant for non-payment of a fine imposed by a conviction, are not repleviable by the person against whom the distress issued, unless the magistrate who issued it acted without jurisdiction. If an action of replevin brought in a County Court is improperly removed into this Court under the Consol. Statutes ch. 37, sec. 201, the plaintiff should move to set aside the order for removal. Quære, whether an order to remove can be ex parte. Hannigan v. Burgess (1888), 26 N.B.R. 99.

PENALTIES.

A conviction, which attaches hard labour to imprisonment in default of there being sufficient distress to levy fine imposed is bad. The Queen v. Farrar (1890), 1 Terr. L.R. 306.

HARD LABOUR; AMENDMENT OF SENTENCE BY SESSIONS; QUASHING CONVICTION.

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:"—Held (Cameron, J., dissenting), that their assuming so to amend the conviction was not a quashing of the conviction, and therefore trespass would not lie against the justice. The General Sessions of the Peace have no power under 32 and 33 Vict. ch. 31, to amend the sentence in a conviction, as by striking out the part imposing hard labour, but can hear and determine an ap-

peal on the adjudication of guilt only (Per Armour, J.) Hagarty, C.J., inclined to agree, but gave no express decision on this point. This Court has power to quash a conviction for an illegal adjudication of punishment, although it has been appealed against and affirmed in respect of such adjudication; and sec. 71 of 32 and 33 Vict. ch. 31 (D.) does not take away the certiorari in such a case. (Per Armour, J.) The conviction awarded imprisonment with hard labour in default of payment of the fine. The Sessions amended the conviction by striking out hard labour, and awarding imprisonment only in default of distress. The commitment under which plaintiff was confined directed imprisonment at hard labour. The conviction as amended, which was the only one put in evidence, superseded the original conviction, and in effect quashed it so far as regarded the hard labour; defendant was bound to shew an existing conviction authorizing the commitment and as he failed to do this, the excess of jurisdiction in awarding hard labour made him liable in trespass; and semble, that the award of imprisonment in the first instance, under the circumstances in evidence, would also make him so liable. (Per Cameron, J.) The conviction was under a village by-law, for writing and posting up an indecent placard, and the placard was a criminal libel. Quære, per Cameron, J., whether the municipality could thus make a new offence, and award a new or additional punishment for what was already a criminal offence. The by-law directed imprisonment only in default of distress. Quære, per Cameron, J., whether the 32 and 33 Vict. ch. 31, sec. 59, would apply so as to enable the justice to commit under it in the first instance upon proper evidence. Quære, per Cameron, J., whether upon the evidence, set out below, the finding that the plaintiff was not put to hard labour was justified. McLellan v. McKinnon, 1 O.R. 219.

PENALTIES AND COSTS; APPEAL FROM.

Upon an appeal to the County Court from a summary conviction, expressed to be for selling spirituous liquors by retail without a license, contrary to the statute in such case, etc., and to a certain municipal by-law, fining and ordering the defendant to pay $50, and in addition $75, as the amount payable for such a license: Per Sir M. B. Begbie, C.J., sitting as a County Court Judge, the following objections were overruled:—(1) To the jurisdiction (a) that the conviction was not returned to or before the Court upon the appeal; (b) that the deposit as security for the appeal had not been returned. (2) That the by-law referred to in the conviction, exercising the statutory power given to the municipality by the Municipal Act 1892, sec. 204, subsec. (3), to issue licenses for the mode of liquor selling charged, and to levy and collect by means thereof an amount not exceeding $75 for every six months was not proved:—Held, (3) That an appeal from a conviction is a proceeding de novo, as if the information were then first brought to be tried. (4) That sec. 208 of the statute, providing that "No person shall sell liquors by retail, and no person shall use, practise, carry on or exercise in the municipality any trade or business described or named in sec. 204 and the sub-sections thereof, without having taken out and had granted to him a license in that behalf, under a penalty not exceeding $250, together with the amount which he shall have paid for such license, which penalty shall, for the purposes of recovery, be held to be one penalty," made it an offence to sell liquor by retail, without a license in that behalf, independently of whether a by-law providing for the issue of such licenses and fixing the amount of fees thereon, had been passed or not, and that the appeal could proceed, as a hearing de novo, for such statutory offence. (5) It appearing upon such hearing that the liquor sold was intoxicating, but no evidence being given as to its having been produced by distillation, that the evidence was insufficient to sustain a charge of selling spirituous liquor. (6) That the absence of proof of the by-law would have been fatal in proceedings by way of certiorari and motion to quash the conviction. Re Kong Wo (1893), 2 B.C.R. 336.

PENALTIES AND COSTS.

One of the sections of the Act respecting Malicious Injuries to Property enacted that an offender should on summary conviction be liable to a penalty not exceeding $100 over and above the amount of injury done or to three months' imprisonment. A conviction thereunder adjudged the defendant "to forfeit and pay the sum of $5 as a penalty, together with $50 for the amount of injury done as compensation in that behalf":—Held, that it was not the intention of the section in question that there should be two separate penalties, but that one penalty should be fixed by first ascertaining the amount of damages and then adding to that amount such sum not exceeding $100 as the justice should deem proper; and that it was therefore beyond the jurisdiction of the justice to award a sum "as compensation." Held, also, that the words "as compensation in that behalf" could not be struck out as surplusage under the power of amendment given by sec. 80 of the Summary Convictions Act and the $50 be treated as part of the penalty, inasmuch as the effect of such an amendment would be to punish the offender, not according to the conviction of the magistrate, but according to the conviction as amended by the Court, which was not the intention of that provision. The conviction also adjudged the

payment of a sum for costs which comprised several items, which exceeded the amounts allowed therefor by the tariff fixed by the Summary Convictions Act as amended by 52 Vict. 1889, ch. 45, sec. 2, or were not mentioned in the tariff. Held, that the conviction was therefore bad, and that it could not be amended by striking out the charges improperly made. The conviction also adjudged in default of payment, imprisonment for three months. Held, that sec. 68 of the Summary Convictions Act applied and that, inasmuch as the penalty imposed together with the costs did not exceed $25, two months was the maximum term of imprisonment which could be imposed. It being contended that the Court had no power on appeal to quash a conviction for defects or errors appearing on the face of the conviction. Held, that the Court had such power; McLennan v. McKinnon on this point not followed. The Queen v. Tebo (1889), 1 Terr. L.R. 196.

WITNESS'S AND INTERPRETER'S FEES.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act, it was also contended that the magistrate exceeded his jurisdiction by ordering the defendant to pay $3 as inspector's fee, $2 for an interpreter, and $1 justice's costs:—Held, that the fees to be paid to witnesses in prosecutions such as this are not established by any law, and such are to be allowed, under sec. 58 of the Summary Convictions Act, as to the justice seems reasonable, and an interpreter may properly be treated as a witness. In any case, however, the award of costs was within the jurisdiction of the magistrate, and certiorari would not therefore lie (being taken away by the statute under which the conviction was made) on the ground of what of jurisdiction; and the erroneous allowance of certain items of costs would not warrant the quashing of the conviction. Regina v. Brown (1888), 16 O.R. 41.

APPEAL FROM CONVICTION BEFORE MAGISTRATE.

The appellant was convicted before the police magistrate of a city for keeping a house of ill-fame, "contrary to a certain by-law of the corporation." She appealed to the sessions, in May following, where it was held that under 32 and 33 Vict. ch. 32 (D.) the decision of the magistrates was final. The appellant, on the 2nd of June, applied to this Court for a mandamus to the Sessions to hear the appeal, and the police magistrate on the same day filed with the clerk of the peace another conviction, stating the offence to be "contrary to the statute in such case made and provided," 32 Vict. ch. 32, under which there is no appeal:—Held, that the appeal should have been heard; and that after notice of appeal given and the time of hearing the appeal had arrived, no amendment could be made to the conviction. The mandamus was therefore ordered. Regina v. Smith (1874) 35 U.C.Q.B. 518.

PROVIDING LEVY BY DISTRESS.

A minute of a conviction for selling liquor without a license in contravention of sec. 70 of the Liquor License Act, R.S.O. ch. 194, stated that in default of payment of the fine and costs imposed, the same was to be levied by distress, and in default of distress imprisonment, and a formal conviction was drawn up following the minute:—Held, that under sec. 70 distress was not authorized; but that the fact of the minute containing such provision did not prevent a conviction omitting such provision being drawn up and returned, in compliance with a certiorari granted. Held, also that the conviction was good under sec. 105 of the said Act. [Regina v. Brady, 12 O.R. 358 and Regina v. Higgins, 18 O.R. 148, considered.] Regina v. Hartley, 20 O. R. 481.

APPEAL FROM.

(1) A cash deposit under Cr. Code, sec. 750 to answer the costs of an appeal from a summary conviction is a security payable to the Crown. (2) Where an appeal from a summary conviction awarding a money penalty was taken under Cr. Code, sec. 749 to the Court of King's Bench (Crown side) in the Province of Quebec, and that Court dismissed the appeal without making any order in respect of the cash deposit made by the appellant under Cr. Code, sec. 750, the Superior Court of Quebec on evocation from the Circuit Court has jurisdiction to decide a contestation respecting the ownership of the money deposited. Groulx v. Sicotte, 19 Can. Cr. Cas. 101.

COSTS NOT FIXED IN MINUTES OF CONVICTION; LIQUOR ACT.

A summary conviction under the Liquor License Act, C.S.N.B., 1903, ch. 22, will not be quashed on the ground that the amount of the costs of the prosecution and of the costs of commitment and conveying to gaol were first fixed in the formal conviction and that the "minute of conviction," which the magistrate is directed to make by sec. 29, adjudged the fine "besides costs" and in default three months' imprisonment, without specifying either the amount of such costs or the costs of commitment and conveying to gaol in the event of the fine and costs not being paid; semble, the minute of conviction was not defective, but, if it were, the defect was cured by sec. 89 of that Act (similar to Cr. Code, sec. 1124), so far as the conviction was concerned, where the latter was in due form. [Ex parte Van Buskirk, 13 Can. Cr. Cas. 234, 38 N.B.R. 335; ex parte Bertin, 10 Can. Cr. Cas. 65, 36 N.B.R. 577, referred to.] Ex parte

Paulin; R. v. Dugas, 25 Can. Cr. Cas. 173, 27 D.L.R. 683.

ILLEGAL COSTS.

When Cr. Code, sec. 1124 is made applicable by provincial statute to summary convictions under provincial laws, the Code having certiorari jurisdiction wil not quash the entire conviction because of the inclusion of illegal costs, but will amend an otherwise valid conviction by striking out the part which relates to costs. R. v. Gage (No. 2), 27 Can. Cr. Cas. 330. See 26 Can. Cr. Cas. 385, 30 D.L.R. 525.

VI. Record of Conviction and Proceedings.

UNSEALED CONVICTION; PROOF OF CONVICTION ON APPEAL; MANDAMUS.

A conviction must be under seal. A conviction may be returned and proved at any time during the hearing of an appeal therefrom to the General Sessions, or, in the discretion of the chairman, even during an adjournment for judgment. A minute of conviction signed by the justice, but not sealed, was returned to the Sessions upon the entering of an appeal therefrom by the defendants. The jury found the defendant guilty of the offence of which he had been convicted, but on motion for judgment he objected that the conviction was not sealed. The chairman reserved judgment until a day named, and during the adjournment the justices returned and filed a conviction under seal. The chairman then declined to receive it, or to give judgment, holding that there was no conviction upon which to found the appeal, which had been heard:—Held, that the prosecutor was not entitled to a mandamus to compel him to deliver judgment; for the reception of the conviction in evidence at that period was in the chairman's discretion, which could not be reviewed. Re Ryer and Plows (1881), 46 U.C.Q.B. 206.

SALE OF LIQUOR ON SUNDAY; OMISSION THAT SALE NOT FOR MEDICINAL PURPOSES; QUALIFICATION OF MAGISTRATE.

A conviction for selling liquor on a Sunday, in contravention of 32 Vict. ch. 32, sec. 23 (Ont.), omitted to state that the liquor was not supplied upon a requisition for medicinal purposes:—Held, bad, and the conviction was quashed. The only evidence offered in proof of the magistrate, before whom the recognizance in this case had been taken, not being properly qualified, was 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:—Held, insufficient. Regina v. White (1871), 21 U.C.C.P. 354.

OMISSION TO REDUCE EVIDENCE TO WRITING.

A summary conviction is bad if made upon evidence not reduced to writing. The King v. McGregor, 10 Can. Cr. Cas. 313.

[Distinguished in R. v. Doyle, 12 Can. Cr. Cas. 71; discussed in R. v. Leach, Fogarty v. Warilow, 14 Can. Cr. Cas. 386, 17 O.L.R. 643; referred to R. v. Weir, 8 Que. P.R. 401; Re Janneau, 12 Can. Cr. Cas. 360; R. v. Poirier, 31 Que. S.C. 69; R. v. Graf, 15 Can. Cr. Cas. 200; followed in R. v. L'Heureux, 14 Can. Cr. Cas. 103.]

CONSENT OF ACCUSED TO DISPENSE WITH WRITTEN DEPOSITIONS.

A consent expressly given by the accused and noted in the record of proceedings upon a trial under the Summary Convictions clauses (Revised Code, secs. 705–770), may dispense with the taking down of the depositions in writing. The King v. Janneau, 12 Can. Cr. Cas. 360.

[Followed in Rex v. Warlow, 17 O.L.R. 284, 14 Can. Cr. Cas. 119, 12 O.W.R. 789; referred to in R. v. Leach, 14 Can. Cr. Cas. 387, 17 O.L.R. 643; R. v. Goulet, 12 Can. Cr. Cas. 366; R. v. L'Heureux, 14 Can. Cr. Cas. 103.]

FORMAL CONVICTION RECORDED WITHOUT MINUTE OF ADJUDICATION.

(1) In a summary conviction matter, the making out of the formal conviction complete in itself, dispenses with the necessity for entering a minute of adjudication on the record of proceedings. (2) A summary conviction need not state the name of the informant. Ex parte Van Buskirk, 13 Can. Cr. Cas. 234.

[Referred to in R. v. Grafton, 17 Can. Cr. Cas. 327.]

TAKING DEPOSITIONS; SHORTHAND NOTES VERIFIED BY STENOGRAPHER; OMISSION TO FIRST SWEAR STENOGRAPHER; DEPOSITIONS IRREGULAR.

(1) Where the evidence in a summary proceeding is certified as having been taken in shorthand by a stenographer, and is accompanied by an affidavit of the stenographer that it is a true report of the evidence, a summary conviction based thereon may be attacked by proof that the stenographer had not been duly sworn under Code, sec. 683 (1). (2) The omission to swear the stenographer before taking the evidence is a matter of substance, and not a mere defect of form. The King v. L'Heureux, 14 Can. Cr. Cas. 100.

[Referred to in R. v. Harris, 18 Can. Cr. Cas. 395; R. v. Bond, 19 Can. Cr. Cas. 97; folowed in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; R. v. Johnson, 20 Can. Cr. Cas. 9, 5 D.L.R. 523.]

VAGRANCY; RECORD OF CONVICTION; WARRANT; INFORMATION; SUFFICIENCY.

A conviction and warrant of commitment issued by a police magistrate charging a

woman with vagrancy in that she is "a common prostitute or night walker" without stating to which of these two classes she belongs, is not void for duplicity, since at most this is a mere defect in form within the meaning of the curative provisions of sec. 724 of the Criminal Code (1906), especially where the offence is described in the words of sec. 238 (1) of the Code, [Regina v. Hazen, 20 A.R. (Ont.) 633, referred to; Rex v. Leconte, 11 Can. Cr. Cas. 41; Smith v. Moody, [1903] 1 K.B. 56, referred to.] It is not a valid objection to a warrant of commitment that the committing magistrate in signing and sealing the warrant wrote after his name merely the letters "P.M." instead of spelling out of his official designation of "police magistrate," where his official capacity was recited in full in the body of the warrant. While fair information and reasonable particularity as to the nature of the offence under the summary conviction sections of the Criminal Code, 1906, must be given in information and convictions, this merely means that such particulars as to the time, place and subject matter of the charge must be given as, with the statutory description of the offence, will shew upon the face of the conviction exactly what it is for; especially since such sections are administered generally by a body of men without special legal training or experience. [Cr. Code, sec. 723, referred to.] The "minute of conviction" made by a justice of the peace for an offence under the Vagrancy Clauses, Cr. Code 1906, secs. 238 and 239, upon directing imprisonment for the offence is not a minute of an "order" of a justice so as to require service of a copy thereof under Cr. Code, sec. 731 before issuing a warrant of commitment. [Sec. 731, Cr. Code 1906, applies only to "orders" as distinguished from "summary convictions" made by justices although the procedure as to both is regulated by Part XV. of the Code; see R. v. Sanderson, 12 O.R. 178; R. v. O'Leary, 16 N.B.R. 264; R. v. Conrod, 5 Can. Cr. Cas. 414, 425.] Re Effie Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.

SECOND OFFENCE; MENTION OF FIRST CONVICTION; STATUTORY LIMITATION.

Infringment of a statutory direction that, on a trial for second offence subjecting to an increased penalty, no mention shall be made of the prior conviction until after an adjudication of guilt for the alleged second offence, will invalidate the summary conviction; but the affidavits filed must satisfy the Court that there was something more than the commencement by counsel of his address preliminary to tendering the evidence, which address was stopped by the magistrate until the latter had completed the writing of the adjudication. [R. v. Nurse, 8 Can. Cr. Cas. 173, R. v. Fox, 10 Cox C.C. 502, and Faulkner v. Rex, [1905] 2 K.B. 76, referred to.] Re Ellis, 24 Can. Cr. Cas. 345.

RECORD OF CONVICTION; STATING NATURE OF OFFENCE.

A summary conviction under a municipal by-law must state the nature of the offence and not merely recite that defendant violated a specified section of the by-law. R. v. Hubley, 25 Can. Cr. Cas. 102, 28 D.L.R. 376.

MINUTE OF CONVICTION IN STENOGRAPHER'S NOTES.

The minute of a summary conviction under Cr. Code, sec. 727, may by direction of the magistrate be included in the stenographer's notes of the evidence, and may be authenticated in like manner without the signature of the magistrate, where the stenographer acts as clerk to the magistrate's court. If the formal conviction is drawn up promptly after the adjudication, there is no necessity for any minute of conviction (Cr. Code, sec. 727), but if a minute of conviction has been made the formal conviction must accord with it. R. v. Clarke, 30 Can. Cr. Cas. 200. See 41 D.L.R. 713.

VII. Amendment.

AMEDMENT OF CONVICTION TO CONFORM WITH ORAL ADJUDICATION; NO "MINUTE OF ADJUDICATION" NECESSARY ON PLEA OF GUILTY.

(1) A warrant of commitment upon a summary conviction may be issued and executed beofre drawing up the formal conviction. (2) A formal record of a summary conviction may be amended after the conviction has been enforced by warrant of commitment, but the recorded statement of the judgment in the conviction as amended must be conformity with the actual oral adjudication. (3) There is no statutory requirement that a justice shall make a minute of adjudication where he makes a summary conviction on a plea of guilty. (4) Apart from statutory regulations, the oral judgment of the convicting justice in a summary conviction matter is subject to reconsideration so long as no formal conviction is drawn up. The King v. Degenais, 18 Can. Cr. Cas. 287.

PERMITTING DEER HOUNDS TO RUN AT LARGE; SCIENTER; COSTS.

A summary conviction of the owner of a hound or other dog for permitting "such hound or dog to run at large in any locality where deer are usually found," contrary to the provisions of the Ontario Game Protection Act, is bad unless it states that dog was "known by the defendant to be accustomed to pursue deer;" and cannot be amended under sec. 889 of the Criminal Code unless the evidence shews knowledge

of the owner of such habit of the dog. A statement in a deposition that "dogs were at large on defendant's premises" is not evidence that they were either running or permitted to run at large contrary to the statute. Costs withheld, as the bona fide of the magistrates had been unsuccessfully attacked. Regina v. Crandall (1896), 27 O.R. 63.

ORDER NISI TO QUASH; AMENDMENT OF CONVICTION.

It did not appear upon the face of the conviction in question that the offence was committed within the territorial jurisdiction of the convicting justices of the peace, but upon the depositions it was clear that it was so committed:—Held, that the saving provision of sec. 87 of R.S.C. (1886), ch. 178, should be applied; and the order nisi to quash the conviction was discharged. Regina v. Perrin (1888), 16 O.R. 446.

AMENDMENT; HAWKERS AND PEDDLERS; QUASHING; COSTS.

Rule to quash a summary conviction of the defendant by two justices of the peace for the county of Halton, for alleged breach of a by-law of the county regulating hawkers and peddlers, in selling fresh meat without a license. The by-law was passed pursuant to sec. 495 of the Municipal Act. The Court held that the conviction was bad upon its face, because it did not negative the exception in sec. 495, sub-sec. 3, with regard to "hawking or peddling any goods, wares or merchandise, the growth, produce or manufacture of this province;" and that it could not be amended under secs. 889 and 890 of the Criminal Code, because the evidence, when looked at, did not shew an offence against the by-law; and as to costs, that, as the prosecutor was not discharging a public duty, there was no reason why he should not be ordered to pay costs. Rule absolute quashing conviction with costs to be paid by the private prosecutor. Regina v. McFarlane (1897), 33 C.L.J. 119.

AMENDMENT.

The Court should not amend a conviction if in doing so it has to exercise the discretion of the magistrate. Ex parte Nugent, 1 Can. Cr. Cas. 126.

[Referred to in R. v. Whiffin, 4 Can. Cr. Cas. 44.]

AMENDMENT.

To authorize the amendment of a conviction under Cr. Code, sec. 889, the Court or Judge must from the depositions be satisfied that if trying the defendant in the first instance, the Court or Judge would have convicted upon that evidence. R. v. Herrell, 1 Can. Cr. Cas. 510.

[Referred to in R. v. Law Bow, 7 Can. Cr. Cas. 469; R. v. Tystad, 15 Can. Cr. Cas. 237.]

SECOND OFFENCE.

A conviction for a second offence which is defective for want of proof of any prior conviction should not be amended under Cr. Code, secs. 209, 210, so as to impose the lesser penalty applicable to a first offence, unless the Court is satisfied, from a perusal of the depositions and after giving the accused the benefit of any reasonable doubt, that an offense is thereby proved. R. v. Herrell, 1 Can. Cr. Cas. 510.

[Referred to in R. v. Law Bow 7 Can. Cr. Cas. 469; R. v. Tystad, 15 Can. Cr. Cas. 237.]

AMENDMENT; REDUCING EXCESSIVE PUNISHMENT.

Where there is nothing upon the face of a conviction for keeping a house of ill-fame to shew whether the police magistrate who tried the case acted under the Summary Trials clause of the Code, by virtue of which he has an absolute jurisdiction in respect of that offence, or simply as justice of the peace under the Summary Convictions clauses, and of Code, secs. 207 and 208 and the conviction is defective in form but is amendable if within the Summary Convic- under Code, sec. 889, by reducing the term tions clause, the Court will treat it as a "summary conviction" and correct the same under Code sec. 889, by reducing the term of imprisonment where the sentence is in excess of that authorized by law. R. v. Spooner, 4 Can. Cr. Cas. 209.

[Followed in R. v. Shing, 17 Can. Cr. Cas. 463; R. v. Mercier, 13 Can. Cr. Cas. 483; referred to in R. v. McKenzie, 12 Can Cr. Cas. 444, 41 N.S.R. 187; discussed in R. v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380; R. v. Ames, 10 Can. Cr. Cas. 52, 57, 5 Terr. L.R. 498.]

DEFECT OF FORM OR SUBSTANCE.

The powers of amending a defective summary conviction conferred by sec. 883 of the Criminal Code of Canada do not extend to or apply to convictions made under an Ontario statute. R. v. Lee, 4 Can. Cr. Cas. 416.

AMENDMENT.

A conviction which is invalid on its face should not be amended under Code sec. 889 upon habeas corpus proceedings, unless the Court, if trying the accused in the first instance, would have convicted upon the same depositions. The King v. Law Bow, 7 Can. Cr. Cas. 468.

[Applicable in Zimmerman v. Burwash, 29 Que. S.C. 255.]

SUBSTITUTIONAL SERVICE OF SUMMONS; ABSENCE OF ACCUSED.

In summary matters before a justice the information cannot be amended at the hearing on the nonappearance of the accused, so as to charge a separate and distinct offence to that for which the summons was

issued. The King v. Lyons, 10 Can. Cr. Cas. 130.

CERTIORARI; POWER OF COURT TO AMEND.

(1) Where upon the return to a writ of certiorari the Court, upon perusal of the depositions, has no doubt as to the commission of the offence for which the defendant has been tried and convicted, but the conviction is defective in awarding a longer term of imprisonment than the statute permits, the Court has power to amend the conviction by reducing the term to the statutory limit. (2) The merits of the defence as disclosed by the depositions may be enquired into upon the motion to amend, but the reference in Revised Code, sec. 1124 dealing with certiorari matters to the procedure on appeals from summary convictions does not imply that there shall be a trial de novo for the purpose of fixing an appropriate punishment. The King v. McKenzie, 12 Can. Cr. Cas. 435.

[Applied in R. v. Moris, 16 Can. Cr. Cas. 3; referred to in R. v. Oberlander, 16 Can. Cr. Cas. 250.]

REVIEW OF CONVICTION ON APPEAL WHERE EXCEPTION NOT NEGATIVED.

(1) If the statute creates an offence with an exemption or exception the statement of which is necessary to properly charge the offence, and such exemption or exception is not negatived in the information, Code, sec. 717 does not apply to cast upon the accused the onus of providing himself within the exception. (2) Where such exemption is not negatived in the information and there is no evidence before the magistrate on the point, the Court hearing an appeal from a summary conviction cannot amend the proceedings by inserting the exception in the charge and rehear the case as upon an amended charge. (3) The power conferred by Code, sec. 754, upon an appeal from a summary conviction, to determine the charge upon the merits notwithstanding any defect in the conviction does not apply where both the information and the conviction omit an exception the statement of which is essential to properly charge the offence. (4) If such exemption is not stated in the information and no evidence is given in respect of the exemption, a summary conviction including it must be quashed for want of evidence to support it. The King v. Boomer, 13 Can. Cr. Cas. 98.

[Referred to in R. v. McGuire, 13 Can. Cr. Cas. 325; R. v. Farrell, 16 Can. Cr. Cas. 424.]

APPEAL; DECISION IN APPEAL UPON THE MERITS NOTWITHSTANDING DEFECTS IN FORM.

(1) An objection taken on appeal from a summary conviction under a liquor license by-law that the conviction does not shew that the by-law was in force at the time of the alleged offence, is at most a defect in a matter of form and notwithstanding the same the conviction should be affirmed if supported by the evidence under the British Columbia Summary Convictions Act, sec. 76 (similar to Code, sec. 754). (2) An objection that a summary conviction does not include a specific sum as the costs of conveying to gaol in default of sufficient distress is one that may be remedied by amendment upon an appeal therefrom under the British Columbia Summary Convictions Act, sec. 76 (similar to Code, sec. 754) and is, therefore, an objection on a matter of form which should not be allowed if the conviction can be supported upon the merits. The King v. Sing Kee, 14 Can. Cr. Cas. 420.

INTERDICTION; PROOF OF EXCESSIVE DRINKING BY INTERDICT.

(1) On a charge against license holder for supplying liquor to a person interdicted by the license inspector as an habitual inebriate under the Liquor License Act (Ont.) the prosecutor must not only prove the notice of interdiction but also that the interdict was in the habit of drinking to excess. (2) Where a summary conviction was made without evidence that the interdict was an habitual inebriate, the prosecutor will not be allowed on the defendant's appeal from the conviction, to supplement his case by producing such evidence on the appeal and the conviction will be quashed. The King v. Morrison, 15 Can. Cr. Cas. 215.

AMENDMENT OF CHARGE; SELLING LIQUOR.

(1) Where the accused was summoned to answer a charge of selling liquor without a license and at the hearing there being evidence of possession of liquor but no evidence of sale the charge was amended to one for "keeping for sale" and the defendant was refused an adjournment and was convicted, the Court on certiorari will quash the conviction for want of evidence of keeping for sale, but not, under the circumstances of the case, on the ground of the refusal of the adjournment. (2) In order to displace the magistrate's jurisdiction on the ground of the refusal of an adjournment asked by the defence, more must be shewn than an amendement of the information and a refusal to adjourn the hearing, as to which the magistrate has a wide discretion. The King v. Milkins, 17 Can. Cr. Cas. 20.

APPEAL FROM SUMMARY CONVICTION.

Where upon an appeal from a summary conviction the County Court Judge purports to delegate the taxation of the costs of the appeal to the clerk of the Court, instead of himself fixing the costs of the appeal, a Superior Court on an application for prohibition from collecting the costs taxed by the clerk, may enlarge the motion to allow of an application to the County Judge to fix the costs and amend his judgment ac-

cordingly. The King v. Hamlink, 17 Can. Cr. Cas. 162.

DUPLICITY; AMENDMENT.

Where a summary conviction was made by a magistrate of several persons upon a charge of unlawfully playing or looking on in a common gaming house and the evidence returned on certiorari was sufficient for the conviction of all the defendants for unlawfully playing, the Court will not quash the conviction for duplicity and uncertainty, but will amend the conviction under Code, sec. 1124 by striking out the charge of looking on. The King v. Toy Moon, 19 Can. Cr. Cas. 33.

IRREGULARITY; TWO CONVICTIONS ON ONE INFORMATION.

(1) Where separate convictions have been irregularly made upon one information for killing two dogs, the magistrate may return to a certiorari a single amended conviction conforming to the minute of adjudication and apportioning the fine and damages for the killing of each dog. (2) The award of costs to the owner of the dog on whose behalf his wife had laid the information instead of to the informant is a mere irregularity which is cured by sec. 1124 of the Revised Code. Ex parte Grey, 12 Can. Cr. Cas. 481.

LIQUOR LAWS; SUBSEQUENT CERTIORARI ORDER AND AMENDMENT OF CONVICTION.

(1) An order for destruction of liquors seized and adjudged to have been illegally kept for sale contrary to the Ontario Liquor License Act is valid as an authorization to the officer directed to superintend the destruction although not reduced to writing. (2) The formal order for destruction may be made either separately from the conviction or it may be embodied in the formal conviction. (3) The formal order or conviction, as the case may be, may be made up at any time before the return to a certiorari, and this notwithstanding that the order had already been executed. Ing Kon v. Archibald, 14 Can. Cr. Cas. 201.

LIQUOR LICENSE LAW; CONVICTION FOR SECOND OFFENCE; PROOF OF PREVIOUS CONVICTION.

(1) Where the Court, reviewing the evidence on certiorari, finds that it would not have made any conviction on the evidence before the magistrate, it may quash the conviction for an irregularity, informality or insufficiency appearing therein, notwithstanding Code, sec. 1124. (2) Where a summary conviction is expressed to be for a second offence under a liquor law, but no evidence was given of a prior conviction, it is doubtful whether there is power on certiorari to amend the conviction under Code, sec. 1124 by reducing it to one for a first offence. The King v. Tystad, 15 Can. Cr. Cas. 236.

SECOND OFFENCE; RECITAL OF PREVIOUS CONVICTION; AMENDMENT OF CONVICTION ON HABEAS CORPUS.

(1) On a conviction for a second offence under the Ontario Liquor License Act, the recital of the previous conviction without stating that the person named as having made the conviction did so as a county police magistrate will not invalidate the conviction if the official capacity of the same person convicting for the subsequent offence is stated elsewhere therein and if the previous conviction was duly proved. (2) Under sec. 105 of the Liquor License Act the Court on habeas corpus may amend a summary conviction for an infraction thereof by striking out an unauthorized adjudication for further detention in respect of charges of conveying the prisoner to gaol. The King v. Graves (No. 1), 16 Can. Cr. Cas. 150.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 321.]

AMENDMENT OF CONVICTION.

Where it is shewn in answer to habeas corpus application that there was in fact such request notwithstanding the omission from the formal conviction made by justices under the Ontario Liquor License Act of any statement that they were so acting for the police magistrate, the prisoner will not be discharged, but will be ordered to be detained that the justices may amend the conviction under sec. 105 of that statute. (Compare with Cr. Code, secs. 754 and 1124.) The King v. Ackers (No. 3), 16 Can. Cr. Cas. 222.

AMENDED CONVICTION; IRREGULARITY.

(1) Sec. 1124 of the Criminal Code permits the Court itself to amend a summary conviction removed by certiorari proceedings as to certain defects, but the right of the magistrate to tender another conviction in substitution for the one attacked is one independent of Code, sec. 1124. (2) It is the duty of the Court on certiorari to receive an amended conviction in substitution for the one first made if the amended conviction is supported by the evidence and other proceedings at the trial. (3) A mistake by misdescription of the official capacity of the magistrate in the proceedings before the final adjudication whereby a "commissioner of police" having the authority of two justices of the peace was wrongly described in the preliminary proceedings as a "justice of the peace" will not invalidate a summary conviction made by him as a commissioner of police if he was correctly designated as such both in the memorandum of adjudication and in the formal conviction. The King v. Fitzgerald, 19 Can. Cr. Cas. 39.

HABEAS CORPUS; CERTIORARI IN AID; RESTRICTION OF POWERS OF AMENDING CONVICTION.

Neither a proceeding to quash a summary conviction by way of certiorari, nor a motion to discharge on habeas corpus with certiorari in aid constitutes an "appeal," and where the powers of amendment of a conviction under a Provincial statute are limited to "appeals" from convictions and orders, a conviction which illegally imposed hard labour for an offence against the provincial liquor laws cannot be amended on the habeas corpus motion and the prisoner is entitled to be discharged. [The King v. Plante, 40 C.L.J. 125, applied.] Re Ching How et al., 19 Can. Cr. Cas. 176, 1 D.L.R. 275.

AMENDMENT OF CONVICTION AFTER FILING; AFTER NOTICE OF HABEAS CORPUS APPLICATION.

(1) A stipendiary magistrate cannot amend a warrant or conviction after it is filed with the clerk of the peace or other proper officer, under the provisions of sec. 793 of the Criminal Code, to be kept among the records of the General or Quarter Sessions of the Peace or of any Court discharging the functions thereof. (2) Where there is no Court of General or Quarter Sessions of the Peace, or officer thereof in a province, with whom a warrant and conviction may be filed by a stipendiary magistrate, under sec. 793 of the Criminal Code, if filed with a city clerk, they are still under the control of the magistrate who issued them, and he may amend them at any time before the conviction is quashed. (3) The filing by a stipendiary magistrate of a warrant and conviction with a city clerk instead of the clerk of the peace, to be kept among the records of the General or Quarter Sessions of the Peace, as required by sec. 793 of the Criminal Code, where there is no such Court in the province or officer thereof with whom they may be filed, does not terminate the right of the magistrate to amend the conviction or substitute a new and correct one therefor at any time before the defective one has been quashed. (4) A reasonable time may intervene between the date of a conviction and the filing by a stipendiary magistrate of a warrant and conviction with the clerk of the peace, as required by sec. 793 of the Criminal Code, and where but a few days elapse, it will be presumed, unless the contrary is shown, that during such time the warrant and conviction remain in the custody of the magistrate, and so long as they are in his possession he may make amendments thereto. (5) A magistrate, who still has control of a warrant and conviction, may amend them after notice has been given of an application for a writ of certiorari and for the release of a person convicted under habeas corpus. The King v. Sarah Smith, 19 Can. Cr. Cas. 253.

[Ex parte Austin, 44 L.T. 102, and Reg. v. Learmont, 23 N.S.R. 24, distinguished; Re Macdonald, 26 N.S.R. 406; Regina v. Bennett, 3 Ont. R. 45; Ex parte Smith, 3 H. & N. 727; R. v. Richards, 5 Q.B. 296; The King v. Leconte, 11 Can. Cr. Cas. 41; and Regina v. Manse, 2 Man. R. 58, specially referred to; Reg. v. Learmont, 23 N.S.R. 24, and Ex p. Austin, 44 L.T. 102, distinguished.]

LIQUOR LICENSE ACT; AMENDMENT OF CONVICTION.

An amendment may be made to a conviction under the Liquor License Act (Ont.) to state that the township was one in which there was, at the time, a by-law in force passed under sec. 141 of such Act prohibiting the sale of liquors by retail therein, and so cure the failure to mention that fact in the conviction as originally made, where the record returned to the Court by the convicting magistrates shewed that counsel for the accused at the trial admitted that such by-law was in force in that township. The King v. O'Connor, 20 Can. Cr. Cas. 75, 3 D.L.R. 23.

FORM; LOCALITY OF OFFENCE.

A place certain should be specified so as to identify the house in question upon a conviction for keeping a disorderly house; but a summary conviction which specifies merely that such keeping was within a named municipality may be amended in that respect in certiorari proceedings to conform to the evidence by virtue of Cr. Code, sec. 1124. [R. v. Cyr, 12 P.R. (Ont.) 24, referred to.] The King v. Demetrio (No. 1), 20 Can. Cr. Cas. 316.

AMENDMENT ON MOTION TO QUASH; STATUTORY POWER.

The intention of sec. 1125 of the Criminal Code, 1906, in giving the power to amend a summary conviction on a motion to quash is, that, when guilt appears upon the evidence which has been believed by the magistrate, the accused should not escape by defects in form occasioned either by the error or by the stupidity of the magistrate. [R. v. Demetrio (No. 1), 20 Can. Cr. Cas. 316, considered.] The King v. Demetrio (No. 2), 20 Can. Cr. Cas. 318, 1 D.L.R. 515.

DEPOSITIONS; SUFFICIENCY.

Where the depositions already taken before the justice do not supply the defect which makes a summary conviction bad on its face, the justice cannot without the parties being before him and having an opportunity of being heard make up a substituted conviction or amend a defective conviction. [Chaney v. Payne, 1 Q.B. 712, applied.] R. v. Aikens, 23 Can. Cr. Cas. 467, 21 D.L.R. 633.

AMENDING DATE OF OFFENCE.

Where without amendment of the information a summary conviction for an

offence at a different time would have been permissible under Cr. Code, sec. 724, the magistrate may before proceeding with the evidence allow an amendment of the time of the offence stated in the information. R. v. Van Fleet, 29 Can. Cr. Cas. 218, 38 D.L.R. 592.

VIII. Duplicity and Uncertainty.

UNCERTAINTY; THEFT OF WOOD; STANDING TIMBER; FAILURE TO ALLEGE VALUE OF PROPERTY TAKEN.

The conviction stated that "Joseph Caswell had on his premises a quantity of chopped wood, to wit, about half a cord, belonging to Thomas Fulton, which said Thomas states was taken and stolen from him, and which said Joseph could not satisfactorily account for its possession":—Held, that the conviction was bad, because 32-33 Vict. ch. 21, sec. 25, under which it was made, applies to trees attached to the freehold, not to trees made into cordwood, and because cordwood is not "the whole or any part of the tree," within the statute. Semble, that the conviction was also bad for not alleging that the property taken was of the value of twenty-five cents at the least; the direction in the conviction, that the defendant should pay twenty-five cents for said wood, not being a finding that it was of that value. Semble, that the conviction sufficiently stated that defendant was in possession of the wood. Regina v. Caswell (1873), 33 U.C.Q.B. 303.

OFFENCE COMMITTED BETWEEN TWO DATES.

The allegation is in the conviction that the offence was committed between the 30th June and the 31st July, was held a sufficiently certain statement of the time. Regina v. Wallace (1883), 4 O.R. 127.

MISCHIEF; UNCERTAINTY OF CONVICTION.

A summary conviction under R.S.C. ch. 168, sec. 59, alleged, in the words of the statute, that the defendant unlawfully and maliciously committed damage, injury and spoil to and upon the real and personal property of the Long Point Company:—Held, that this was not sufficient without its being alleged what the particular act was which was done by the defendant which constituted such damage, etc., and what the particular nature and quality of the property, real and personal, was in and upon which such damage, etc., was committed; and the conviction was quashed for uncertainty. Regina v. Spain (1889), 18 O.R. 385.

ONE PENALTY FOR TWO OFFENCES; NOT SHEWING FOR WHICH OFFENCE.

The defendant was convicted under sec. 41 of the Liquor License Act, R.S.O. 1877, ch. 181, for selling liquor without license, and under sec. 46 for allowing liquor sold by him to be consumed on the premises; and one penalty was inflicted "for his said offence:"—Held, bad, in not shewing for which offence the penalty was imposed. Regina v. Young, 5 O.R. 184a.

NOT SHEWING THE PLACE OF OFFENCE.

Conviction held bad for not shewing the place where the offence was committed. Regina v. Young, 5 O.R. 184a.

DUPLICITY.

A conviction which charges an offence on two separate days charges two distinct separate offences, and, if it be a case where sec. 26 of the Summary Convictions Act applies, is bad; a warrant of commitment based on such a conviction is consequently bad. The Queen v. Farrar (1890), 1 Ter. L.R. 306.

FAILURE TO STATE THE OFFENCE IN SPECIFIC TERMS.

In Quebec it has recently been held that a conviction purporting to be for breach of a by-law, but which fails to set out which of the large number of sections of the by-law defendant has violated, and which fails to otherwise state the offence in specific, distinct and substantive terms, is defective and will be quashed on certiorari. Riopelle v. Desrosiers (1900), 3 P.R. (Que.) 195.

SUFFICIENT COMPLIANCE WITH STATUTE.

A conviction under 32 and 33 Vict. ch. 28 (D.) for that V. L. was in the nighttime of the 24th February, 1870, a common prostitute, wandering in the public streets in the city of Ottawa, and not giving a satisfactory account of herself, contrary to this statute:—Held, bad, for not shewing sufficiently that she was asked, before or at the time of being taken, to give an account of herself, and did not do so satisfactorily. Semble, proceedings having been taken under 29 and 30 Vict. ch. 45 (D.) that the evidence might be looked at; and if so it was plainly insufficient, in not shewing that the place in which she was found was within the statute, or that she was a common prostitute. The conviction having been brought up by certiorari, when under 32 and 33 Vict. ch. 31 (D.) no such writ could issue. Per Richards, C.J., and Morrison, C.J., it could not be quashed, but the Court could only discharge the defendant. Semble, per Wilson, J., that being before the Court it might be quashed. Regina v. Leveque (1870), 30 U.C.Q.B. 509.

[Dissented from in Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

A conviction for doing worldly labour on Sunday contrary to the Lord's Day Act is void for uncertainty unless the acts constituting the offence are specified. The Queen v. Somers, 1 Can. Cr. Cas. 46.

PARTICULARS IN CONVICTION.

A conviction for unlawfully practising

medicine without being registered is bad unless it specifies the particular acts constituting the alleged "practising." R. v. Coulson, 1 Can. Cr. Cas. 114.

[Referred to in R. v. Couture, 16 Can. Cr. Cas. 150; applied in R. v. Oberlander, 16 Can. Cr. Cas. 248.]

UNCERTAINTY; DISCLOSURE OF SEVERAL OFFENCES.

The disclosure in the defendant's testimony of several illegal sales made on the same day in a liquor license prosecution in which he is compelled to testify for the prosecution, does not invalidate a conviction thereon for illegally selling liquor although such conviction does not specify to which of such sales the same relates. R. v. Nurse, 2 Can. Cr. Cas. 57.

UNCERTAINTY AND DUPLICITY IN CONVICTION.

A conviction for "unlawfully procuring or attempting to procure" a girl to become a prostitute, is void for duplicity and for uncertainty. Sec. 800 of the Criminal Code does not validate a defective commitment, if it recites a conviction which is on its face invalid. R. v. Gibson, 2 Can. Cr. Cas. 302.

DUPLICITY; CR. CODE, SEC. 907.

A summary conviction for unlawfully distilling spirits and making or fermenting beer without a revenue license is not void as charging two offences, but is to be held to charge only one offence by virtue of Code, sec. 907. The Queen v. Joseph McDonald, 6 Can. Cr. Cas. 1.

[Followed in R. v. Toy Moon, 19 Can. Cr. Cas. 34; R. v. Brouse, 21 Can. Cr. Cas. 17, 9 D.L.R. 458.]

UNCERTAINTY; TIME OF OFFENCE.

(1) A conviction for refusing to close a billiard room after a closing hour fixed by a municipal by-law which applied to Saturdays only is bad if it does not shew on its face that the offence took place on a Saturday. (2) A conviction for keeping a billiard room open contrary to a municipal by-law "after the hour of half-past eight" is bad unless it specifies whether the time was in the morning or evening, if the by-law applies to the evening only. (3) A conviction under a by-law must shew on its face whether the date of the alleged offence was before or after the by-law came into operation. Re Fisher, 9 Can. Cr. Cas. 451.

[Distinguished in R. v. Baird, 13 Can. Cr. Cas. 243.]

INFORMATION; ONE MATTER OF COMPLAINT ONLY; DUPLICITY; MAGISTRATE'S DUTY TO STRIKE OUT ALL BUT ONE CHARGE CONVICTION ON ONE CHARGE FOLLOWING EVIDENCE ON SEVERAL CHARGES.

(1) Upon a summary hearing of a charge punishable on summary conviction, if the information charges more than one offence all but one should be struck out upon objection taken. (2) Where the objection so taken by the defendant was overruled and evidence was taken upon the several charges until the conclusion of the prosecutor's case, when all but one were abandoned, a conviction upon that one is invalid and should be quashed on appeal. The King v. Austin, 10 Can. Cr. Cas. 34.

SEPARATE OFFENCES UNDER VAGRANCY CLAUSES; MULTIFARIOUSNESS; DEFECTIVE DESCRIPTION OF ONE OFFENCE.

(1) A summary conviction for vagrancy is multifarious if it charges both obstructing passengers on the street and causing a disturbance in the street, such being separate offences under clauses (a) and (1) of Code, sec. 238. (2) A summary conviction for causing a disturbance in a public place and thereby being a vagrant (Code, sec. 238 (f)) must specify one of the means of causing the disturbance which are specified in clause (f), i. e., screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers. (3) Where a summary conviction is in form for two separate offences, and shews that the penalty adjudged is for both although within the legal limit for one, but one of the offences is defectively described, the conviction must be quashed on certiorari; it cannot be amended by striking out the offence defectively described, as the Court has no power to make a fresh adjudication by apportioning the penalty which was discretionary with the magistrate. The King v. Code, 13 Can. Cr. Cas. 372.

[Referred to in R. v. Harris, 13 Can. Cr. Cas. 398; R. v. Turnbull, 15 Can. Cr. Cas. 5; distinguished in R. v. Mah Sam, 19 Can. Cr. Cas. 5.]

VAGRANCY; DESCRIPTION OF OFFENCE IN SUMMARY CONVICTION PROCEEDINGS; PLEA OF GUILTY NO WAIVER OF OBJECTION THAT NO OFFENCE SHEWN IN INFORMATION.

(1) Notwithstanding sec. 723 of the Code making valid the description of an offence in the words of the creating statute, it is still necessary to specify in a summary conviction whatever the accused has done which brings him within the words of the statute. (2) A plea of guilty in a summary conviction matter is an admission only of the matters contained in the information; if the latter be defective in not stating an essential ingredient of the offence under the statute pursuant to which it purports to be a charge, the conviction will be quashed. The King v. Harris, 13 Can. Cr. Cas. 393.

[Followed in Rex v. Pepper, 19 Man. L.R. 209, 15 Can. Cr. Cas. 314; dissented from in Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

STATING TIME OF OFFENCE; "BETWEEN" TWO DATES; LAST DATE SAME AS DATE WHEN INFORMATION WAS LAID.

A summary conviction is not bad for uncertainty as to whether an offence subsequent to the information is included therein, where the time of the commission of the offence is stated as being between two dates the last of which is the date of the information. Ex parte Wilson, 14 Can. Cr. Cas. 32.

NON-DISCLOSURE OF TIME AND PLACE OF CIRCUMSTANCES IN DEPOSITIONS; LACK OF EVIDENCE TO SUPPORT CONVICTION.

Where the depositions in support of a summary conviction for keeping liquor for sale without a license fail to shew the time and place of the alleged offence or that the circumstances deposed to had reference to the time and place stated in the information, the conviction will be quashed for lack of evidence to support the same. The King v. Reedy, 14 Can. Cr. Cas. 256.

SPECIFIED DATE AND "BEFORE AND SINCE;" PRECISION OF DATE DISPENSED WITH BY STATUTE.

A summary conviction under the Quebec Liquor License Act in respect of a single offence of selling without a license on or about a specified date "and at divers times before and since" is not bad for uncertainty where by statute the time of the offence is sufficiently proved if shewn to be within the four months' limitation allowed for prosecution. The King v. Dubuc, 15 Can. Cr. Cas. 353.

ERROR IN SUMMONS; WRONG ADDRESS OF MAGISTRATE'S OFFICE.

Where the original summons was in due form but the copy served erroneously stated the place of appearance to be the office of the signing magistrate at Perth instead of at Andover, where it was in fact, a conviction in default of appearance will not be set aside because of the error unless it is shewn that the accused did not know where the magistrate's office was or unless it is shewn that the accused was misled by the mistake. Ex parte Giberson (No. 2), 16 Can. Cr. Cas. 70.

INFORMATION; PARTICULARS OF OFFENCE.

(1) Where the information for an offence punishable on summary conviction charges the offence in general terms and there is no statutory definition giving the particulars of the acts which will constitute the offence, Code, sec. 723, will not apply to validate an information which does not specify the means by which the offence was committed. (2) There being no statutory definition of what constitutes a false pretending to be a healer of the sick, which is punishable on summary conviction under the Saskatchewan Medical Act, an information for that offence is defective if it does not specify the acts complained of. The King v. Armstrong, 18 Can. Cr. Cas. 72.

INDECENCY; UNCERTAINTY AND MULTIPLICITY; EVIDENCE.

A summary conviction for that the accused did "at various times and in public places unlawfully commit acts of indecency" at a named city within a period of two months specified is invalid for uncertainty and as including several offences, and no amendment is permissible on certiorari, if the evidence at the hearing included several distinct offences within the period named in the conviction and the magistrate had neither indicated any particular occasion regarding which he found the accused guilty nor found him guilty in respect of all of such occasions. The necessities of justice as well as the provision contained in sec. 710 of the Criminal Code require that a summary conviction must be for a single and certain charge; and where there is no need for giving evidence of other offences to prove intent, the charge and the evidence at any one trial should be confined to a single offence. [Rex v. Sutherland, 2 O.W.N. 595, Reg. v. Hazen, 20 A.R. 633, and R. v. Alward, 21 O.R. 519, referred to.] R. v. Roach, 23 Can. Cr. Cas. 28, 19 D.L.R. 362.

DUPLICITY; LIQUOR ACT.

Two or more offences against the Alberta Liquor Act, 1916, can be included in one information only in the event of the time and place of each offence being stated (Liquor Act, 1916, sec. 42); an information for unlawfully selling on a date mentioned "and some time previous thereto" does not state the time of both offences and a conviction in the terms of the information is bad for duplicity, although the evidence related wholly to an offense of the specific date. [R. v. Code, 13 Can. Cr. Cas. 372, 1 Sask. L.R. 299, followed.] R. v. Aitken, 28 Can. Cr. Cas. 227, 37 D.L.R. 530.

IX. Variance.

TWO RECORDS OF THE SAME CONVICTION; FIRST RECORD DIFFERING FROM THE SECOND.

The defendant was convicted of selling intoxicating liquor contrary to the Canada Temperance Act, 1878, upon an information charging him with keeping, selling, bartering and otherwise unlawfuly disposing of liquor. He was adjudged to pay a fine of $50 and $5.20 costs and in default of payment and of sufficient distress, he was adjudged to be imprisoned in the common gaol at hard labour. A second record of the conviction, bearing the same date as the first, was filed differing in some minor points from the first, and omitting the adjudication as to hard labour, and adjudging the

payment of $5.27 costs. The proceedings having been removed by certiorari:—Held, that the first conviction was bad for want of jurisdiction to impose hard labour, which was not authorized by the Act, and that the second was bad in not following the actual adjudication as to costs, which were, as shewn by the magistrate's minute, $5.20 and not $5.27. Regina v. Walsh, 2 O.R. 206.

VARIANCE BETWEEN CONVICTION AND MEMORANDUM OF CONVICTION.

Held, (1) that the fact that the memorandum of conviction differed from the conviction as returned, in not providing for imprisonment in default of payment, did not invalidate the conviction, for it is sufficient if the penalty has been fixed at any time before the conviction is formally drawn up: (2) the defendant, having had the certiorari directed to the magistrate who had convicted, was estopped from objecting that the conviction was in reality made by three, as appeared from the memorandum of conviction which was signed by them. Regina v. Smith (1881), 46 U.C.Q.B. 442.

VARIANCE OF CONVICTION FROM MINUTES OF ADJUDICATION; AMENDMENT.

A conviction under the Canada Temperance Act, which varies from the minute of adjudication in omitting to provide for payment of "the costs and charges of the distress" in the event of the defendant being imprisoned for non-payment of the fine, is defective. Such conviction may be amended under secs. 117 and 118 of the Act. Ex parte Conway (1892), 31 N.B.R. 405.

VARIANCE.

A conviction was open to the objection that it did not correspond to the minute of the actual adjudication, and, therefore, could not be supported for want of jurisdiction in the magistrate to make it. Regina v. Brady, 12 O.R. 358.

VARIANCE BETWEEN THE MINUTE OF CONVICTION AND CONVICTION.

The defendant had been a licensed hotel keeper, his hotel having a bar furnished with a counter and the usual appliances for the sale of liquor, his license having expired. On being asked by a couple of persons for whiskey, said he could not sell it, and gave them temperance drinks, and on being paid therefor, treated to whiskey, which he obtained from a bottle behind the counter. The defendant was convicted under sec. 50 for permitting spirituous liquors to be drunk in his house, being a house of public entertainment, the minute of conviction providing for distress in default of payment of the fine and costs imposed: but the conviction drawn up and returned under a writ of certiorari omitted the provisions for distress. Neither under secs. 50 or 70 is distress authorized:—Held, that the conviction was valid as being in accordance with sec. 50; and that, under the circumstances, it need not follow the minute. Held, also, that the conviction would have been good under sec. 70, as the giving and being paid for the temperance drinks was a mere subterfuge for disposing and selling spirituous liquors; and, further, the conviction could be supported under sec. 105. [Regina v. Hartley, 20 O.R. 481, followed.] Regina v. Richardson (1891), 20 O.R. 514.

STATING OFFENCE IN TERMS OF STATUTE; VAGRANCY.

Code, sec. 723, applies to validate a summary conviction of a woman for vagrancy as a night-walker if the offence is stated in the words of subsection (i) of Code, sec. 238; and a warrant of commitment in the like terms will not be held bad because it does not recite expressly that the accused was first asked to give an account of herself. [Re Effie Brady (1913), 21 Can. Cr. Cas. 123, 10 D.L.R. 424, cited.] R. v. Campbell, 26 Can. Cr. Cas. 196, 28 D.L.R. 385.

SUMMARY TRIAL.

Jurisdiction of certain magistrates to try without consent. 3 Can. Cr. Cas. 590.

Jurisdiction of magistrate to try with consent; Code Amendment of 1900. 3 Can. Cr. Cas. 590, 591.

Of aggravated assault. 4 Can. Cr. Cas 163.

Of theft and kindred offences. 4 Can. Cr. Cas. 168.

Right of appeal or of stated case; Note 4 Can. Cr. Cas. 532.

Note on sentences and commitments on summary trials. 5 Can. Cr. Cas. 277.

For obstructing a peace officer; Jurisdiction of two justices to try. 5 Can. Cr. Cas. 304.

Resisting peace officer; Where tribunal qualified to hear summary trial, Summary Convictions clauses inapplicable. 7 Can. Cr. Cas. 167.

Convicting for lesser offence than that charged; Limit of punishment for common assault. 7 Can. Cr. Cas. 522.

Formalities on electing; Note. 7 Can. Cr. Cas. 130.

Summary trial with or without consent; When reviewable; Cr. Code, sec. 798. 8 Can. Cr. Cas. 350.

Notice to parents or guardians, if accused is a minor; Cr. Code, sec. 786A (passed in 1904). 8 Can. Cr. Cas. 510.

Summary trial for theft under $10. 9 Can. Cr. Cas. 370.

Summary trial for keeping a gaming house; Jurisdiction without consent. 9 Can. Cr. Cas. 553.

Bawdy house cases. 10 Can. Cr. Cas. 59.

CONSENT OF DEFENDANTS; SUBSTITUTED CHARGE.

The plaintiffs in error 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. They were convicted and sentenced to one year's imprisonment:—Held, on error, that their consent to be summarily tried on the substituted charge should appear, and that in its absence the conviction was bad. Held, also, that it was bad in adjudging the sentence of one year, the Act 40 Vict. ch. 32 (D) only authorizing a sentence for any term less than a year. Goodman v. Regina (1883), 3 O.R. 18.

KEEPING A HOUSE OF ILL-FAME; FINE; COSTS.

The prisoner was convicted of keeping a house of ill-fame under sec. 783 (f) of the Criminal Code, and was condemned under sec. 788 to pay a fine of $100. Upon a motion on the return of a writ of habeas corpus to discharge the prisoner, held, following Reg. v. Cyr, 12 P.R. 24, that the conviction was bad, as under sec. 788 a fine must not be in the full sum allowed for fine and costs; and also that the conviction should have disclosed that there were no costs. Reg. v. Perry, 35 C.L.J. 174.

OMISSION OF WRITTEN DEPOSITIONS; REVIEW OF CONVICTION ON CERTIORARI.

It is the duty of a magistrate, at a trial under his summary jurisdiction, to take the examination and evidence in writing. Where a magistrate on a summary trial took no written depositions, but the conviction returned to a certiorari set out the evidence:—Held, in the absence of anything to shew that there was any other or different evidence given, the return must be taken to be a true and full statement. Semble, that had there been proof of any other or different evidence given, the magistrate might have ben required to return it or to amend the conviction by setting it out. R. v. Flannigan, 32 U.C.Q.B. 593.

POWERS OF COUNTY COURT JUDGE.

A County Court Judge trying a prisoner summarily under 32 and 33 Vict. ch. 35 (D.) has the same authority to convict of an offence under 32 and 33 Vict. ch. 21, sec. 110 (D.) instead of that charged, as a jury has. Regina v. Haines (1877), 42 U.C.Q.B. 208.

EXCESSIVE TERM OF IMPRISONMENT; AMENDMENT.

Where a conviction by a police magistrate on a "summary trial" of the accused under Part 55 of the Code imposes a longer term of imprisonment than is authorized by law, the warrant of commitment cannot be amended, as in such case there is not "a valid conviction to sustain the same" (Cr. Code, sec. 800.) The Queen v. Randolph, 4 Can. Cr. Cas. 165.

[Discussed in R. v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.]

FINE IN THE FULL SUM ALLOWED FOR FINE AND COSTS.

The prisoner was convicted of keeping a house of ill-fame under sec. 783 (f) of the Criminal Code, and was condemned under sec. 788 to pay a fine of $100. Upon a motion on the return of a writ of habeas corpus to discharge the prisoner:—Held, following Reg. v. Cyr, 12 P.R. 24, that the conviction was bad, as under sec. 788, a fine must not be in the full sum allowed for fine and costs; and also that the conviction should have disclosed that there were no costs. Reg. v. Perry, 35 C.L.J. 174.

CONVICTION FOR FELONIOUS ASSAULT; RIGHT TO ELECT TRIAL BY JURY; CONSENT TO SUMMARY TRIAL.

The defendant on being charged before a stipendiary magistrate with felonious assault, pleaded guilty to a common assault, but denied the more serious offence. The magistrate, without having complied with the requirements of sec. 8 of the Summary Trials Act, R.S.C. ch. 176, by asking defendant whether he consented to be tried before him or desired a jury, proceeded to try and convicted the defendant on the charge of the felonious assault:—Held, that the defendant was entitled to be informed of his right to trial by a jury, and that the conviction must be quashed. Where a statute requires something to be done in order to give a magistrate jurisdiction, it is advisable to shew, on the face of the proceedings, a strict compliance with such direction. Regina v. Hogarth (1893), 24 O.R. 60.

LARCENY; PREFERRING SECOND CHARGE; ACQUITTAL AFTER COMMITMENT ON THE FIRST; JURISDICTION TO GRANT LEAVE TO PREFER ANOTHER CHARGE.

Defendant was committed for trial on a charge of larceny, and elected to be tried under the Speedy Trials Act, before the County Court Judge for the district of Halifax. He was tried and acquitted. After the acquittal, and while defendant was still in custody, the prosecuting attorney applied for leave to prefer another charge, under sec. 12 of the Act. Leave was given, and the prosecuting attorney preferred a charge upon which the defendant consented to be tried on the second charge and was tried and convicted. A case was reserved for the opinion of the Court as to whether sec. 12 covered the case, and whether the Judge of the County Court was

justified in allowing the second charge to be preferred:—Held, that inasmuch as the prisoner was tried and acquitted on the only charge on which he was committed, and, inasmuch as that matter was completely disposed of, the Judge had no further jurisdiction, and the defendant was entitled to his discharge. Regina v. Lonar, 25 N.S.R. 124.

THEFT; EXCESSIVE PUNISHMENT; PREVIOUS CONVICTIONS.

When a prisoner is convicted on a summary trial before a police magistrate of theft, he cannot be sentenced, under subsec. 2 of sec. 386 of the Criminal Code, to more than seven years' imprisonment although he has been previously convicted of theft, unless such previous conviction has been charged in the information by analogy to sec. 851 and proved in accordance with sec. 953, and, where in such a case a greater punishment is inflicted, the Court of Appeal, when an application under subsec. 2 of sec. 1016 of the Code, will set aside the sentence and pass what it considers a proper sentence. Quaere, whether the procedure provided in the Code permits of inserting charges of previous convictions in an information leading up to the preliminary hearing of a charge of an indictable offense. When a previous conviction is not charged in the indictment or information, neither a Judge nor a magistrate has any right to ask a prisoner, after conviction, whether he has been previously convicted or not, either with a view of ascertaining whether the prisoner is liable to any increased punishment in such case or with the view of determining what the proper sentence, within the ordinary maximum provided by the statute in the particular case, should be. Semble, previous convictions cannot be in any way considered in passing sentence, unless they had been charged in the indictment or information. Rex v. Edwards, 17 Man. L.R. 288.

The provisions of Criminal Code, sec. 889, as to reducing a punishment imposed by a justice of the peace, where the same is in excess of that which might lawfully have been imposed, apply only to cases of "summary convictions" under Part LVIII. of the Code, and not to "summary trials" by a police magistrate under Part LV. The Queen v. Randolph, 4 Can. Cr. Cas. 165.

POLICE MAGISTRATE; DISCRETION TO REFUSE SUMMARY TRIAL.

Upon a charge under Cr. Code, secs. 783 and 784, of keeping a "disorderly house" in that the accused is alleged to be keeping a gaming house, the police magistrate has jurisdiction to hear and determine the charge summarily without the consent of the accused, but the exercise of that jurisdiction is discretionary with the magistrate, and he may instead proceed as with a preliminary enquiry, and commit the accused for trial. Ex parte John Cook, 3 Can. Cr. Cas. 72.

[Followed in R. v. Flynn, 9 Can. Cr. Cas. 553; approved in R. v. Ah Sam, 12 Can. Cr. Cas. 538.]

CONSENT OF ACCUSED; JURISDICTION OF MAGISTRATE.

The provisions of Cr. Code, sec. 144, fixing the punishment for which anyone guilty of obstructing a peace officer shall be liable "on summary conviction," are controlled by Code, secs. 783 and 786, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with sec. 786. R. v. Crossen, 3 Can. Cr. Cas. 152.

[Applied in Von Koolberger v. Lapointe, 16 Can. Cr. Cas. 228, 19 Que. K.B. 241; disapproved in R. v. Nelson, 4 Can. Cr. Cas. 461, 8 B.C.R. 110, 112; followed in Carmichael v. McDonald, 7 Can. Cr. Cas. 168.]

RIGHT OF APPEAL.

No appeal lies from the decision of a Judge of the sessions, police magistrate, district magistrate or other functionary mentioned in Cr. Code, sec. 782a (1), holding a "summary trial" under Cr. Code, sec. 783. R. v. Racine, 3 Can. Cr. Cas. 446.

[Followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 352; distinguished in R. v. Leschinski, 17 Can. Cr. Cas. 201.]

OMISSION TO RECITE CONSENT OF ACCUSED.

A summary conviction by a magistrate in respect of a charge in which he has jurisdiction only upon the consent of the accused to a summary trial, is not invalid merely because it omits to state that the accused so consented if in fact the consent was given. The omission to state the consent in the conviction is a "want of form" which is cured by Code, sec. 800, which provides that a conviction under Part LV. shall not be quashed for want of form. R. v. Burtress, 3 Can. Cr. Cas. 536.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 80, 39 N.S.R. 125.]

ABSOLUTE JURISDICTION; HABEAS CORPUS.

(1) A summary conviction by a magistrate in respect of a charge under Part LV. of the Code of an indictable offence which the magistrate has absolute jurisdiction to try without the consent of the accused, is subject to be enquired into upon habeas corpus and certiorari proceedings, notwithstanding the provision of sec. 798 declaring that it shall have the same effect as a conviction upon an indictment. (2) If there was some evidence before the magistrate which would support a conviction unless he gave credence to the evidence given on behalf of the accused, the conviction will be sustained, the weight to be attached to the evidence not being a question reviewable

upon habeas corpus and certiorari. R. v. St. Clair, 3 Can. Cr. Cas. 551.

[Referred to in R. v. Johnson, 20 Can. Cr. Cas. 10, 5 D.L.R. 523; R. v. Johnson, 19 Can. Cr. Cas. 204, 1 D.L.R. 548; R. v. Broadfoot, 17 Can. Cr. Cas. 76; R. v. McLennan, 10 Can. Cr. Cas. 15; R. v. Riddell, 19 Can. Cr. Cas. 401, 4 D.L.R. 662; followed in R. v. Leschinsi, 17 Can. Cr. Cas. 199, 19 W.L.R. 602; R. v. Farrell, 12 Can. Cr. Cas. 524, 15 O.L.R. 100; R. v. Simmons, 10 Can. Cr. Cas. 6, 17 O.L.R. 239; R. v. Brisbois, 13 Can. Cr. Cas. 97; applied in R. v Weir, 8 Que. P.R. 402.]

ACQUITTAL AS A BAR TO NEW CHARGE.

The offence of carnal knowledge of a girl under fourteen years iucludes the offence of indecent assault, and a trial for the greater offence is a trial also for the lesser offence included therein, and the accuesd may, although found not guilty of the greater offence, be convicted for such lesser offence, if proved, under the same charge or indictment. A police magistrate trying an accused with his consent summarily, upon the charge of carnal knowledge, has the same power to convict of the lesser offence as a Court of General Sessions would have upon a trial under an indictment. An acquittal by the police magistrate on such summary trial is a bar to a charge upon a fresh information for indecent assault in respect of the same occurrence. R. v. Cameron, 4 Can. Cr. Cas. 385.

[Referred to in R. v. Hanney, 11 Can. Cr. Cas. 25.]

EFFECT OF ACQUITTAL AFTER "DEFENCE MADE."

Where the offence is one which may be summarily tried by a police magistrate on consent, and the accused has given his consent and made his defence to the charge and been acquitted, it is no longer competent for the magistrate to turn the proceedings into a preliminary enquiry and to accept the prosecutor's recognizance to prefer an indictment. R. v. Burns (No. 2), 4 Can. Cr. Cas. 330.

WITHOUT CONSENT; PENALTY.

(1) A prosecution before a magistrate for the offence of being an inmate of a house of ill-fame is none the less a "summary trial" proceeding, although the magistrate's jurisdiction is absolute and is exercisable without the consent of the accused. (2) The extended jurisdiction by which magistrates and certain other functionaries are empowered to summarily try that and other offences under Part LV. of the Criminal Code, and to impose imprisonment up to six months and a fine not exceeding, with costs, $100, is not restricted as to the offence of being an inmate of a house of ill-fame by the fact that, if the accused had been prosecuted before such magistrate in his capacity of justice of the peace, under the "summary convictions" clauses for the similar offence of being a "vagrant" by reason of being such inmate, the fine could not have exceeded $50 in addition to six months' imprisonment. R. v. Roberts, 4 Can. Cr. Cas. 253.

DISORDERLY HOUSE; KEEPING A BAWDY HOUSE.

(1) An informant charging the accused, for that she was "the keeper of a disorderly house, that is to say, a common bawdy house," must be taken to be a charge under Code, sec. 198, for the indictable offence of keeping a common bawdy house, and is not cognizable under the special jurisdiction given to magistrate by Code, sec. 783 (f), because not laid in the exact language of the latter section. (2) Such charge could not be summarily tried by a city stipendiary magistrate without the consent of the accused under Code, sec. 785 (amendment of 1900). (3) To give jurisdiction to a justice to punish on summary conviction the keeper of a disorderly house under the vagrancy clauses of the Code, (secs. 207 and 208), the information must charge that the accused is a loose, idle or disorderly person or vagrant (sec. 208), and it is not sufficient to charge simply that the person is a keeper of a disorderly house, although the fact constitutes the person a loose, idle or disorderly person or vagrant by virtue of Code, sec. 207. R. v. Keeping, 4 Can. Cr. Cas. 494.

[Referred to in R. v. Young, 12 Can. Cr. Cas. 111; R. v. Ames, 10 Can. Cr. Cas. 57; not followed in R. v. Demetrio, 20 Can. Cr. Cas. 316; R. v. Code, 13 Can. Cr. Cas. 376, 1 S.L.R. 299; discussed in R. v. Leconte, 11 O.L.R. 408.]

THEFT; CONVICTION FOR ATTEMPT.

It is competent for a magistrate upon the summary trial before him of a prisoner charged under sec. 783 (a) of the Criminal Code with having committed theft, to convict him of the offence of attempting to commit it provided for in sec. 783 (b). A conviction on summary trial that the accused "attempted to pick the pocket" of a person named sufficiently describes the offence of attempting to commit theft. (Per Street, J.) The King v. Morgan (No 1), 5 Can. Cr. Cas. 63, affirmed in 5 Can. Cr. Cas. 272, 3 O.L.R. 356.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238.]

EFFECT OF CONSENT TO SUMMARY TRIAL; CONVICTING FOR ATTEMPT ONLY; DESCRIBING THE OFFENCE.

(1) Where there has been a valid conviction on a summary trial by a magistrate, and the accused has been imprisoned thereunder without a formal warrant of commitment, in lieu of which the original record of conviction was delivered to the gaoler, the Court may on habeas corpus allow a

formal commitment to be lodged, and direct the detention of the prisoner in the meantime under sec. 752. (Per Court of Appeal.) (2) The provision of sec. 711 of the Code that when the complete commission of the offence charged is not proved, but the offence establishes an attempt to commit the offence, the accused may be convicted of the attempt applies to summary trials before city and town police magistrates under sec. 785 of the Code, as well as to trials upon indictment. (3) On a summary trial before the police magistrate of a city or town under sec. 785 of the Code, the consent of the accused to be tried summarily is to be taken as a consent to a summary trial for whatever offence he might be found guilty of at a Court of General Sessions, were he being there tried on a like charge. (4) On a "summary trial" proceeding before a "magistrate" under sec. 783 for theft under the value of $10, the magistrate must, before he asks the accused the statutory question as to whether or not he consents to summary trial, satisfy himself firstly, that the property is alleged to have been stolen, and secondly, that the value does not exceed $10. (Per Moss, J.A.) (5) Quære, whether a magistrate trying a case summarily under sec. 783, and not under sec. 785, on a charge of theft, where the value is under $10, could convict for an attempt. The King v. Morgan (No. 2), 5 Can. Cr. Cas. 272.

[Specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 113; discussed in R. v. Frejd, 18 Can. Cr. Cas. 118; followed in R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238.],

CONSENT TO SUMMARY TRIAL; WANT OF SWORN INFORMATION.

Where the accused found committing a criminal offence is arrested without warrant by a police officer, and on being brought before a police magistrate a written charge not under oath is read over to him, and he thereupon consents to be tried summarily, the police magistrate has jurisdiction to try the case, although no information has been laid under oath. The King v. McLean, 5 Can. Cr. Cas. 67.

BY RECORDER'S COURT, MONTREAL; NO RIGHT OF APPEAL.

No appeal lies from the decision of the Recorder's Court of Montreal holding a "summary trial" under Cr. Code, sec. 783. The King v. Portugais, 5 Can. Cr. Cas. 100.

[Followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 352. But see Revised Code, sec. 797, as to certain offences.]

DISORDERLY HOUSE; INMATE; FORM OF CONVICTION.

(1) Where a conviction made by a city police or stipendiary magistrate for being an inmate of a disorderly house follows the Code, form WW, and does not recite that the accused was charged before him in the words of form QQ, the inference is that the prosecution is brought under the Vagrancy clauses (207 (j) and 208) and not under the Summary Trials procedure, secs. 783 (f) and 788. (2) Where the proceedings are taken under the "summary convictions" procedure, a conviction inflicting a punishment in excess of that authorized on summary conviction cannot be supported in habeas corpus proceedings as a conviction on "summary trial" under which the punishment inflicted is authorized, notwithstanding that the magistrate was one authorized to hold a summary trial, and that the offence was one of the class for which the consent to such trial is dispensed with by statute. (Per Townshend, J.) (3) As there is an appeal from a summary conviction on such a charge and none from a conviction on summary trial, a strict construction of the proceedings is required in favour of the preservation of the right of appeal. The King v. Laura Carter, 5 Can. Cr. Cas. 401.

[Considered in R. v. Ames, 10 Can. Cr. Cas. 52, 57, 5 Terr. L.R. 493.]

KEEPING BAWDY HOUSE; CONSENT IRREGULARLY OBTAINED; OMISSION OF MAGISTRATES TO STATE OPINION OF JURY.

(1) After the accused consents to summary trial before a magistrate under Code, sec. 786, it is not necessary for the magistrate to again "reduce the charge to writing" if that had been done before the consent was given, and it is sufficient for the magistrate to read to the accused the charge already written. (2) A consent to "summary trial" under Code, sec. 786, given to the magistrate without the option of a jury trial being expressly stated to the accused, is invalid and a prisoner held upon a conviction based upon such consent must be discharged upon habeas corpus. The King v. Shepherd, 6 Can. Cr. Cas. 463.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 199, 19 O.L.R. 238; referred to in R. v. Baird, 13 Can. Cr. Cas. 243.]

CONSENT OF ACCUSED; MAGISTRATE MUST STATE RIGHT TO A JURY TRIAL.

A consent to a summary trial under Part LV. of the Code is invalid unless the accused has been specifically informed by the magistrate, pursuant to sec. 786, of his right to a trial by jury. The King v. Conway, 7 Can. Cr. Cas. 129.

[Referred to in R. v. Bonin, 20 Can. Cr. Cas. 180.]

RIGHT TO ELECT STATED BY MAGISTRATE'S CLERK; ASSAULT; LIMIT OF PUNISHMENT.

(1) The question put to the accused under the "summary trials" part of the Criminal Code, asking him to elect between a summary trial and a trial by jury, and the statutory statement of the rights of the ac-

cused in regard thereto under Code, sec. 786, may properly be delegated to the magistrate's clerk, speaking for the magistrate in the latter's presence. (2) A police magistrate of a city or town may on a "summary trial" under Code, sec. 785, for assault impose the same punishment as is permitted upon a conviction under indictment. The King v. Ridehaugh, 7 Can. Cr. Cas. 340.

[Referred to in R. v. Barnes, 19 Can. Cr. Cas. 465.

CONVICTION FOR LESSER OFFENCE INCLUDED IN THAT CHARGED.

(1) Upon a summary trial with consent upon a charge of assault occasioning bodily harm, the magistrate may convict of common assault. (2) Sec. 713 of the Code applies to summary trials as well as to trials upon an indictment. (3) The word "count" as used in secs. 3 (1) and 713 includes an information before a justice for an indictable offence. The King v. Frank Coolen, 8 Can. Cr. Cas. 157.

[Referred to in R. v. Sharpe, 18 Can. Cr. Cas. 135; by Lamont, J., dissenting, in R. v. Mah Sam, 19 Can. Cr. Cas. 12.]

JURISDICTION; DEFECT APPARENT UPON WARRANT OF COMMITMENT.

A justice of the peace not having the powers of two justices (Code, sec. 782), has no jurisdiction to hold a "summary trial" under Part LV. of the Criminal Code. The King v. Coté, 8 Can. Cr. Cas. 393.

POLICE MAGISTRATE; CONSTITUTION OF COURT FOR ENFORCEMENT OF PART LV. OF CRIMINAL CODE; PROVINCIAL LEGISLATION.

(1) It is within the legislative powers of a provincial legislature to enact that every police magistrate shall constitute a Court with such jurisdiction as the Parliament of Canada confers or purports to confer or may hereafter confer upon him. (2) Such a statute is not an attempted delegation by the Province of its constitutional right of constituting Courts. Ex parte Vancini (No. 1), 8 Can. Cr. Cas. 164.

[Referred to in Ex parte Gaynor and Greene (No. 4), 9 Can. Cr. Cas. 252.]

JURISDICTION OF MAGISTRATE; CONSTITUTION OF CRIMINAL COURTS; CR. CODE, SEC. 785.

(1) Although there are no "Courts of General Sessions" except in Ontario, the 1900 amendment of Cr. Code, sec. 785, extending its provisions to cities and towns of other Provinces is not, therefore, inoperative, but gives to a magistrate in any other Province the jurisdiction created for Ontario by sec. 785. (2) Though the organization of Courts of criminal jurisdiction is within the exclusive powers of the provincial legislatures, the Parliament of Canada may impose upon existing Courts or judicial officers the duty of administering the criminal law, and its action to that end need not be supplemented by provincial legislation. Re Vancini (No. 2), 8 Can. Cr. Cas. 228.

[Referred to in Ex parte Seeley, 13 Can. Cr. Cas. 265; followed in R. v. Wells, 15 Can. Cr. Cas. 221; Ex parte Le Bel, 16 Can. Cr. Cas. 370; Geller v. Loughlin, 18 Can. Cr. Cas. 468.]

JURISDICTION; POLICE MAGISTRATES OF CITIES AND INCORPORATED TOWNS; COUNTY MAGISTRATE; STATUTORY POWERS WITHIN CITY UNDER PROVINCIAL LEGISLATION.

A police magistrate holding a commission for a county with a statutory jurisdiction in a city situate in such county is not a police magistrate, of a city within the meaning of Code, sec. 785, sub-sec. 2; and such county police magistrate has no jurisdiction to hold a "summary trial" under Part LV. of the Criminal Code. The King v. Benner, 8 Can. Cr. Cas. 398.

[Followed in R. v. Nar Singh, 14 Can. Cr. Cas. 456.]

STATING TO ACCUSED THE NEXT JURY COURT; COUNSEL'S ASSENT TO IMMEDIATE TRIAL BY MAGISTRATE NOT A WAIVER; NO AMENDMENT OF CHARGE ON SUMMARY TRIAL WITHOUT PRIVILEGE TO RE-ELECT.

(1) Where there is a right to elect a summary trial before a police magistrate, it is imperative that the magistrate state to the accused the Court as which the case can probably soonest be tried by a jury. (2) The right of the accused to be informed by the magistrate as to the next jury Court is not waived by a statement of his counsel that he elects to be then and there tried by the magistrate. (3) The fact that the accused is represented by counsel who was probably aware of the time of the next jury sittings, does not abridge the magistrate's statutory duty to himself inform the accused. (4) Where the magistrate simply asks the accused, "how do you wish to be tried, before me or before a jury," the provisions of Code, sec. 786, have not been complied with and the magistrate is without jurisdiction to hold a "summary trial," although the accused in answer assents to be tried by the magistrate. (5) Upon a summary trial under Part LV. of the Code where the consent of the accused is essential to the jurisdiction, the charge upon which the accused has elected that mode of trial cannot be enlarged or extended by amendment without giving him the right to re-elect. The King v. Walsh, 8 Can. Cr. Cas. 101.

[Referred to in R. v. Crooks, 19 Can. Cr. Cas. 153; R. v. Mali, 1 D.L.R. 258; R. v. Lacelle, 11 O.L.R. 74; Ex parte McDonald, 9 Can. Cr. Cas. 370; approved in R. v. McDougall, 8 Can. Cr. Cas. 237, 8 O.L.R. 30; distinguished in R. v. Graf, 15 Can. Cr. Cas.

200, 19 O.L.R. 238; R. v. Mali (No. 1), 19 Can. Cr. Cas. 187.]

SUMMARY TRIAL IN N.W.T.; WAIVER OF RIGHT TO JURY TRIAL; REFUSAL OF JUDGE TO TRY WITHOUT JURY.

When the accused person is charged in the North-West Territories with an offence for which trial by jury is provided by the North-West Territories Act, sec. 67, he may consent to be tried summarily by the Judge alone, but the Judge is not bound to accept such consent and may, if he sees fit, proceed with a trial by jury. The Queen v. Webster, 8 Can. Cr. Cas. 457.

SUMMARY TRIAL UNDER PART LV. OF CODE; EFFECT OF CONVICTION; WHETHER CERTIORARI LIES.

(1) The Superior Court of the Province of Quebec has no jurisdiction to quash by way of certiorari, decisions rendered by magistrates sitting for the summary trial of indictable offences in virtue of Part LV. of the Criminal Code. (2) The review of such decisions in so far as they are reviewable belongs exclusively to the Court of King's Bench in the Province of Quebec. The King v. Marquis, 8 Can. Cr. Cas. 346.

[Referred to in R. v. Janneau, 12 Can. Cr. Cas. 360; R. v. Poirier, 31 Que. S.C. 360; disapproved in R. v. Leschinski, 17 Can. Cr. Cas. 202.]

THEFT UNDER $10; JURISDICTION OF CITY STIPENDIARY MAGISTRATE; LIMIT OF SENTENCE.

Upon a summary trial before a city stipendiary magistrate for theft of property not exceeding $10 in value, the limit of punishment on conviction is six months' imprisonment. [R. v. Hayward (1902), 6 Can. Cr. Cas. 399, followed.] Ex parte David McDonald, 9 Can. Cr. Cas. 368.

JURISDICTION; KEEPING COMMON GAMING HOUSE.

(1) Code, sec. 738 (f) which confers the power of summary trial for the offence of keeping "any disorderly house, house of ill-fame or bawdy house," includes as a "disorderly house" a common gaming house. (2) The definition of the term "disorderly house" contained in Code, sec. 198 (Part XIV. "Nuisances"), applies to the same term in Code, sec. 783 (Part LV. "Summary Trials), and the rule "noscitur a sociis" does not apply to the interpretation of sub-sec. (f) of sec. 783. [R. v. France, 1 Can. Cr. Cas. 321 (Que.), disapproved.] The King v. Flynn, 9 Can. Cr. Cas. 550.

POWER TO RELEASE ON SUSPENDED SENTENCE; AWARD OF COSTS AGAINST ACCUSED; TIME AND MANNER OF PAYMENT; INSTALMENTS NOT ESSENTIAL.

(1) Upon a summary trial under Part LV. of the Code the magistrate is a "Court" within the meaning of Code, secs. 971 and 974. (2) If no previous conviction is proved against the accused upon a summary trial for an indictable offence, and the magistrate's power to award imprisonment is limited to a term of less than two years, such magistrate may upon conviction release the accused upon suspended sentence. (3) When the person convicted upon a summary trial is released upon suspended sentence and is directed to pay the informant's costs, such costs are payable forthwith unless otherwise ordered. (4) The power under Code, sec. 971, to award such costs to be paid "within such period and by such instalments as the Court directs" does not make it necessary to divide the costs into instalments. The King v. McLellan (No. 1), 10 Can. Cr. Cas. 1.

LIMITED RIGHT OF APPEAL; DECISION OF TWO JUSTICES.

Where two justices of the peace in the Territories exercise their jurisdiction of summary trial for the offences of theft, etc., under $10, there is no appeal as such justices have a general jurisdiction under Part LV. of the Code, under 782 (a iii.), and the trial is not by virtue of sub-paragraph (v.) of that section. (But see now Revised Code, sec. 797.) The King v. McLellan (No. 2), 10 Can. Cr. Cas. 14.

[Adhered to in R. v. Pisoni, 6 Terr. L.R. 238.]

ELECTION; MAGISTRATE NOT QUALIFIED UNDER CODE, SEC. 785; TRIAL OF THEFT EXCEEDING $10.

(1) A "magistrate" under Code, sec. 782, authorized to hold a summary trial by consent for theft of property exceeding $10 in value, but not being a police or stipendiary magistrate of a city or town having the additional jurisdiction conferred by Code, sec. 785, must first proceed with the charge as on a preliminary enquiry until it is ascertained whether or not the evidence for the prosecution is sufficient to put the accused on his trial. (2) If the magistrate is then of opinion that the evidence for the prosecution is sufficient to put the accused on his trial, and that the case is a proper one to be disposed of summarily, he may proceed with a summary trial under Code, sec. 789. (3) The omission to inform the accused arraigned for election for or against summary trial, of the time or probable time when the jury Court would sit, is fatal to the election of summary trial and to a conviction upon such trial. The King v. Williams, 10 Can. Cr. Cas. 330.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 200; disapproved in R. v. Howell, 16 Can. Cr. Cas. 183; referred to in R. v. Crooks, 19 Can. Cr. Cas. 153.]

THEFT; PLEA OF GUILTY; REDUCING CHARGE TO WRITING; FORM OF CONVICTION.

(1) The extended jurisdiction given to magistrates of cities and towns under the Revised Code, sec. 777 (former sec. 785) is

not controlled by Code, secs. 782 and 783, as regards the offenses of theft, false pretences and receiving, where the value exceeds $10; and a magistrate having jurisdiction under sec. 777 may proceed to try such offences without the preliminary investigation required in the case of other magistrates whose jurisdiction depends upon sec. 773. (2) Where there is a valid conviction under the Revised Code, sec. 777, the warrant of commitment thereunder need not recite that the charge was read over to the accused in conformity with sec. 778 before he was asked to plead, for the omission, if otherwise material, is cured by sec. 1130. (3) Where the charge upon a summary trial by consent without a jury is read to the accused, in the terms of the written information and his plea taken thereto, any objection to the order in which the statutory proceedings were taken is thereby waived. The King v. McLeod, 12 Can. Cr. Cas. 73.

[Specially referred to in Dufresne v. The King, 19 Can. Cr. Cas. 414, 5 D.L.R. 501.]

ASSAULT AND POINTING FIRE-ARM; ELECTION OF SUMMARY TRIAL; NAMING THE JURY COURT WITHOUT DATE OF SITTINGS.

(1) On the summary trial of concurrent charges of assault and pointing a fire-arm the magistrate after hearing the assault case reserved judgment to take up the second charge, but no further evidence then being adduced except upon the examination of the defendant, the magistrate dismissed the second charge and entered a conviction upon the charge of assault. There is no presumption under such circumstances that the intermixing of the trials has prejudiced the accused, and the conviction should be sustained unless such prejudice is clearly shewn. (2) On obtaining the consent of the accused to a summary trial under Rev. Cr. Code, sec. 778, and stating to him his option of jury trial, it is not essential that the date of the sittings of the jury Court should be stated if the name of the latter Court and the city where the trial would take place are both specified and the accused told that he may be sent for trial at its "next ensuing sitting." The King v. Reid, 12 Can. Cr. Cas. 352.

TRIAL WITHOUT CONSENT.

(1) The offence of keeping a common gaming house is not included in the term "keeping any disorderly house, house of ill-fame or bawdy house" as used in Code, secs. 773 and 774, and is not a subject of "summary trial" other than by a city or town magistrate acting under sec. 777 upon the consent of the accused. (2) The magistrate in this case having a general jurisdiction under Code, sec. 777, to try the charge with the consent of the accused, but no jurisdiction to convict as he did on a trial had without such consent, the case should be remitted for a new trial and the accused should be again brought before the magistrate to elect for or against summary trial. The King v. Lee Guey, 13 Can. Cr. Cas. 80.

[Discussed in R. v. Nar Singh, 14 Can. Cr. Cas. 456; specially referred to in R. v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276.]

THEFT; MAXIMUM SENTENCE; SUMMARY TRIAL BY CITY POLICE MAGISTRATE.

On a summary trial before a city police magistrate for theft (Code, sec. 386) the maximum penalty is seven years' imprisonment unless a previous conviction has been charged in the information by analogy to the procedure under Code, sec. 851, for charging previous convictions in indictments in cases in which a greater punishment may be imposed by reason thereof. The King v. Edwards, 13 Can. Cr. Cas. 202.

OFFENCE COMMITTED OUTSIDE TERRITORIAL LIMITS; CONSENT TO TRIAL AT PLACE OF ARREST.

A stipendiary magistrate in Nova Scotia acting within the local limits of his jurisdiction may summarily try a prisoner with his consent by virtue of Code, secs. 771a (ii) and 777 for an offence committed outside of his territorial jurisdiction, but in the same Province. Ex parte Seeley, 13 Can. Cr. Cas. 259.

EXTENDED JURISDICTION OF CITY MAGISTRATE; TERRITORIAL JURISDICTION.

(1) On a summary trial with consent and conviction thereon objections as to the sufficiency of the evidence to shew any offence or to prove that the offence was committed within the magistrate's jurisdiction must be taken by reserved case or appeal and cannot be raised by habeas corpus. (2) On a summary trial under Code, sec. 777, by a city police magistrate, the consent of the accused to a summary trial for the greater offence charged, gives jurisdiction to the magistrate to convict for any lesser offence necessarily included therein. The King v. McEwen, 13 Can. Cr. Cas. 346.

[Referred to in R. v. Pepper, 15 Can. Cr. Cas. 315; distinguished in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; R. v. Johnson, 20 Can. Cr. Cas. 9, 5 D.L.R. 523.]

CHARGE REDUCED TO WRITING; FORM OF CONVICTION; AMENDMENT OF INFORMATION.

(1) If a conviction by two justices for the offence of keeping a house of ill-fame recites that the accused is "charged" before them following form 55 and a charge apart from the information, has been reduced by them to writing as required by Code, sec. 778 (3), the trial will, in the absence of any circumstances shewing the contrary, be presumed to have taken place under the summary trials part as for an indictable offence and not for the similar offence punishable by summary conviction

under the vagrancy clauses. (2) A magistrate acting under the summary trials part may permit the information to be amended and reswort, but the amendment must not be for an entirely distinct offence, nor can it change the date of the offence to a time subsequent to the issue of the summons. (3) Sec. 892 of the Criminal Code 1892 (now sec. 1126 of the Criminal Code 1906), as to recognizances in certiorari proceedings applied only to matters under the summary convictions clauses and not to summary trials by a magistrate or two justices under the summary trials clauses for certain indictable offences. The King v. Earley (No. 3), 14 Can. Cr. Cas. 10.

PERJURY; RECORD OF FORMER TRIAL FOR THEFT; DEMEANOUR OF ACCUSED AND WITNESSES AT FORMER TRIAL.

(1) Where perjury is charged as having been committed on a summary trial for an indictable offence under the Code, the formal record of such summary trial must be proved in the perjury case, although the latter is tried summarily by the same magistrate. (2) A magistrate holding a summary trial for perjury alleged to have been committed in a prior trial before himself, must not import into the perjury trial his recollections of the demeanour of the accused and other witnesses at the former trial; he must be guided solely by the evidence at the perjury trial considered in view of the demeanour of the witnesses thereat. [The King v. Drummond (1905), 10 Can. Cr. Cas. 340, followed.] The King v. Legros, 14 Can. Cr. Cas. 161.

[Referred to in R. v. Graf, 15 Can. Cr. Cas. 200; R. v. Graves (No. 2), 16 Can. Cr. Cas. 336; followed in Rex v. Farrell, 20 O.L.R. 182, 15 Can. Cr. Cas. 287.]

CONVICTION; INVALIDITY FOR UNCERTAINTY.

A conviction under Code, sec. 517 (f), for doing an unlawful act on a railway in a manner likely to cause danger is bad if it does not disclose the nature of the unlawful act. The King v. Porte, 14 Can. Cr. Cas. 238.

CONSENT TO TRIAL AT PLACE OF ARREST.

(1) A police magistrate or stipendiary magistrate may summarily try a prisoner with his consent by virtue of Code, secs. 771a (ii.) and 777 for an offence committed outside of his territorial jurisdiction but in the same province. (2) The presence of the accused, whether transitory or not, in any part of the province in which the offence was committed will justify the exercise of jurisdiction by the magistrate of the place where the accused is found, to the same extent as if the offence had been there committed; but the magistrate has a discretion to send the prisoner for further preliminary enquiry before the magistrate of the place where the offence was committed. Re Seeley, 14 Can. Cr. Cas. 270.

[Referred to in R. v. O'Gorman, 15 Can. Cr. Cas. 183; distinguished in R. v. Wells, 15 Can. Cr. Cas. 221.]

FREQUENTING HOUSE OF ILL-FAME; NECESSITY OF CHARGING ACCUSED AS AN HABITUAL FREQUENTER.

(1) Code, sec. 773, deals with procedure only and has not the effect of creating any new offence. (2) The offence of being an habitual frequenter of a bawdy house which is referred to in sub-section (f) of Code, sec. 773, is the offence declared by the vagrancy clauses, Code, sec. 238 (k), and it is essential to the offence that the accused should be an habitual frequenter and that he did not give a satisfactory account of himself regarding his visits to the house. (3) A conviction on summary trial for being "a frequenter of a house of ill-fame" upon an information similarly worded and an alleged plea of guilty thereto is bad for not charging that the accused was an habitual frequenter. (4) Where before sentence on a plea of guilty it appears that the accused disputed that he had so pleaded and claimed a justification or excuse for the act charged against him, the magistrate should have allowed the plea to be changed to one of not guilty and proceeded to a trial on the evidence. The King v. Lamothe, 15 Can. Cr. Cas. 61.

SUMMARY TRIAL BEFORE MAGISTRATE; CONVICTION ON PROOF OF CONFESSION; WRITTEN CHARGE ON SUMMARY TRIAL; AMENDMENT OF CONVICTION.

(1) The written charge required upon a summary trial of an indictable offence before a police magistrate under Code, sec. 778, may be in the form of an information sworn prior to the appearance of the accused for trial. (2) A conviction on summary trial for selling obscene pictures is not invalid because the magistrate prior to the trial inspected the pictures seized by the police. (3) A conviction by a magistrate on a summary trial for an indictable offence may be amended by the return of an amended conviction to a writ of certiorari. The King v. Graf, 15 Can. Cr. Cas. 193.

[Specially referred to in R. v. Mitchell, 19 Can. Cr. Cas. 113; referred to in R. v. Frejd, 18 Can. Cr. Cas. 113.]

CONVICTION UNDER REPEALED STATUTE; CONVICTION ON LEARNING OF REPEAL.

Where a magistrate holding a summary trial convicted the accused under a repealed statute not knowing of the repeal, he may afterwards reserve a case for the Court of Appeal under Code, sec. 1014, and the conviction will be quashed. The King v. Corrigan, 15 Can. Cr. Cas. 310.

CONSENT IN ABSENCE OF COUNSEL; NO REVOCATION WITHOUT LEAVE; THEFT OVER $10.

(1) A prisoner who when unrepresented by counsel elects summary trial by the magistrate, has no right upon a postponed hearing when represented by counsel to recall such election and to re-elect for a jury trial, without the leave of the magistrate. (2) Secs. 782 and 783 of the Criminal Code, as to summary trial in certain cases of theft, false pretences, and receiving, where the value is over $10, apply only where the magistrate would have no power to summarily try under any other section of the Summary Trials Act (Code, Part XVI.); and they are not restrictive of the general powers conferred by Code, sec. 777, on police magistrates of cities and towns. The King v. Macdonald, 16 Can. Cr. Cas. 121.

SUMMARY TRIAL; STATING OPTION TO ACCUSED.

(1) It is essential to the magistrate's jurisdiction to summarily try for an indictable offence on the prisoner's consent obtained under Code, sec. 778 (amendment of 1909), that the prisoner be informed at the time he is called upon to elect for or against summary trial, that he may remain in custody or under bail as the Court decides, and so have called to his attention the possibility of his release on bail while retaining and exercising his right to a jury trial. (2) Where the prisoner's consent to summary trial has been irregularly obtained without the statutory information being given him, he may repudiate it after conviction, but the Court on quashing the conviction will remand him to custody on the original commitment to proceed de novo under the Summary Trials clauses. The King v. Howell, 16 Can. Cr. Cas. 178.

[Referred to in R. v. Crooks, 19 Can. Cr. Cas. 153; distinguished in R. v. Mali (No. 1), 19 Can. Cr. Cas. 187.]

JURISDICTION; CITY OR TOWN POLICE MAGISTRATE WHERE CENSUS POPULATION OF 2,500.

Judicial notice will be taken of census returns taken under a Dominion statute for the purpose of ascertaining the jurisdiction of a magistrate holding a summary trial under Code, sec. 777 (amendment of 1909), as the police magistrate of a city of not less than 2,500 inhabitants according to the last Parliamentary census. The King v. Rahamat Ali (No. 1), 16 Can. Cr. Cas. 193.

OBSTRUCTING PEACE OFFICER; APPLICATION OF SUMMARY TRIALS PROCEDURE TO SUMMARY CONVICTION MATTER WHERE SPECIALLY PROVIDED.

(1) Except in localities where the jurisdiction of summary trial is absolute without the consent of the accused, a person charged before two justices with wilfully obstructing a peace officer cannot be tried summarily under Code, sec. 169, without his consent to summary trial being obtained under Code, sec. 778, relating to summary trial of indictable offences. (2) As authority is given to two justices to try such charge by Code, sec. 169, and the offence is specifically named in Code, sec. 773 (e), the accused is "charged before a magistrate" within the terms of sec. 773, although two justices in Quebec province are not constituted a statutory magistrate under Code, sec. 771, except as to certain other offences named in sec. 773, paragraph (a) and (f). (3) The decision of the two justices in such a case is a "summary conviction" and subject to appeal as such, although the procedure of Part XVI. (Summary Trials) is applicable under Code, sec. 706, as a "special provision otherwise enacted with respect to such offence." The King v. VanKoolberger, VanKoolberger (appellant) v. Lapointe (respondent), 16 Can. Cr. Cas. 228.

PROCEDURE; READING OVER AND SIGNING DEPOSITIONS OF CROWN WITNESSES BEFORE DEFENCE NOT OBLIGATORY.

(1) On a summary trial before a magistrate under Part XVI. of the Criminal Code for an indictable offence, the magistrate need not read over their depositions to the witnesses for the prosecution before entering on the defence as upon a preliminary enquiry under Part XIV. (sec. 682), (2) Code, sec. 798, excludes the operation of sec. 682 in cases of "summary trial" procedure as to reading depositions to witnesses in the presence of the accused and having them signed, but the practice is nevertheless to be commended to magistrates. The King v. Klein, 16 Can. Cr. Cas. 503.

FINE RETAINED BY GOVERNMENT ON CLAIM OF SET-OFF NOTWITHSTANDING DIRECTION OF PROVINCIAL CRIMINAL COURT FOR ITS RETURN.

(1) Where a fine was imposed and paid upon a summary trial for alleged infraction of the Chinese Immigration Act but the conviction was set aside, the Customs officer on whose information the prosecution was instituted is not liable for the return of the fine which was paid into a Dominion Government fund and did not pass through his hands, nor should the amount so paid be considered in assessing damages against the Customs officer for unlawful detention. (2) The Crown, as represented by the Department of Trade and Commerce, claiming to hold the fine against the amount of an entry tax for which it held the plaintiff civilly liable, although the final judgment in the criminal prosecution had directed the return of the fine to the plaintiff, semble, the plaintiff could not enforce the direction for return except by proceeding against the Crown in a Federal Court. Cheng Fun v. Campbell, 16 Can. Cr. Cas. 508.

RECEIVING STOLEN GOODS.

(1) Notwithstanding sec. 791 of the Criminal Code, a conviction and commitment upon a summary trial for an indictable offence may be reviewed on habeas corpus. (2) The prisoner will be discharged if the conviction on a plea of guilty is upon a charge which does not disclose a criminal offence. (3) Where the information for having received stolen property did not charge that the accused knew the same to have been stolen, a criminal offence is not disclosed and the accused will be discharged on habeas corpus although he pleaded guilty. (4) The Supreme Court of Saskatchewan has a general jurisdiction to deal with decisions of Inferior Criminal Courts in that province upon certiorari. [R. v. St. Clair, 3 Can. Cr. Cas. 551, followed.] The King v. Leschinski, 17 Can. Cr. Cas. 199.

[Specially referred to in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; referred to in R. v. Johnson, 20 Can. Cr. Cas. 10, 5 D.L.R. 523.]

KEEPING DISORDERLY HOUSE; SUMMARY TRIAL WITHOUT CONSENT; EXCESSIVE PENALTY NOT AMENDED ON HABEAS CORPUS.

(1) Notwithstanding Code, sec. 777, a city police magistrate holding a summary trial without the consent of the accused for keeping a disorderly house cannot impose a penalty in excess of that provided by Code, sec. 781. (2) Code, sec. 1124, as to reducing punishments in excess of those authorized does not apply to convictions for indictable offences upon summary trial under Part XVI. of the Code, and if the conviction on such trial imposes an illegal penalty, the prisoner will be discharged on habeas corpus. [R. v. Randolph, 4 Can. Cr. Cas. 165, and R. v. Spooner, 4 Can. Cr. Cas. 209, followed.] The King v. Shing, 17 Can. Cr. Cas. 463.

[Disapproved in R. v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.]

JURISDICTION OF POLICE MAGISTRATE; CHARGE OF ASSAULT OCCASIONING ACTUAL BODILY HARM; QUASHING CONVICTION.

(1) Unless a police magistrate has the extended jurisdiction conferred on city magistrates and certain others by Code, sec. 777, he has no jurisdiction to summarily try a charge of assault occasioning actual bodily harm, which is indictable under Code, sec. 295, although he has jurisdiction under Code, sec. 773 to summarily try a charge of unlawful wounding or of inflicting grevious bodily harm. (2) Where the jurisdiction of the magistrate depends upon Code, sec. 773, the charge as laid before him must be for one of the specific offences which that section enumerates, and it is not sufficient that the offence charged is closely allied to and possibly included in one of the offences so enumerated. (3) Code, sec. 951, which permits of a conviction being made for a lesser offence, the commission of which is included in the offence charged, does not apply to validate a conviction upon a charge laid in the first instance for the lesser offence, if the magistrate had no jurisdiction to enter upon the trial thereof. (4) The Court, on hearing a motion to quash a conviction, will not refuse to consider an objection of want of jurisdiction in the magistrate although it was not expressly set out in the notice of motion for the rule, but will adjourn the motion to permit an amendment, if the opposing party is prejudiced by the omission. The King v. Sharpe, 18 Can. Cr. Cas. 132.

STATING OPTION OF, TO ACCUSED; STATING RIGHT TO APPLY FOR BAIL; KEEPING RECORD OF PROCEEDINGS.

(1) In stating to the accused his option of summary trial, it is necessary since the amendment of 1909 to Code, sec. 778, that he should be told not only that he may be tried summarily or may be committed for trial, but also that he would have the right to apply for bail although he elected against summary trial, so that he would not be led to infer that he must stay in gaol unless he chose to be summarily tried by a magistrate. (2) A magistrate or justices trying a charge under the Summary Trials clauses, must keep a record of the proceedings and of any evidence taken. (3) Where there was no record of election or plea other than an unsigned memorandum in the margin of the information as follows—"pleads guilty and elects to be tried before two justices," and there was no written charge apart from the information, the conviction was quashed. The King v. Harris, 18 Can. Cr. Cas. 392.

INDICTMENT; INFORMATION ON SUMMARY TRIAL; ALTERNATIVE MATTER.

An information in a summary trial proceeding under Cr. Code, sec. 773 or 777 for keeping a disorderly house is by sec. 2 (16) to be considered as a "count" or "indictment" as regards formal and other objections cured by the general provisions as to counts (Code, secs. 852-858), and such information is not objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the statute by which the offence is defined. [R. v. Leconte (1906), 11 Can. Cr. Cas. 41, and R. v. Code (1908), 13 Can. Cr. Cas. 372, distinguished.] The King v. Mah Sam, 19 Can. Cr. Cas. 1.

EXCESSIVE FINE; POWERS OF AMENDMENT.

(1) The costs imposed on a summary trial are a part of the fine and a fine of $100 without costs is not authorized under

Code, sec. 871, which in effect declares that the money penalty in cases to which it applies shall not exceed "with the costs $100;" but if a fine of $100 is imposed without any mention of costs it will be presumed that the costs formed a part of the sum of $100 and the conviction will be upheld. (2) Semble, a conviction under the Summary Trials clauses (Cr. Code, secs. 771-779) is not subject to amendment on a habeas corpus application as a summary conviction would be. The King v. Stark, 19 Can. Cr. Cas. 67.

CONSENT TO SUMMARY TRIAL; RECORD; COMPLIANCE WITH STATUTE.

(1) A conviction upon summary trial for an indictable offence before a magistrate, under secs. 777 and 778 of the Criminal Code 1909, as amended, under which jurisdiction is acquired only by consent of the accused, will be quashed, with leave to the Crown to begin de novo, where the magistrate's record shews only that the accused "consented to jurisdiction" and pleaded guilty, that not being a substantial compliance with the provisions of the Criminal Code, which require that, in such respect, the record shall shew what actually transpired before the magistrate. (2) In determining whether secs. 777 and 778 of the Criminal Code, as to conferring jurisdiction of summary trial by consent on a magistrate, has been complied with in a case in which the record does not state that the consent was given, and the consent is denied by the accused under oath, affidavits will not be received on the part of the prosecution to supplement the omission from the formal record by shewing, in contradiction of the accused, that he did in fact consent. (3) Where a statute expressly requires certain things to be done before a magistrate acquires the jurisdiction of summary trial, the record must shew that such things were actually done, or that the statute was substantially complied with, otherwise the conviction cannot stand. The King v. Crooks, 19 Can. Cr. Cas. 150.

[Distinguished in R. v. Mali (No. 1), 19 Can. Cr. Cas. 187; Ex parte R. v. Mali (No. 2), 19 Can. Cr. Cas. 188.]

ELECTING MODE OF TRIAL; PRESUMPTION; COMMITMENT ON SUMMARY TRIAL.

(1) When the prisoner consents to be tried summarily by a magistrate under the Summary Trials clauses of the Criminal Code and an entry of this appears on the record, it will be presumed on a habeas corpus motion, unless the contrary is shewn, that the consent of the prisoner to be tried summarily was regularly obtained and that his option to elect summary trial was exercised only after the magistrate had stated his right of election in the manner prescribed by Cr. Code, sec. 778, and it is not essential that the magistrate's statement to the accused of the option in the statutory form should also be recited in the conviction or in the commitment. (2) When it is proved that a prisoner consented that the charge against him should be summarily tried by a magistrate under the Criminal Code, sec. 778, the presumption arises that the preliminary requirement of stating to the prisoner his option as prescribed by sec. 778 was complied with by the magistrate. (3) A sentence to a penitentiary imposed by a magistrate acting under the Summary Trials clauses of the Criminal Code is subject to the provisions of sec. 44 of the Penitentiary Act and a duly certified copy of the sentence is a sufficient warrant of commitment, without a recital of the preliminaries of the trial. [See also Reg. v. Peterson, 6 Man. L.R. 311; Rex v. Howell, 19 Man. L.R. 317; Rex v. Walsh, 7 O.L.R. 149; Rex v. Crooks, 17 W.L.R. 560, distinguished.] The King v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256.

ELECTING MODE OF TRIAL; SUMMARY TRIAL BY CONSENT.

(1) The recital of consent contained in Code form 55 is the method prescribed by law of shewing a magistrate's jurisdiction to summarily try for an indictable offence under Part XVI. of the Criminal Code 1906, and where such a recital is contained in the conviction there is, in the absence of anything to impeach such record, a necessary implication that conditions precedent were observed. (2) A defendant's consent to summary trial by a magistrate as an alternative to a jury trial should be a specific consent in the statutory form and not a mere consent to the "jurisdiction" of the magistrate which might have reference only to the territorial jurisdiction of the magistrate as to summary convictions for minor offences apart from his special jurisdiction to try certain indictable offences with the consent of the accused. [R. v. Crooks, 17 W.L.R. 560, explained; see also Tremeear's Crim. Code, 2nd ed., p. 635.] The King v. Mali (No. 2), 19 Can. Cr. Cas. 188, 1 D.L.R. 484.

PROCEDURE; STATEMENT OF OPTION AS TO ELECTION MADE TO PRISONER BY MAGISTRATE'S CLERK.

A conviction before a police magistrate upon a summary trial is not vitiated by the fact that the clerk of the Court and not the magistrate, informed the accused in the words of the statute that he might elect whether he would be forthwith tried by the magistrate or be held for trial in the ordinary way by the Court having criminal jurisdiction. [Rex v. Ridehaugh, 7 Can. Cr. Cas. 340, referred to.] The King v. Barnes, 19 Can. Cr. Cas. 465.

GAMING HOUSE; KEEPING OF; EVIDENCE; ABSOLUTE JURISDICTION.

(1) A person charged under secs. 227 and 228, Criminal Code, 1906, ch. 146, with keeping a common betting house, may without his consent, under secs. 641, 773 and 774 of the Code, as amended by 8 and 9 Edw. VII., be summarily tried by a police magistrate, absolute jurisdiction to try such offence without a jury having been conferred upon such official by secs. 641, 673, and 674, of the Cr. Code, 1906. (2) Upon a trial for keeping a common betting house in violation of secs. 227 and 228 of the Criminal Code, R.S.C. 1906, ch. 146, articles for recording bets which were seized upon the premises by police officers are admissible in evidence against the prisoner, irrespective of a claim by the accused that the alleged search warrant was illegal and that the police officer had obtained possession of the articles by means of their own trespass. [Rex v. White (1908), 15 Can. Cr. Cas. 30, 18 O.L.R. 640; Rex v. Lee Guey, 13 Can. Cr. Cas. 80, 15 O.L.R. 235, specially referred to.] The King v. Honan, 20 Can. Cr. Cas. 10, 6 D.L.R. 276.

POWER OF MAGISTRATE AS TO AMENDMENT; ABSENCE OF SWORN INFORMATION; EXCESSIVE PENALTY.

(1) The probable effect of Part XVI. of the Criminal Code, R.S.C. ch. 146, dealing with summary trials of indictable offences, is to give to the magistrate trying such an offence without indictment the same powers of amendment as are given to the Courts upon the trial of the same offence under an indictment. (2) The absolute jurisdiction conferred upon a police magistrate to try certain indictable offences upon summary trial without the consent of the accused is exercisable where the accused is present, whether or not an information had been sworn in respect of the offence which is the subject of the trial, if the "charge" is reduced to writing and is read to the accused and a full opportunity is given for making defence thereto. (3) Upon the summary trial of a charge of keeping a disorderly house, the magistrate has power to amend the information during the course of the trial, by changing the street number of the alleged disorderly house, without having the information resworn. (4) A conviction upon summary trial before a police magistrate for keeping a disorderly house may be amended in certiorari proceedings, if the Court is satisfied as to the proof, by reducing the illegal fine of $100 and costs to the limit provided by Cr. Code, sec. 781 of $100 including costs; the amount of the costs in such case remaining in the amended conviction but the $100 penalty being reduced by the amount of the costs so that the total shall not exceed $100. [R. v. Shing, 17 Can. Cr. Cas. 463, disapproved; Reg. v. D'Eyncourt, 12 Q.B.D. 109, referred to.] The King v. Crawford, 20 Can. Cr. Cas. 49, 6 D.L.R. 380.

THEFT UNDER $10.

The consent of the accused is essential for the summary trial by a magistrate under Cr. Code, sec. 773 (a), of a charge under sec. 379 of the Criminal Code (1906) of theft from the person of less than $10. [The King v. Conway, 7 Can. Cr. Cas. 129, referred to.] The King v. Bonin, 20 Can. Cr. Cas. 180.

POWER OF JUSTICES TO COMMIT FOR TRIAL.

Under the Criminal Code it is not competent for a magistrate who is holding a summary trial after hearing all the evidence on both sides to decide to commit for trial instead of disposing of the case himself; the right to commit for trial being limited as to time by the terms of Cr. Code, sec. 786, directing that the magistrate may "before the accused person has made his defence" decide not to adjudicate summarily upon the case. The King v. Roger Hicks, 20 Can. Cr. Cas. 192, 7 D.L.R. 171.

COMMITMENT FOR; ELECTION OF TRIAL.

Where a person is charged before a magistrate authorized to hold a summary trial and elects to be summarily tried by such magistrate for an indictable offence, a preliminary commitment for trial is unnecessary to give the magistrate jurisdiction under Cr. Code, sec. 777 (amendment of 1909). The failure of a magistrate on taking an election of a summary trial to state to the accused conformably to the provisions of sec. 778, of the Criminal Code, that he has the option of being tried forthwith by the magistrate without a jury, or to remain in custody or under bail as the court decides, to be tried in the ordinary way by a court having criminal jurisdiction, renders void a conviction on a plea of guilty. [Rex v. Howell, 16 Can. Cr. Cas. 178, 19 Man. L.R. 326; The King v. Walsh and Lamont, 8 Can. Cr. Cas. 101, 7 O.L.R. 149; The King v. Harris, 18 Can. Cr. Cas. 392, 4 S.L.R. 31; and The King v. Crooks, 19 Can. Cr. Cas. 150, 4 S.L.R. 335, followed.] R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612.

[Followed in R. v. James, 31 Can. Cr. Cas. 4.]

POLICE MAGISTRATE; JURISDICTION; GAMING HOUSE.

A police magistrate has jurisdiction under secs. 641, 773, and 774 of the Criminal Code (1906), as amended 1909, on a charge of keeping a common gaming house in violation of sec. 228 of the Code, to summarily try the accused without permitting him to elect whether he will go before a jury. [Rex v. Honan, 6 D.L.R. 276, 26 O.L.R. 484, 20 Can. Cr. Cas. 10, followed.] R. v. Jung Lee, 22 Can. Cr. Cas. 63, 13 D.L.R. 896.

TRIAL BY CONSENT; FAILURE TO INFORM PRISONER.

The failure of a police magistrate, on taking an election of a summary trial, to state to the accused conformably to section 778 (b) of the Criminal Code, as amended by 8-9 Edw. VII. ch. 9, that he has the option to be tried forthwith, or to remain in custody, or under bail as the court shall decide, to be tried in the ordinary manner by a court having criminal jurisdiction, will vitiate a conviction on the summary trial. [Rex v. Howell, 16 Can. Cr. Cas. 178, 19 Man. L.R. 326, followed and applied; see also The King v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612.] R. v. Fuerst, 22 Can. Cr. Cas. 183, 15 D.L.R. 214.

[Followed in R. v. James, 31 Can. Cr. Cas. 4.]

SUMMARY TRIAL; CONSENT.

The jurisdiction to try summarily conferred by Code, sec. 773, as to certain indictable offences, is expressly subject to the subsequent provisions of Part XVI., and depends upon the consent of the accused as to all of the offences mentioned in the section, except those as to which, and the cases in which, it is expressly provided that jurisdiction does not depend upon the consent of the person charged. R. v. Hollinwell, 23 Can. Cr. Cas. 146, 18 D.L.R. 550.

ASSAULT; TRIAL WITHOUT CONSENT.

A charge under Code, sec. 295, of assault causing actual bodily harm may be summarily tried in Saskatchewan by two justices under sec. 776 without the consent of the accused under sec. 778. [R. v. Hostetter, 7 Can. Cr. Cas. 221, 5 Terr. L.R. 363; R. v. Zyla, 17 W.L.R. 258, applied.] R. v. Prokopate, 23 Can. Cr. Cas. 189, 18 D.L.R. 696.

SUMMARY TRIAL WITHOUT CONSENT; PROCEDURE; ANSWER AND DEFENCE.

Where a magistrate has jurisdiction over the particular offence either as one for which a summary conviction may be made or as one for which he has power of summary trial as for an indictable offence without the consent of the accused, it is essential to the exercise of the latter jurisdiction that the magistrate should expressly declare on commencing the trial that he will proceed under the "summary trials" clauses of the Code. [R. v. Belmont, 23 Can. Cr. Cas. 89, 18 D.L.R. 53 followed.] For the purposes of the summary trials clauses of the Criminal Code, the accused must be personally present; and it is not competent for a magistrate to proceed with a summary trial as for an indictable offence in the absence of the accused, although his counsel is present on his behalf prepared to make option under Code, sec. 778, as to mode of trial and although the latter produces a written authority in that behalf signed and sworn to by the absent defendant. [R. v. Lepine, 4 Can. Cr. Cas. 145; Re Nunn, 2 Can. Cr. Cas. 429; R. v. Traynor, 4 Can. Cr. Cas. 410, and R. v. Sarault, 9 Can. Cr. Cas. 448, referred to.] The word "answer" as used in Code, sec. 786 in the phrase "full answer and defence" has no special reference to the question to be put by the magistrate to the accused in certain cases on taking an election for or against summary trial, but applies alike to summary trial cases in which there is no right of election by the accused. R. v. Romer et al. 23 Can. Cr. Cas. 235.

JURISDICTION IN SASK. WITHOUT CONSENT.

The absolute jurisdiction of a police magistrate in Saskatchewan of a city having a population of over 2,500 is retained under Code, secs. 776 and 777, as to the offences specified in Code, sec. 773 (including that of unlawful wounding), and the consent of the accused to summary trial is required by Code, secs. 777 and 778, only in such cases in which there is additional jurisdiction under sec. 777. [R. v. Hayward, 6 Can. Cr. Cas. 399, 5 O.L.R. 65, applied.] Re Worrell, 24 Can. Cr. Cas. 88, 21 D.L.R. 519, affirmed in 24 Can. Cr. Cas. 92, 21 D.L.R. 522.

ELECTION AFTER COMMITTAL; HABEAS CORPUS.

Where a committal for trial for an offence alleged to have been committed in a city to which sub-sec. 2 of sec. 777 applies has been made by a county stipendiary not authorized to hold a summary trial in Nova Scotia under sec. 777, sub-sec. 2, the Superior Court may enable the prisoner to elect trial before the city stipendiary magistrate having the extended jurisdiction of sec. 777 by granting his application for writs of habeas corpus and recipias corpus to transfer him from the gaol to the city magistrate's court. R. v. Foley, 24 Can. Cr. Cas. 150.

SUMMARY TRIALS CLAUSES; CR. CODE, SEC. 773.

An information for theft of property of less value than $10 may be laid and preliminary enquiry held before a justice of the peace in New Brunswick in his capacity as such, although he was also a county stipendiary magistrate with power of summary trial under Part XVI. of the Cr. Code (Code, sec. 773), without any obligation to give the accused an opportunity to elect for a summary trial before such county stipendiary magistrate. [R. v. Wener, 6 Can. Cr. Cas. 406, cited.] R. v. Howe, 24 Can. Cr. Cas. 215.

ILLEGAL REMAND "UNTIL CALLED ON."

A magistrate holding a summary trial for an indictable offence under Part XVI. of the Code is not authorized, after hearing both sides, to adjourn the trial and to remand the accused for trial "until called on,"

where the evidence does not satisfy the magistrate either of the guilt or innocence of the accused; the prisoner is in such case entitled to the benefit of the doubt and to an acquittal, and prohibition will be granted to restrain the magistrate from proceeding to hear further evidence alleged to have been discovered by the Crown, and in respect whereof the accused was again summoned to receive judgment upon the original charge. R. v. White, 24 Can. Cr. Cas. 277.

DEPOSITIONS AND NOTES OF EVIDENCE.

Where a magistrate holds a summary trial under Part XVI. of the Criminal Code for an indictable offence and the accused pleads not guilty, it is obligatory that the depositions should be taken down in writing, and where there are no notes of the evidence the conviction will be set aside on certiorari; the absence of any notes of evidence is irreconcilable with secs. 793 and 1124, which latter section is made applicable by Cr. Code, sec. 797 (2). [R. v. Harris, 18 Can. Cr. Cas. 392; Re Lacroix, 12 Can. Cr. Cas. 297; and R. v. Jung Lee, 22 Can. Cr. Cas. 63, 13 D.L.R. 896, followed.] Perron v. Senecal, 24 Can. Cr. Cas. 358.

PERSON IRREGULARLY BROUGHT BEFORE MAGISTRATE; CONSENT.

If the accused has been illegally arrested without a warrant on a charge of keeping a disorderly house and on being brought before the magistrate for summary trial takes objection to his jurisdiction, he will have no authority to proceed with the trial notwithstanding Cr. Code, sec. 774, declaring the jurisdiction of the magistrate to be absolute for that offence and not dependent on the consent of the accused to summary trial. R. v. Wilson, 24 Can. Cr. Cas. 370.

[Followed in R. v. Young Kee, 28 Can. Cr. Cas. 161.]

CHARGE IN WRITING.

Where there is already a written information in respect of the charge of an indictable offence, which a magistrate is about to try under Part XVI. of the Criminal Code, such information may be adopted as a "charge in writing," which he shall read to the accused, and it is not in such case necessary for the magistrate to again reduce the charge to writing; but if the accused were before the magistrate without any preliminary information having been laid for the offence which is to be the subject of the summary trial, it would then be the magistrate's duty to write out the charge. R. v. James, 25 Can. Cr. Cas. 23, 25 D.L.R. 476.

SUMMARY CONVICTION OR SUMMARY TRIAL; OBSTRUCTING OFFICER.

The methods of procedure by summary conviction (Part XV. of the Criminal Code) and by summary trials (Part XVI.) for the offence of obstructing a peace officer (Cr Code, sec. 169) are alternative methods and where a summary conviction is sought and the procedure of Part XV. followed, the defendant need not be asked for his consent to summary trial under Cr. Code, sec. 778, even where the magistrate is one having jurisdiction under Cr. Code, sec. 773. R. v. West (No. 2), 25 Can. Cr. Cas. 145, affirming 24 Can. Cr. Cas. 145.

SUMMARY TRIAL ON CONSENT; STATING POSSIBILITY OF BAIL.

Where the Magistrate or Judge, taking the election of the prisoner for summary trial under the "Summary trials" procedure, Part XVI. of the Criminal Code, places before the accused only the option of remaining in custody until the sittings of the jury Court and omits to inform him that he would be at liberty, in case he did not choose a summary trial, to apply for release on bail to answer the charge at the jury Court, such omission goes to the jurisdiction of summary trial, and the subsequent proceedings and sentence, although upon a plea of guilty, will be set aside. [R. v. Howell 16 Can. Cr. Cas. 178, 19 Man. L.R. 317, R. v. Harris, 18 Can. Cr. Cas. 392, followed; and see R. v. Crooks, 19 Can. Cr. Cas. 150, 4 S.L.R. 335; R. v. Mali (No. 1), 19 Can. Cr. Cas. 184, 1 D.L.R. 256; R. v. Mali (No. 2), 19 Can. Cr. Cas. 188, 1 D.L.R. 484; R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612; R. v. Walsh, 8 Can. Cr. Cas. 101, 7 O.L.R. 149.] R. v. Morgan, 25 Can. Cr. Cas. 192.

POWERS OF JUSTICES; ASSAULT.

Two justices, having jurisdiction under Cr. Code, sec. 773 (c), to summarily try, with the consent of the accused, a charge of unlawful wounding or inflicting grievous bodily harm (Cr. Code, sec. 274), are without jurisdiction to proceed with a summary trial under Part XVI. if the charge is laid for an "assault occasioning actual bodily harm" (Cr. Code, sec. 295), and a conviction made by them for the lesser offence of common assault upon a charge so laid will be set aside. [R. v. Sharpe, 18 Can. Cr. Cas. 132, followed; R. v. Hostetter, 7 Can. Cr. Cas. 221, doubted.] R. v. Law, 25 Can. Cr. Cas. 251.

THEFT; OFFENCE COMMITTED IN ANOTHER COUNTY; POWERS OF POLICE MAGISTRATE.

Cr. Code, sec. 577, applies to enable a police magistrate to hold a summary trial under Part XVI. of the Code upon a charge of theft of less than $10 committed in another county, but as to which the proceedings for arrest were instituted before such magistrate and to answer which the accused was taken into custody within the territorial jurisdiction of the magistrate;

the police magistrate of a city of over 25,000 population has absolute jurisdiction in such case without the consent of the accused, such consent being dispensed with under sec. 777 (5), as added by the Code amendment of 1909, if, in the judgment of the city police magistrate, the value of the property stolen does not exceed $10. R. v. Sinclair, 27 Can. Cr. Cas. 327, 31 D.L.R. 265; appeal quashed in 28 Can Cr. Cas. 350, 32 D.L.R. 796.

ELECTION OF SUMMARY TRIAL.

The procedure of taking the election of the accused for summary trial as enacted by Cr. Code, sec. 778, applies to the offence of theft by a servant or agent under Cr. Code, sec. 359, although the value is alleged to be under $10; it is not enough that the accused pleaded not guilty where his consent to summary trial was not asked in conformity with sec. 778. R. v. De la Durantaye, 27 Can. Cr. Cas. 395, 34 D.L.R. 689.

EXTENDED JURISDICTION.

Sec. 777 of the Criminal Code, giving extended jurisdiction of summary trial by consent before certain magistrates, applies only to cases which in Ontario would be triable at General Sessions other than cases listed in sec. 773. (Per Stuart and Beck, JJ.) [R. v. Hayward, 6 Can. Cr. Cas. 399, 5 O.L.R. 65; Ex parte McDonald, 9 Can. Cr. Cas. 368, followed; but see R. v. Archibald, 4 Can. Cr. Cas. 159; R. v. Crawford, 20 Can. Cr. Cas. 53, 6 D.L.R. 380.] R. v. Davidson (No. 2), 28 Can. Cr. Cas. 56, 35 D.L.R. 94. See 28 Can. Cr. Cas. 44, 35 D.L.R. 82.

ASSAULT; PEACE OFFICER; SUMMARY TRIAL; JURISDICTION.

A charge of assaulting a peace officer acting in the discharge of his duty is subject to the provisions of Part XVI. (summary trials) and a magistrate has no jurisdiction to try it without the consent of the accused under Cr. Code, sec. 778, in provinces where such consent is not dispensed with by the Code. Ex parte Carroll, 29 Can. Cr. Cas. 213, 41 D.L.R. 196.

ASSAULT; LESSER OFFENCE THAN CHARGED.

On an information for inflicting grievous bodily harm by an assault, a magistrate exercising the power of summary trial under Code, sec. 773 (c), may convict for the lesser offence of assault occasioning actual bodily harm. In provinces where the jurisdiction under sec. 773 is absolute, there is also jurisdiction under sec. 951 to convict for the lesser offence without taking the consent of the accused. R. v. Adonchuk, 30 Can. Cr. Cas. 301.

SUMMARY TRIAL BY CONSENT; STATING OPTION.

The directions of Code, sec. 778, for stating to the accused his option of summary trial should be strictly followed and the option stated verbatim in the statutory form of that section. [R. v. Howell, 16 Can. Cr. Cas. 178, 19 Man. L.R. 326; R. v. Harris, 18 Can. Cr. Cas. 392; R. v. Davis, 22 Can. Cr. Cas. 34, 13 D.L.R. 612; R. v. Fuerst, 22 Can. Cr. Cas. 183, 15 D.L.R. 214, followed.] R. v. James, 31 Can. Cr. Cas. 4.

SUMMONS.

DESCRIBING THE OFFENCE.

See that title; also Information; Indictment.

See also Substitutional Service.

Summons should state a place certain at which accused is to appear. 7 Can. Cr. Cas. 294.

SUMMONS TO WITNESS; WHO MAY ISSUE.

Held, per Allen, C.J., Weldon, King and Fraser, JJ., that under sec. 16 of the Summary Convictions Act, only a justice before whom the case is to be heard, has authority to issue a summons for a witness; therefore A. and B. were not legally summoned as witnesses, and were not "absent" within the meaning of the Act, and that the other justices acted without jurisdiction. Per Palmer, J., that A. and B. having been summoned as witnesses on the request of the defendant he could not object that they were not legally summoned. Byrne v. Arnold et al., 24 N.B.R. 161.

NAMES OF JUSTICES TO APPEAR ON THE SUMMONS.

It is imperative, under sec. 105 of the Canada Temperance Act, 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 named justice as well. Regina v. Ramsay, 11 O.R. 210.

[But see R. v. Sproule, 14 O.R. 375.]

OMISSION OF NAMES OF JUSTICES FROM.

The omission of the names of the justices from the summons was held to be no objection as the complaint was tried before the justices before whom the information was laid. Regina v. Sproule (1887), 14 O.R. 375.

IRREGULARITY IN ISSUING OF SUMMONS; WAIVING OF BY APPEARANCE.

The summons for an offence under the Canada Temperance Act (1878) stated that the defendant was charged with an 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 wit-

ness for the Crown, and called witnesses on his own behalf:—Held, that the fact of so issuing the summons was a mere irregularity, which was waived by appearing on the summons. Held, also, that the justices before whom the case was to be tried need not be named on the summons. Regina v. Collins (1887), 14 O.R. 613.

[See Regina v. Clarke, 19 O.R. 601.]

SERVICE OF; INSUFFICIENCY OF SERVICE.

Service of summons made at the defendant's domicile during his absence from the province is insufficient. Rule for certiorari. Ex parte Simpson, 37 C.L.J. 510.

NO SERVICE OF SUMMONS; WAIVER OF WANT OF SERVICE; DEFECT CANNOT BE TAKEN ADVANTAGE OF BY APPEAL; CERTIORARI PROPER REMEDY.

Defendant was prosecuted under ch. 19, Revised Statutes (3rd series), for a breach of the law relating to the sale of intoxicating liquors. There was no actual service upon him of the writ of summons, and the affidavit of the constable verifying the return was informal in being intituled with the surnames only of plaintiff and defendant. Defendant having been convicted in his absence, appealed, and filed the necessary bond under the statute:—Held, that when an appeal is taken and perfected from a decision of justices of the peace in a summary cause, the judgment below is thereby ipso facto vacated, and the case stands for a new trial. Also, that defendant having appealed and thus virtually appeared, and haing avoided the judgment below by having taken an important step in the cause, it was not competent to him to repudiate the jurisdiction of the Court below on the ground of want of personal service. Had he wished to avail himself of such an objection he should not have appealed, but should have sued out a writ of certiorari. On a second trial no amendment adding or substituting a new cause of action or ground of defence will be allowed. Rand v. Rockwell (1871), 2 N.S.R. 199.

OMISSION OF THE NAMES OF THE JUSTICES.

The omission of the names of the justices from the summons was held to be no objection as the complaint was tried before the justices before whom the information was laid. [Regina v. Ramsay, 11 O.R. 210, distinguished.] Regina v. Sproule, 14 O.R. 375.

SERVICE OF; LEAVING AT DEFENDANT'S PLACE OF BUSINESS; VALIDITY.

Where the summons was left at the defendant's place of business an hour or two before it was returnable, and defendant swore that he never received it and the trial was adjourned but no notice given defendant other than a verbal message through the constable that he was instructed by some one not shewn to be connected with the prosecution, to tell him that "his case would come up on Monday at ten o'clock." (Per Ritchie, J.):—Held, that the justice had no jurisdiction. The Queen v. McKenzie, 23 N.S.R. 6.

SERVICE OF; SUFFICIENCY.

Service of a summons issued under the Summary Convictions Act held sufficient, where the door of the defendant's house was fastened, and the constable spoke to him through a closed window, explaining the nature of the process, and then placed a copy of it under the door, informing the defendant thereof; after which he returned to the window and shewed the original summons to the defendant, who said, "That will do." Ex parte Colin Campbell (1887), 26 N.B.R. 590.

SUMMONS TO DEFENDANT; REASONABLE TIME OF SERVICE.

(1) Where the service of a summons is proved to have been made personally on the defendant in the town where he was carrying on business and where the hearing was to take place, and the date of hearing is the day following the date of service, the magistrate has evidence upon which he may find that a reasonbale notice was given and may proceed in the defendant's absence without enquiring as to the hour of service. (2) If the service were made at a late hour on the date prior to the hearing, the defendant should have applied to the magistrate for an adjournment instead of ignoring the summons. The King v. Craig, 10 Can. Cr. Cas. 249.

[Referred to in Ex parte Monahan, 17 Can. Cr. Cas. 53.]

SERVICE OF SUMMONS; SUBSTITUTIONAL SERVICE; PROOF OF SERVICE; EVIDENCE OF REASONABLE NOTICE.

(1) A magistrate has no jurisdiction to proceed in the absence of the accused in a summary proceeding, without evidence that the summons was served a reasonable time before the hearing. (2) Where the proof of service of the summons was that it had been left with an adult person at defendant's house on the date preceding the hearing, such does not constitute evidence upon which the magistrate could adjudicate upon the question of reasonable notice, without proof of the hour of service and the distance from the place of hearing. Re O'Brien, 10 Can. Cr. Cas. 142.

REVIEW OF MAGISTRATE'S DECISION REFUSING SUMMONS.

Where a police magistrate receives an information, and, after hearing and considering the allegations of the informant, decides that the statute invoked in support of the prosecution does not apply, and that what is charged does not constitute an offence, and therefore refuses to issue either a summons or warrant against the accused,

a manadamus does not lie to compel him to do so. Re E. J. Parke, 3 Can. Cr. Cas. 122. [Referred to in Re Broom, 18 Can. Cr. Cas. 255.]

SERVICE OF; LEAVING AT USUAL PLACE OF ABODE.

Service of a summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made although left with the defendant's wife at his usual place of abode (Cr. Code, sec. 562), if the defendant was then absent from Canada and remained away until after the hearing. The magistrate in such a case acquires no jurisdiction over the person of the defendant, and a conviction made in the defendant's absence upon such service will be quashed. Ex parte Donovan, 3 Can. Cr. Cas. 286.

[Referred to in R. v. Lew, 1 D.L.R. 478.]

ISSUE OF; INFORMATION NEED NOT BE SWORN.

A summons may be issued upon an information before a justice of the peace for an offence punishable on summary conviction, although the information has not been sworn (Cr. Code, secs. 843, 845 (2)); but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath (Cr. Code, secs. 558, 843). R. v. McDonald, 3 Can. Cr. Cas. 287.

[Referred to in R. v. Paul (No. 1), 20 Can. Cr. Cas. 160, 7 D.L.R. 24; R. v. Lew, 1 D.L.R. 477; R. v. McGillivray, 13 Can. Cr. Cas. 117, 120; disregarded in R. v. McLean, 5 Can. Cr. Cas. 69; distinguished in R. v. Johnson, 17 Can. Cr. Cas. 174.]

ISSUING SUMMONS A JUDICIAL ACT.

The issue of a summons, whether in relation to an offence punishable summarily or to an indictable offence, is a judicial act. Notwithstanding sec. 105 of the Canada Temperance Act and sec. 842 of the Criminal Code, an information charging an offence under the Canada Temperance Act must be laid before two justices, who must concur in directing the issue of the summons, but it is not necessary that the information or the summons issued thereon should be signed by more than one of such justices. R. v. Ettinger, 3 Can. Cr. Cas. 387.

DEFECT IN SERVICE; WAIVER.

The defendant's appearance by counsel upon the return of a magistrate's summons is a waiver of any irregularity in respect of the service not having been effected by a peace officer, although counsel objects on that ground to the hearing being proceeded with. The absence of defendant's counsel from the adjourned sittings at which the magistrate pronounced his judgment, the evidence having been closed at the former sittings at which counsel appeared, does not affect the power of the magistrate to convict, notwithstanding any such irregularity in the service. R. v. Doherty, 3 Can. Cr. Cas. 505.

CONVICTION QUASHED FOR DEFECT IN SERVICE: SECOND SUMMONS; PROHIBITION AGAINST.

(1) Where a summary conviction has been removed by certiorari, together with the information and proceedings thereon, and the conviction is thereupon quashed, the information becomes part of the record in the Court above and cannot be returned to the magistrate for the purpose of a second summons thereon, although the ground for quashing the conviction was that the defendant had not been served, and had not authorized an appearance for her. (2) An order for the return of any of the proceedings to the convicting justice is only authorized under Cr. Code, sec. 895, in cases where formerly a procedendo would have issued upon the conviction being affirmed, and not where the conviction is quashed. (3) Prohibition will be granted against a justice to prevent his proceeding under a second summons after the quashing of a conviction for want of service of the first summons or of appearance thereunder. (4) Semble, per Killan, J., the justices in proceeding with the second summons were guilty of contempt of Court, notwithstanding that the information had been returned to them under a Judge's order. The Queen v. Zickrick, 5 Can. Cr. Cas. 380.

REASONABLE TIME OF SERVICE; RETURN ON DATE FOLLOWING SERVICE IN SAME TOWN; HOUR OF SERVICE NOT PROVED; MAGISTRATE PROCEEDING IN DEFENDANT'S ABSENCE.

(1) Where the service of a summons is proved to have been made personally on the defendant in the town where he was carrying on business and where the hearing was to take place, and the date of hearing is the day following the date of service, the magistrate has evidence upon which he may find that a reasonable notice was given and may proceed in the defendant's absence without enquiring as to the hour of service. (2) If the service were made at a late hour on the date prior to the hearing, the defendant should have applied to the magistrate for an adjournment instead of ignoring the summons. The King v. Craig, 10 Can. Cr. Cas. 249.

[Referred to in Ex parte Monohan, 7 Can. Cr. Cas. 53.]

WHEN TO ISSUE; AFTER A PERIOD OF LIMITATION UPON INFORMATION.

(1) Upon taking an information the magistrate is not bound to issue a summons or warrant upon the same day, notwithstanding the words "this day" in the statutory forms (Revised Cr. Code, forms 5 and 6),

but may take time to consider whether a case is made out for so doing. (2) Where a statute provides that informations thereunder shall be laid within a fixed number of days after the offence, but makes no limitation as to the summons or other proceedings, the summons calling upon the accused to answer may be issued after the period of limitation upon an information taken within the period. The King v. Hudgins, 12 Can. Cr. Cas. 223.

SUMMONS FOR OFFENCE DIFFERENT FROM THAT CHARGED IN INFORMATION; JURISDICTION NOT ACQUIRED OVER THE ACCUSED.

(1) Where the summons issued under the summary convictions procedure is for an offence different from that set out in the information, the magistrate acquires no jurisdiction over the accused on his failure to attend on the return of the summons and a conviction made in default of appearance will be set aside. (2) Secs. 669 and 724 of the Criminal Code (1906) which validate proceedings notwithstanding certain irregularities and variances, do not apply where jurisdiction has not been acquired over the accused either by the service of process or by his personal attendance before the magistrate. (3) The offences of keeping liquor for sale and of selling liquor contrary to the Canada Temperance Act are distinct offences, and a summons to answer one upon an information for the other is invalid. Ex parte Melanson, 13 Can. Cr. Cas. 251.

SUMMARY CONVICTION; ERROR IN SUMMONS.

Where the original summons was in due form but the copy served erroneously stated the place of appearance to be the office of the signing magistrate at Perth instead of at Andover, where it was in fact, a conviction in default of appearance will not be set aside because of the error unless it is shewn that the accused did not know where the magistrate's office was or unless it is shewn that the accused was misled by the mistake. Ex parte Giberson (No. 2), 16 Can. Cr. Cas. 70.

SUMMONS MAY ISSUE TO OUTSIDE COUNTY; SERVICE BY CONSTABLE QUALIFIED AT PLACE OF SERVICE SUFFICIENT; SUMMONS ISSUED ON MERE INFORMATION AND BELIEF.

(1) A summons for an offence punishable on summary conviction may be served outside as well as within the territorial limits of the justice by whom it is issued. (2) A summons may be validly served by a constable or peace officer of the county where the defendant is found requiring his attendance before the issuing justice in another county, and the justice may proceed ex parte if the defendant fails to appear either in person or by solicitor or counsel. (3) Prior to the amendment of 1909 made to Code, sec. 655, it was not necessary for the justice on issuing a summons in a summary conviction matter to have more than the sworn information and belief of the informant that the offence had been committed, although the ground of suspicion would have to be enquired into to justify a warrant. Quære, whether that amendment, which requires the justice to hear not only the complainant, but "the evidence of his witnesses, if any," has made any alteration as to the requirements for a warrant or a summons. Ex parte O'Regan, 16 Can. Cr. Cas. 110.

[Referred to in Ex parte Archambault, 16 Can. Cr. Cas. 435.]

SUMMARY PROCEEDINGS; SUMMONS ISSUED BY POLICE MAGISTRATE.

(1) A summons in a summary proceeding matter issued by a police magistrate who is also a justice of the peace may be made returnable in the alternative before himself or such other justices having jurisdiction as might attend. (2) Where by statute the jurisdiction of other justices is excluded in respect of proceedings initiated before a police magistrate except at his request or in case of his illness or absence, a conviction by two justices upon a summons so made returnable in the alternative sufficiently shews that the justices acted at the magistrate's request. (3) The summons need not name the justices who are to act in place of and at the request of the magistrate in case of his non-attendance. The King v. Ackers (No. 1), 16 Can. Cr. Cas. 218.

[Referred to in R. v. Graves (No. 2), 16 Can. Cr. Cas. 346.]

SUMMARY CONVICTION; SUMMONS STATING DIFFERENT OFFENCE TO THAT IN INFORMATION; AMENDING SUMMONS AT HEARING TO CONFORM WITH INFORMATION.

(1) A variance between the summons and the information and evidence in a summary conviction matter is cured by Code sec. 724, subject to the right of the accused, if prejudiced by the variance and appearing on the summons, to ask an adjournment; but, if the accused fails to appear, a new charge cannot be substituted in his absence. (2) Where by mistake a summons following an information for keeping liquor for sale in a proclaimed district contrary to Code, sec. 150, stated the charge as unlawfully selling which is also an offence under the same section, but the magistrate presiding at the trial ordered the summons amended and refused an adjournment asked by the defence to answer the amended charge, the Court declined to quash the conviction on certiorari. (3) The granting of an adjournment because of the summons not conforming with the information is wholly in the discretion of the magistrate, and its refusal does not

go to the jurisdiction. Ex parte LeBel, 16 Can. Cr. Cas. 363.

SUMMARY CONVICTION; FAILURE OF JUSTICE TO TAKE EVIDENCE OF COMPLAINANT'S WITNESSES ON EX PARTE APPLICATION FOR SUMMONS.

(1) A justice of the peace hearing a summary conviction matter may accept as proof of service of the summons a constable's affidavit of service endorsed thereon prior to the return date. (2) Sec. 655 of the Criminal Code (as amended, 1909) makes it imperative that a justice shall before issuing either a summons or a warrant in a summary conviction matter, take down the evidence of the complainant's witnesses (if any) and consider the same on the ex parte application for the issue of a summons or warrant; and the justice's omission to do so will invalidate a conviction pronounced at the hearing in the absence of the accused. The King v. Smith, 16 Can. Cr. Cas. 425.

[But see Ex parte Archambault, 16 Can. Cr. Cas. 433; disapproved in R. v. Mitchell, 19 Can. Cr. Cas. 114.]

SUMMONS SERVED BY CONSTABLE WHERE HIMSELF THE INFORMANT AND PROSECUTOR; INVALIDITY.

(1) A summons in summary proceedings is by Code, sec. 658, to be served by a constable or other peace officer, but this does not abrogate the common law rule that a constable cannot perform official functions in a proceeding in which he is the complainant. (2) The service of a summons for trial of a summary conviction matter is invalid if made by a constable or peace officer who is himself the prosecutor. (3) The defect in the manner of service goes to the jurisdiction of the magistrate if the defendant does not appear and thereby dispense with the necessity of service. (4) The defendant may shew the invalidity of the service upon a certiorari application to quash the conviction, although he did not appear or have counsel appear to raise the objection before the magistrate. Re Kennedy, 17 Can. Cr. Cas. 342.

APPLICATION FOR SUMMONS OR WARRANT; SUPPLEMENTING COMPLAINANT'S INFORMATION, WHERE ALONE INSUFFICIENT FOR PROCESS.

(1) Although by the amendment of 1909 to Code, sec. 655, a magistrate is directed to hear the complainant and "the evidence of his witnesses, if any" in support of the application for a summons or warrant, in respect of an indictable offence, the Crown may, upon the trial, call witnesses whose evidence was not offered on the application for the summons or warrant. (2) The object of the amendment is to prevent the magistrate from refusing to issue process, because in his review the complainant's own unaided statement might be insufficient to make out a case, although supplementary evidence was available. The King v. James W. Johnston, 17 Can. Cr. Cas. 369.

INFORMATION FOR PERJURY; REFUSAL TO ISSUE SUMMONS.

Where a magistrate has tried a charge of assault depending wholly upon the evidence of the complainant and of the defendant and has dismissed the charge because he believed the defendant rather than the complainant, he is not bound to issue a summons for perjury on the information of the discredited complainant against the defendant in respect of the latter's evidence at the trial, and a mandamus will not be granted to compel him to do so. Re Broom 18 Can. Cr Cas. 254.

REGULARITY OF; HEARING COMPLAINANT AND HIS WITNESSES.

(1) Upon an application by the informant for process in a summary conviction matter calling upon the accused to answer the charge, the magistrate need not first hear other evidence than that of the informant in swearing to the information if that satisfies him that the process should issue without hearing other witnesses for the complainant under Cr. Code (1906), sec. 655, as amended by 8 and 9 Edw. VII. ch. 9. [Ex parte Archambault, 16 Can. Cr. Cas. 433, approved; R. v. Smith, 16 Can. Cr. Cas. 425, disapproved.] (2) It is only when the allegations of the complainant do not convince the magistrate that a summons should issue, that there is any need of witnesses for the complainant, and until that time there are no persons who can be termed "his witnesses" under Cr. Code (1906), sec. 655, as amended in 1909, which directs the justice to hear and consider the allegations of the complainant " and the evidence of his witnesses if any," and on a case for same being made out, to issue a summons or warrant. [Ex parte Archambault, 16 Can. Cr. Cas. 433, approved.] The King v. Mitchell, 19 Can. Cr Cas. 113.

DEFECTS; WAIVER; APPEARANCE.

Defects in a summons in a summary conviction matter are cured by a personal appearance by the defendant and going to trial on the merits. [See also R. v. Doherty, 3 Can. Cr. Cas. 505, 32 N.S.R. 235; Ex parte Giberson, 4 Can. Cr. Cas. 537, 34 N.B.R. 538; McGuiness v. Dafoe, 3 Can. Cr. Cas. 139.] R. v. Holyoke; Ex parte McIntyre, 21 Can. Cr. Cas. 422, 13 D.L.R. 225.

DEFAULT OF APPEARANCE; SUMMONS IRREGULAR; SIGNATURE.

A summary conviction made on default of defendant's appearance to an alleged copy of summons served upon him may be set aside if it be shown that the summons was not signed by the magistrate and that in consequence the defendant had not been legally cited to appear. Lamontagne v. Lanctot, 25 Can. Cr. Cas. 449.

ISSUING OF SUMMONS; WAIVER OF DEFECTS; APPEARANCE.

The justice before whom an information for common assault is laid may be satisfied by the information itself that there is sufficient ground to issue a summons without any preliminary examination under oath, either of the complainant or of his witnesses; his failure to examine the complainant under oath does not deprive him of the jurisdiction to make a summary conviction. [Cr. Code, sec. 655, as amended 1909 and 1913, considered; and see R. v. Neilson, 17 Can. Cr Cas. 298; Ex parte Archambault, 16 Can. Cr. Cas. 433, R. v. Mitchell, 19 Can. Cr. Cas. 113, 24 O.L.R. 324.] By appearing without objection to a summons for common assault requiring defendant to appear for trial before a justice, the defendant waives any defect which may have occurred in the procedure leading up to the issuing of the summons. [Ex parte Dolan, 41 N.B.R. 95, followed.] Ex parte Kane, 26 Can. Cr. Cas. 156, 27 D.L.R. 494.

SUMMARY CONVICTION; SUMMONS ON UNSWORN INFORMATION; WAIVER OF DEFECTS.

The duty of the justice on being applied to for a summons in a summary proceeding is to satisfy himself that there is sufficient cause for his interference by summons; he may be satisfied with the information or complainant alone although not sworn, but, if not, he may take the evidence under oath of any witness in support of the information. The defendant's appearance by counsel in answer to a summons in a summary proceeding under Part XV. of the Code is equivalent to his personal appearance, and the plea of not guilty entered by counsel for defendant in the latter's absence without objection to an alleged irregularity in the information and proceedings upon which the summons was founded, is a waiver of the irregularity and a submission to the jurisdiction of the justice. [Dixon v. Wells, 25 Q.B.D. 249, and R. v. Thompson (1909) 2 K.B. 614, applied.] Ex parte Dolan; R. v. Kay, 26 Can. Cr. Cas. 171.

SUNDAY.

See also Municipal by-law; Constitutional Law.

Provincial criminal law before confederation of the provinces; Ultra vires amendments. 1 Can. Cr. Cas. 424.

Reasonableness of by-law. 1 Can. Cr. Cas. 91.

Ontario Lord's Day Act, R.S.O. 1897, ch. 246, ultra vires. 7 Can. Cr. Cas. 326.

Note on Sunday Observance laws in Ontario. 7 Can. Cr. Cas. 332.

Provincial laws as to; Application to local railways; Statute of 1904. 8 Can. Cr. Cas. Cas. 516.

By-law requiring pool rooms to be closed on Sundays; Powers of Provincial Legislatures. 9 Can. Cr. Cas. 453.

Ice cream dealers and the Sunday laws; 10 Can. Cr. Cas. 18.

PROHIBITING WORK, SPORT AND ENTERTAINMENT; CONSTITUTIONALITY OF STATUTE.

The statute 54 and 55 Vict. ch. 25, sec. 4, does not empower the Governor-General-in-Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a province might enact in the future. Sedgwick, J., dissenting. The said section provides that the Governor-in-Council may refer important questions of law or fact touching specified subjects "or touching any other matter with reference to which he sees fit to exercise this power":—Held, Sedgwick, J., contra, that such "other matter" must be ejusdem generis with the subjects specified. Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada. [Attorney-General for Ontario v. Hamilton Street Railway Co., (1903) A.C. 524, followed.] Re Sunday Observance Laws, 35 Can. S.C.R. 581.

SALE OF LIQUOR ON SUNDAY; OMISSION THAT SALE NOT FOR MEDICINAL PURPOSES; QUALIFICATION OF MAGISTRATE.

A conviction for selling liquor on a Sunday, in contravention of 32 Vict. ch. 32, sec. 23 (Ont.), omitted to state that the liquor was not supplied upon a requisiton for medicinal purposes:—Held, bad, and the conviction was quashed. The only evidence offered in proof of the magistrate, before whom the recognizance in this case had been taken, not being properly qualified, was 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:—Held, insufficient. Regina v. White (1871), 21 U.C.C.P. 354.

MAKING AND HAULING HAY; INDICTMENT NOT NEGATIVING THE EXCEPTION.

Defendant was convicted under 8 Vict. ch. 45, "for that he, Jacob Hespeler, of the village of Preston, Esquire, did, on Sunday, the 26th day of July last past, at the township of Waterloo, work at his ordinary calling, inasmuch as he and his men did make and haul in hay on said day." He appealed to the Quarter Sessions, where the question was tried before a jury, and the conviction affirmed. The proceedings having been removed by certiorari to this Court:—Held, (1) That the statute 13 and 14 Vict. ch. 45, extended to this case, and authorized the trial by jury, though in 8 Vict. ch. 45, there is a provision for appeal to the Sessions, but not for such trial. (2) That a certiorari would lie, not to examine

the finding of the jury on the facts, but to determine whether the justices had exceeded their jurisdiction. (3) That the conviction must be quashed, as not shewing any offence within the statute, for defendant was not alleged to be of nor to have worked at any particular calling. Semble, that it was also bad, for not negativing the exception in the statute, by stating that the work done was not one of necessity. Hespeler v. Shaw (1858), 16 U.C.Q.B. 104.

BY-LAW; REASONABLENESS.

A municipal by-law as to Sunday observance which exceeds in its prohibition the terms of the provincial law by including classes of persons not included by the latter is too wide in its scope, and is void for unreasonableness. R. v. Petersky, 1 Can. Cr. Cas. 91.

CAB-DRIVING.

(1) Cab-driving on Sunday is not an offence by the cab-driver under the Lord's Day Act of Ontario (R.S.O. 1897, ch. 246; R.S.O. 1887, ch. 203). (2) A conviction for doing wordly labour on Sunday contrary to the Lord's Day Act (Ont.) is void for uncertainty unless the acts constituting the offence are specified. R. v. Somers, 1 Can. Cr. Cas. 46.

[Followed in Attorney-General v. Hamilton St. Ry. Co. 27 O.R. 49; referred to in Beauchesene v. Scotstown, 16 Que. S.C. 324; R. v. Albertie, 3 Can. Cr. Cas. 362.]

SALE OF ICE CREAM; VICTUALLING HOUSE.

(1) The business of keeping a victualling house may be lawfully carried on on Sunday as a "work of necessity" within the exception contained in the Lord's Day Act of Ontario, and the keeper may supply any article which may fairly be considered food or victuals. (2) Ice cream is a food, and the keeper of a victualling house may lawfully sell the same to his customers on Sunday, whether or not other foods are supplied therewith. (3) The Lord's Day Act of Ontario is to be construed as in pari materia with the English statute, 29 Car. ch. 7, at one time in force in Ontario. R. v. Albertie, 3 Can. Cr. Cas. 356.

[Considered in R. v. Weatheral, 18 Can. Cr. Cas. 376; referred to in R. v. Sabine, 8 Can. Cr. Cas. 72; R. v. Stinson, 10 Can. Cr. Cas. 16.]

FINDING ON QUESTION OF FACT.

The magistrate's finding in a summary conviction upon a question of fact within his jurisdiction will not be reviewed upon certiorari, and the same can be attacked only by way of appeal from the conviction. R. v. Urquhart, 4 Can. Cr. Cas. 256.

"KEEPING OPEN" OF BARBER SHOP.

A conviction for "keeping a barber shop open" on Sunday, contrary to a municipal by-law, cannot be supported upon the mere admission of the accused, when called upon to plead, that he had shaved customers in his shop on the day named. Semble, a barber who exercises his trade at his shop with the doors barred cannot be said to be "keeping open." Re Lambert, 4 Can. Cr. Cas. 533.

SELLING CIGARS ON SUNDAY.

The selling of cigars on Sunday may be prohibited either directly by a Provincial Legislature or by municipal by-law authorized by such Legislature; and in either case such restriction is of a merely local nature; and is to be classed as a police or municipal regulation and not as a matter essentially appertaining to the "criminal law," and so within the sole competence of the Parliament of Canada. The New Brunswick statute to prevent the profanation of the Lord's Day, 62 Vict. ch. 11, is intra vires of the Provincial Legislature. Re Greene, 4 Can. Cr. Cas. 182.

[Referred to in R. v. Weatheral, 18 Can. Cr. Cas. 376; but see now the Lord's Day Act of Canada, 1906.]

MUNICIPAL BY-LAW AGAINST SUNDAY TRADING; TRIFLING SALE; REVIEW OF UNREASONABLY LARGE FINE.

Where an unreasonably large fine has been imposed by a magistrate under a municipal by-law for a trifling offence thereunder, the Court having jurisdiction to retry the case on appeal may set aside the conviction and reconvict with a lesser penalty. Sing Kee v. Johnston, 5 Can. Cr. Cas. 454.

MONTREAL CITY BY-LAW AS TO PETTY TRADING; SALE OF CIGARS AND CONFECTIONERY.

Montreal city by-law No. 281, permitting the sale on Sunday of "fruits, cigars, confectionery and temperance beverages" by all persons who sell all these things and are not engaged in trade, is invalid as arbitrary and unjust because it does not authorize the sale of tobacco as well as cigars, and because it does not extend to all persons who are engaged in the same business. City of Montreal v. Fortier, 6 Can. Cr. Cas. 340.

FARMER BUILDING FENCES ON HIS FARM.

A farmer who builds fences on his farm on a Sunday does not thereby infringe the Lord's Day Ordinance (N.W.T.), such employment not being ejusdem generis with that of a mechanic, workman or labourer. The King v. Hamren, 7 Can. Cr. Cas. 188.

ICE CREAM SALES NOT PRIVILEGED BECAUSE OF VICTUALLING HOUSE LICENSE; ORDINARY CALLING; WORK OF NECESSITY.

A confectioner whose business does not in fact include the supplying of meals will not, by taking out a municipal victualling house license, become privileged to sell ice cream preparations on Sunday, although a

similar sale by a person actually conducting a victualling house would be exempt under the Sunday observance statutes. The King v. Sabine, 8 Can. Cr. Cas. 70.

[Followed in R. v. Stinson, 10 Can. Cr. Cas. 17; referred to in R. v. Weatheral, 18 Can. Cr. Cas. 376.]

SALE OF ICE CREAM ON SUNDAY; VICTUALLING HOUSE ALONE EXEMPT UNDER THE LORD'S DAY ACT; WORK OF NECESSITY.

(1) The sale of ice cream to the public on Sunday by a dealer who is not the keeper of a victualling or eating house, is an offence in Ontario under the Lord's Day Act, C.S.U.C. 1859, ch. 104. (2) The sale of ice cream is not an offence under the Lord's Day Act (Ont.) where supplied in the bona fide exercise of the business of keeping an eating house. The King v. Stinson, 10 Can. Cr. Cas. 16.

[Adopted in R. v. Weatheral, 18 Can. Cr. Cas. 376.]

SUNDAY OBSERVANCE; SALE OF NEWSPAPERS.

(1) A newsdealer who sells newspapers on Sunday is liable to fine as for an infraction of the Ontario Lord's Day Act, C.S.U.C. ch. 104. (2) A newsdealer is a "tradesman" within the meaning of that statute. The King v. Anderson, 10 Can. Cr. Cas. 144.

KEEPING AMUSEMENT HALL OPEN FOR GAIN; "MOVING PICTURE" SHOW; PURSUING BUSINESS OR CALLING; LORD'S DAY ACT, R.S.C. 1906, CH. 153; OFFENCE UNDER BOTH DOMINION AND PROVINCIAL STATUTES; APPEAL FROM SUMMARY CONVICTION; SUNDAY OBSERVANCE ACT (QUE.), 7 EDW. VII. CH. 42; CR. CODE (1906) SEC. 706.

(1) The proprietor of a moving picture show who keeps his amusement hall open on Sundays as on week days and charges an admission fee, thereby pursues his business or calling for gain on Sunday in contravention of the Quebec Sunday Observance Act (1907) sec. 2. (2) Code, sec. 706 combined with sec. 16 of the Lord's Day Act (Canada) which enacts that, if an offence thereunder is also an offence under a provincial law, the prosecution may be under either statute, has the effect of conferring the right of appeal under Part XV. of the Criminal Code, to a defendant convicted under the Sunday Observance Act (Quebec) of an offence thereunder which might have been charged as an offence under the Dominion Act. (3) Sec. 4 of the Quebec Sunday Observance Act which enacts that fines for its violation may be recovered before certain magistrates or two justices of the peace "under the provisions of Part XV. of the Criminal Code," has not the effect of embodying the appeal provisions of Part XV. in the provincial statute. The King v. Ouimet, 14 Can. Cr. Cas. 136.

KEEPING STORE OPEN ON SUNDAY; CONSTITUTIONALITY OF QUEBEC SUNDAY OBSERVANCE ACT.

(1) The Quebec Sunday Observance Act, 7 Edw. VII. ch. 42, is not in conflict with the Dominion Lord's Day Act, R.S.C. 1906, ch. 153; and, being recognized as valid by the Dominion statute, the provincial statute is not subject to objection on the ground that it is ultra vires. (2) The prosecutor instituting summary proceedings under the Quebec Sunday Observance Act must under the provincial law be a British subject but no allegation to that effect need be made in the information if the fact is proved at the trial. The King v. Panos (No. 1), 14 Can. Cr. Cas. 291.

[Affirmed in 14 Can. Cr. Cas. 408.]

"MOVING PICTURE" SHOW; PURSUING BUSINESS OR CALLING.

(1) In construing penal statutes of the Province of Quebec which are enacted concurrently in both the English and French languages, that version is to be taken which is most favourable to the accused. (2) By carrying on a "moving picture" show on Sunday at which an admission fee is charged, the proprietor thereof does not violate the Quebec Sunday Observance Act prohibiting the pursuit of any business or calling (exercer aucun négoce métier) as the corresponding words of the French version of the statute are restricted to the sale of goods, mercantile affairs and the manual occupations. (3) An exhibition of "moving pictures" showing events in the life of Napoleon Buonaparte without verbal explanation or musical accompaniment, is not a theatrical performance, within the prohibition of that statute. The King v. Charron, 15 Can. Cr. Cas. 241.

MUNICIPAL BY-LAWS; LEGISLATIVE AUTHORITY.

(1) A municipal by-law of the city of Quebec which orders the closing, on Sunday, of theatres and moving pictures shows, under penalty, is valid under the peace, order and good government clause of the city charter granted by the late Province of Canada before Confederation, and which is still in force. (2) Such charter and the municipal by-laws thereby authorized are a part of the provincial law within the saving clause (sec. 16) of the Federal statute, the Lord's Day Act, and are not repealed or varied by the latter statute. Tremblay v. City of Quebec (No. 2), 16 Can. Cr. Cas. 487.

EXCEPTION OF SUNDAY SALES BY CERTAIN RETAILERS AS SPECIFIED IN MONTREAL BY-LAW.

(1) The Sunday observance law in force in the Province of Quebec at Confederation, C.S.L.C. ch. 23, is still in force in that province not only because the Dominion

Parliament has sole legislative power to modify or repeal it but because it is specially continued in force by the Lord's Day Act of Canada, R.S.C. (1906) ch. 153. (2) Sec. 5 of the Lord's Day Act (Canada), whereby its prohibition of Sunday business is made subject to the exceptions provided in that Act or in any provincial Act or law "now or hereafter in force" does not have the effect of validating a provincial statute or by-law relating to Sunday observance which was void ab initio because it was ultra vires. (3) A by-law under the Montreal Charter, 62 Viet. (Que.) ch. 58, purporting to authorize certain Sunday sales by traders is ultra vires in so far as it is in conflict with the terms of ch. 23 of the Consolidated Statutes of Lower Canada and of the Lord's Day Act (Canada). Kennedy v. Kokoliades, 17 Can. Cr. Cas. 4.

[Reversed in 18 Can. Cr. Cas. 495.]

GAMBLING; PLAYING CARDS.

The unrepealed Lord's Day Act, C.S.U.C., ch. 104, sec. 3, in force in Ontario, makes it a criminal offence to be engaged in playing cards for money in a private place, on a Sunday. The King v. Quick, 17 Can. Cr. Cas. 61.

DRUGGIST SELLING TOBACCO AND CIGARS; SALE AS A DRUG.

(1) Tobacco is a drug within the exception of sales of drugs for the relief of sickness and suffering, contained in the Lord's Day Act, R.S.C. 1906, ch. 153, sec. 12, and a druggist may legally sell cigars and tobacco on Sunday upon the assumption that they are required for such purposes. (2) The onus of shewing that the sale was for other than medicinal purposes is upon the prosecutor. The King v. Lee, 17 Can. Cr. Cas. 190.

[But see R. v. Wells, 18 Can. Cr. Cas. 377.]

SALES OF FRUITS, CIGARS, ETC., BY RETAIL ON SUNDAY.

(1) The Montreal Charter (1899), authorizing the city council to pass by-laws concerning the Sunday sales of fruit, confectionery, cigars, and temperance beverages has the effect of amending as to the city of Montreal the provincial statute regarding Sunday observance C.S.L.C. sec. 3498 (now sec. 4462 Con. Statutes of Quebec (1909)), and that portion of the Montreal by-law which permits such sales by retail where the dealer carries on trade in all of such articles is not ultra vires on the ground of dealing with a matter of criminal law, (2) The Quebec Sunday Observance Statute, C.S.L.C. 1888, sec. 3498 (now C.S. Que. (1909), sec. 4462) which is applicable only to shop-keepers and keepers of public houses is one of local municipal regulation and is not ultra vires as dealing with a matter of criminal law. [Attorney-General (Ont.) v. Hamilton Street Railway Co., [1903] A.C. 524, distinguished.] Kennedy v. Couillard, 17 Can. Cr. Cas. 239.

EXCEPTION OF SUNDAY SALES BY CERTAIN RETAILERS, AS SPECIFIED IN MONTREAL BY-LAW.

Whether or not a by-law under the Montreal Charter, passed by the Quebec Legislature, purporting to authorize certain Sunday sales by traders is ultra vires as dealing with a question of criminal law, the provincial statute is a protection to those who exercise the privileges or exemptions, which it purports to confer; and until such statute has been declared invalid by a Court of superior jurisdiction after due notice to the Attorney-General, a police magistrate's summary conviction, based upon his finding that such provincial legislation was ultra vires, will be quashed. Where the by-law passed in conformity with a provincial statute purports to authorize certain Sunday sales of fruit and temperance beverages, the provincial statute operates as a de facto authority, which constitutes a good defence to a penal prosecution in respect of acts which such legislation purports to authorize, committed prior to the legislation being so declared ultra vires. Kokoliades v. Kennedy, 18 Can. Cr. Cas. 495, reversing 17 Can. Cr. Cas. 4.

SELLING REAL ESTATE.

An agreement for the sale of land made on Sunday in British Columbia is illegal, as contravening sec. 5 of the Lord's Day Act (Can.). [Lord's Day Act, R.S.C. 1906, ch. 153, sec. 5, applied; Sunday Observance Act R.S.B.C. 1911, c. 219, applying only to former separate colony of B. C. and re-enacting certain Imperial Acts, considered.] Simpson v. Proestler, 21 Can. Cr. Cas. 415, 13 D.L.R. 191. See also 11 D.L.R. 145.

TRADESMEN SELLING WARES.

Whether by the operation of sec. 5 of the Lord's Day Act, R.S.C. 1906, ch. 153, or of the British Columbia Sunday Observance Act, R.S.B.C. 1911, ch. 219, or of the Imperial Acts introduced prior to Confederation, it is unlawful in British Columbia for a tradesman to publicly sell his wares on a Sunday. R. v. Laity, 21 Can. Cr. Cas. 417, 13 D.L.R. 532.

THEATRICAL PERFORMANCE; ADMISSIONS; CONTRIBUTIONS.

Where tickets of admission were not sold on Sunday to a moving picture show, nor an admission fee charged, nor any person requested to pay one, but a plate, near which an employee of the theatre was stationed, was placed near the entrance, and on which any person who desired to do so might place contributions, the performance was not one "at which any fee is charged directly or indirectly" in violation of sec. 7 of the Lord's Day Act, R.S.C. 1906, ch. 153. (Per Beck, Simmons, and Walsh,

JJ.) R. v. Thompson, 22 Can. Cr. Cas. 78, 14 D.L.R. 175.

SUNDAY LAWS; CONSTITUTIONALITY; DOMINION ACT; PROVINCIAL POWER.

The Lord's Day Act, R.S.C. 1906, ch. 153, by the proviso in sec. 5, enables a province to reduce the scope or mitigate the severity of the general prohibition in respect of the topics mentioned therein, but does not clothe the province with power, either itself to deal generally with the matter of Sunday observance, or to confer such powers on municipalities so as to enlarge the scope of the Dominion Act; and a conviction under a municipal by-law so framed under the Municipal Act, R.S.B.C. 1911, ch. 170, cannot be sustained. R. v. Waldon, 22 Can. Cr. Cas. 405, 18 D.L.R. 109, affirming 22 Can. Cr. Cas. 122, 14 D.L.R. 893.

CARRYING ON BUSINESS; HOTEL CIGAR STAND.

The sale of cigars in a hotel on Sunday, otherwise than in connection with and as an incident to a meal is contrary to the provisions of the Lord's Day Act, R.S.C. 1906, ch. 153; but an hotel steward taking no part in the running of the cigar stand is improperly convicted, under sec. 5, of carrying on his "ordinary calling" in respect of Sunday sales there made, although he might be liable had the charge been under sec. 14 if he were the employer of the cigar stand attendant, and had authorized and directed that the stand should be open on Sunday. R. v. Walsh and Crane, 22 Can. Cr. Cas. 144.

RESTAURANT; SALE OF ICE CREAM.

A restaurant-keeper duly licensed may legally sell ice cream on Sunday to be consumed in the restaurant and not sold to be taken away. R. v. Brooker, 22 Can. Cr. Cas. 146.

SPORTS AND AMUSEMENTS; SKATING RINK; FRANCHISE TO CLUB; QUEBEC STATUTE.

As section 16 of the Lord's Day Act, R.S.C. 1906, ch. 153, preserves in any province the provisions of any Act or law already in force there, an athletic institution which has acquired the rights and franchises granted by statute of the province of Quebec to an athletic club prior to the federal "Lord's Day Act" including by implication the right to keep its skating rink open on Sunday, has the right to maintain and operate a public skating rink on Sunday if permitted to do so under municipal by-laws and ordinances. R. v. The Stadium, 23 Can. Cr. Cas. 84, 18 D.L.R. 85.

SUNDAY NEWSPAPER; "PERSON"; CORPORATION.

An incorporated company is within the term "person" under the Interpretation Act, C.S.U.C., as regards liability in Ontario under the Lord's Day Act, C.S.U.C., ch. 104, for carrying on the business of a merchant on a Sunday by issuing and selling on that day for purposes of gain an edition of a newspaper, the publishing of which on other days was the company's ordinary business; it is not within the exception made by the statute as to works of necessity. R. v. World Newspaper Co., 24 Can. Cr. Cas. 145.

SALE OF FRUITS AND CIGARS; PROVINCIAL AND FEDERAL LAW.

Section 4466, R.S. Que. 1909, preserves, subject to the restrictions therein mentioned, all such liberties as are recognized by the customs of the Province of Quebec as to Sunday trading, and on a prosecution in that province under the Lord's Day Act, R.S.C. 1906, ch. 153, for selling by retail fruits and tobacco on a Sunday at a place where there is no municipal by-law prohibiting such sales, it may be shewn by parol evidence in defence of the charge that such sales, of which there is no express prohibition in either federal or provincial Acts, are customary in the Province of Quebec and therefore lawful under the exception contained in the Federal Act of matters provided "in any provincial Act or law;" (R.S.C. 1906, ch. 153, sec. 5.) [Kennedy v. Couillard, 17 Can. Cr. Cas. 239, referred to.] Dupuis v. Blouin, 24 Can. Cr. Cas. 441, 26 D.L.R. 127.

CONSTITUTIONAL LAW; MUNICIPAL BY-LAW; MONTREAL CHARTER.

The special powers conferred upon the City of Montreal in 1860, by the legislature of the Province of Canada, 23 Vict., ch. 72, to pass by-laws "for the better observance of the Sabbath," not having been repealed by Dominion legislation since Confederation, and having been continued in the Montreal Charter, article 390, pars. 75 and 76, the by-law of that city prohibiting a tradesman from selling goods on Sunday is not ultra vires, such by-law being a mere continuation of the by-law passed by the city in 1865, prior to the British North America Act; and a grocer who kept his store open on Sunday and sold a pound of sugar is properly convicted under that by-law. Re Sunday legislation, 35 Can. S.C.R. 581 and Guimet v. Bazin, 20 Can. Cr. Cas. 458, 3 D.L.R. 593, 46 Can. S.C.R. 502, referred to.] Bischinski v. City of Montreal, 25 Can. Cr. Cas. 254, 28 D.L.R. 381.

SALE OF FRUIT; NECESSITY.

A sale of fruit on Sunday by a merchant from his store is contrary both to the statute 29 Car. II. ch. 27 and to the Lord's Day Act, R.S.C. 1906, ch. 153 and a conviction for such offence under the latter Act will be sustained although not brought within the limitation of ten days provided by the statute of Charles II. The sale of fruit from a store and not from an eating or victualling house is not within the exemptions of the statute 29 Car. II. ch. 27, nor is it exempt as a work "of necessity or

mercy" under sec. 12 of R.S.C. 1906, ch. 153. [Slater v. Evans, (1916) 2 K.B. 403, referred to.] R. v. Dimond, 27 Can. Cr. Cas. 28, 31 D.L.R. 556.

WORK OF NECESSITY; PAPER MILL.

The operation of a paper mill is not a "work of necessity or mercy" permitted to be carried on continuously without closing down over Sunday under the Lord's Day Act, R.S.C. 1906, ch. 153, sec. 12. R. v. Donnacona Paper Co., 28 Can. Cr. Cas. 13, 35 D.L.R. 189.

WORK OF NECESSITY; PULP AND PAPER MILL; LIMITED WATER POWER.

The employment of a limited number of men in work on Sunday in a combined pulp and paper mill is permissible as a "work of necessity" within sec. 12 of the Lord's Day Act, R.S.C. 1906, ch. 153, during that part of the season when the water is high and it is commercially necessary to keep the water power going in the pulp mill to manufacture the pulp supply for the paper mill during the remainder of the year, and where the resultant clogging of the liquid pulp on its way to the paper mill, in case of the latter being entirely shut down, would mean a serious injury to the product. R. v. News Pulp & Paper Co., 28 Can. Cr. Cas. 77.

SALE OF CIGARS AND NONINTOXICATING DRINKS; QUEBEC LAW.

In the Province of Quebec sales on Sunday of fruit, sweets, cigars and nonintoxicating liquors to be consumed upon the premises are permissible, notwithstanding the Sunday Observance Act, R.S.Q. 1909, art. 4462 et seq., and the Lord's Day Act, R.S.C. 1906, ch. 153, s. 16. Spiliotopulos v. The King, 36 Can. Cr. Cas. 123.

SURETIES.

See Bail; Estreat; Keeping the peace.

SUSPENDED SENTENCE.

Release on suspended sentence; Cr. Code, sec. 971. 6 Can. Cr. Cas. 226; 10 Can. Cr. Cas. 9.

RELEASE ON SUSPENDED SENTENCE; PROCEDURE TO BRING OFFENDER UP FOR SENTENCE.

(1) Where after a summary trial the accused is convicted but is released on suspended sentence and a recognizance is taken binding the accused to keep the peace and be of good behavior (Code, sec. 971), the magistrate has no jurisdiction to impose sentence without an information under oath charging a breach of the recognizance (Code, sec. 973). (2) Where such release on suspended sentence was in respect of a conviction for keeping a disorderly house, the fact that the accused had again been brought before the same magistrate on a similar charge which, however, was not substantiated, does not give the magistrate jurisdiction to impose the sentence which had been suspended in respect of the first charge. (3) Semble, a procedure under sec. 973 to bring up for sentence an accused person who had been released on suspended sentence, can only be taken at the instance of the Crown. The King v. Siteman, 6 Can. Cr. Cas. 224.

SUMMARY TRIAL; POWER TO RELEASE ON SUSPENDED SENTENCE; AWARD OF COSTS AGAINST ACCUSED.

(1) If no previous conviction is proved against the accused upon a summary trial for an indictable offence, and the magistrate's power to award imprisonment is limited to a term of less than two years, such magistrate may upon conviction release the accused upon suspended sentence. (2) Where the person convicted upon a summary trial is released upon suspended sentence and is directed to pay the informant's costs, such costs are payable forthwith unless otherwise ordered. The King v. McLellan (No. 1), 10 Can. Cr. Cas. 1.

RELEASE ON SUSPENDED SENTENCE; PREVIOUS CONVICTION.

The proper time for taking evidence of a previous conviction to exclude a magistrate's jurisdiction to release on suspended sentence is after the finding of guilty on the present charge and not during the hearing of the charge. The King v. Bonnevie, 10 Can. Cr. Cas. 376.

DISCRETIONARY ORDER; CONVICTION ON INDICTMENT; SUSPENSION OF SENTENCE WITH CONCURRENCE OF CROWN COUNSEL.

(1) A convicted person, against whom there is no previous conviction, may be released with the consent of the Crown upon suspended sentence under Code, sec. 1081, although the offence is punishable with more than two years' imprisonment, notwithstanding that the offence may not be of a trivial nature. (2) Such of the circumstances mentioned in Code, sec. 1081, as are disclosed, are to be considered together in exercising the discretion given to the trial Judge to release on suspended sentence. (3) Quære, whether a private prosecutor has any status to appeal against a suspension of sentence in which the Crown has concurred. (4) The suspension of sentence is a discretionary order and ordinarily will not be interfered with unless there has been a violation of a legal principle. (Per Graham, E.J.) The King v. Pettipas (No.2), 18 Can. Cr. Cas. 74.

TAMPERING WITH WITNESS.

See Witness.

TELEGRAM.

See Forgery.

TERRITORIAL JURISDICTION.

See Jurisdiction.

THEATERS.

THEATRES OPERATING WITHOUT MOVING PICTURE LICENSE; QUEBEC STATUTE.

The intention of the 1913 statute, 3 Geo. V. (Que.) ch. 36 (R.S.Q. 1301d) is to impose a provincial license fee on moving picture halls but not on theatres proper, and where the place in question has the appointments of a theatre and holds a municipal license as such, and at each public performance a number of performers or actors appear, it is not subject to the provincial tax merely by reason of the display of moving pictures to make up nearly half of each performance. Boisseau v. People's Amusement Co., Boisseau v. Scala Amusement Co., 22 Can. Cr Cas. 31.

STATUTORY REGULATIONS; AISLES AND PASSAGEWAYS.

Clauses 39 of the regulations under the Theatres Act, Alta, is ineffective to support a conviction thereunder because it fails to state who shall be responsible that its terms shall be observed and whether the owner, the occupant, or other person connected with a moving-picture theatre, shall be responsible for seeing that the halls and passageways are kept unobstructed. Clause 39 of the statutory regulations made under the Theatres Act, Alta, requiring free and unobstructed passageways and forbidding that the public be allowed to stand in any aisle or approach thereto or at any place where it would hinder the entrance or egress of the public from the theatre, is not intended to prevent persons who have bought tickets at a moving-picture theatre holding a continuous performance from standing in the lobby between the box-office and the auditorium entrance while waiting for seating space in the theatre, if there is a separated space kept clear for exit from the theatre. R. v. Hazza, 25 Can. Cr. Cas. 306, 28 D.L.R. 373.

LICENSE; POWERS OF MUNICIPALITY; AMOUNT.

The corporate powers of a municipality, under sec. 64 (24) of the Towns Incorporation Act (C.S.N.B., ch. 166), to license and regulate all theatres, is subject to the limitation of sec. 3 of ch. 168, that the license fee on "public places of amusement" shall not exceed $50; a by-law imposing on moving picture shows an annual license fee of $300 is ultra vires and void. R. v. Dimack, 26 Can. Cr. Cas. 311, 30 D.L.R. 217.

THEFT.

Demand with menaces, and with intent to steal. 1 Can. Cr. Cas. 340, 350.

Recent possession as evidence of stealing. 2 Can. Cr Cas. 291, 295.

Assisting to conceal stolen property; "Aiding and abetting;" Continuation of a completed crime. 2 Can. Cr. Cas. 357.

Of things under seizure. 3 Can. Cr. Cas. 570.

Stealing domestic animals. 3 Can. Cr. Cas. 571.

Summary trial of. 3 Can. Cr. Cas. 591.

Summary trial of theft and kindred offences. 4 Can. Cr. Cas. 168.

Note on fraudulent conversion by clerks, servants or agents; Distinction between "servant" and agent." 5 Can. Cr. Cas. 80.

Receiver controverting guilt of principal. 5 Can. Cr. Cas. 269.

Of cattle; Evidence of ownership; Cattle brands. 5 Can. Cr. Cas. 475.

Giving a reasonable account of possession. 6 Can. Cr. Cas. 153.

Summary trials for theft. 6 Can. Cr. Cas. 266.

Summary trial for theft: Cr. Code, secs. 783, 785, 787. 6 Can. Cr. Cas. 401.

By agent; Fraudulent conversion; Terms requiring an accounting. 7 Can. Cr. Cas. 116.

Conversion of lost chattel by finder. 7 Can. Cr. Cas. 177.

Theft by agent; Misappropriation of proceeds of sale; Denial of agency and claim of ownership by accused; Evidence of intoxication of accused adduced for the prosecution. 8 Can. Cr. Cas. 143.

Summary trial for theft under $10. 9 Can. Cr. Cas. 370.

EMBEZZLEMENT; MISAPPROPRIATION BY TRUSTEE OF CORPORATE FUNDS; SUFFICIENCY OF INFORMATION.

The information charged that the prisoner at a named time and place "being a trustee of a sum of money . . . the property of the C.B. of C. (a corporate body) for the use of the said C.B. of C., did unlawfully and with intent to defraud, convert and appropriate the same to his own use, contrary to the statute in that behalf":—Held, that the prisoner was by this information charged with a criminal offence under the Larceny Act, R.S.C. ch. 164. R. v. Cox (1888), 16 O.R. 228.

EMBEZZLEMENT; MISAPPROPRIATION OF OTHER PERSON'S MONEY BY AGENT OF CARRIER; IMPROPER SUBMISSION OF CASE TO JURY.

Upon an indictment for stealing money, the property of certain persons (composing the firm of the American Express Company), it appeared in evidence that the agent of the express company in St. M.

delivered two parcels containing $888.22, which had been sent by one K., addressed to E. & S. at St. Mary's, to the prisoner to deliver, and that he appropriated them to his own use. On the trial in the County Court the counsel for the Crown asked the agent of the company when their (the company's) liability ceased, which was objected to by the prisoner's counsel. Upon an appeal to this Court:—Held, that the enquiry aimed at was material to shew how far the company had undertaken to deliver and therefore when their duty as carriers ceased, but that the question as put was objectionable. That it was a question for the jury to say whether the contract of the company was to deliver to E. & S., and the property in the money was therefore properly laid in the indictment. That as the undertaking was to deliver the money to E. & S. the prisoner was the agent of the company for that purpose. That money is property, of which a person can be a bailee so as to make him guilty of felony, if he appropriates it to his own use. The case not having been properly submitted to the jury on these points, a new trial was ordered in the Court below. The Queen v. William Massey (1863), 13 U.C.C.P. 484.

FRAUDULENT CONVERSION OF NEGOTIABLE SECURITIES BY TRUSTEE; LETTER SHEWING TRUST; IDENTITY OF INSTRUMENTS PRODUCED WITH THOSE MENTIONED IN LETTER; CONVERSION OF PROCEEDS OF SECURITIES.

The defendant was indicted and convicted under the Larceny Act, R.S.C. ch. 164, sec. 65, for that he, being a trustee of two negotiable securities for the payment of $5,250 each, the property of the C. bank, for the use and benefit of the C. bank, unlawfully and with intent to defraud, did convert and appropriate the two negotiable securities to the use and benefit of him, the defendant, etc. At the trial the following letter, written and signed by the defendant, dated 6th November, 1885, was produced: "I have this day been entrusted by A. (the cashier of the C. bank) with two notes of $5,250 each, for the specific purpose of paying two notes for $5,000 that are due in Montreal on 8th November, 1885, and my failing this shall consider myself committing criminal offence and amenable to the criminal law." The securities produced at the trial as those converted by the defendant were two drafts, not promissory notes, for $5,250 each, dated 7th November, 1885; and two drafts for $5,000 each were also produced answering the description of the notes for that amount mentioned in the letter, except that they were not actually notes, and were due at Toronto on the 9th November instead of at Montreal on the 8th. It was shewn, however, that they were held by a person in Montreal. It also appeared in evidence that the defendant procured one B. to discount the two drafts for $5,250 each, B. retaining $1,000 for an old debt, and paying part of the balance of the proceeds to the defendant in diamonds. The defendant did not take up the two $5,000 drafts and retained the proceeds of the two new drafts. The drafts were indentified by witnesses as to dates, amounts, etc., and entries in the defendant's memorandum book, also produced, shewed the nature of the transactions with the cashier and B. The trial Judge stated a case for the opinion of the Court: Held, upon the evidence, that the drafts were the property of the bank and not of the cashier in his private capacity; and, upon the law and evidence, that the defendant was a trustee of the documents within the meaning of the statute; and that, notwithstanding the discrepancies as to the nature of the instruments, the due date, and place of payment, there was sufficient evidence to go to the jury of the identity of the drafts produced at the trial with the notes mentioned in the letter. It was contended that the defendant should have been indicted for converting the proceeds of the securities, inasmuch as the securities were entrusted to the defendant for a purpose which rendered necessary the conversion of the securities themselves:—Held, that the nature of the transaction with B. shewed an appropriation by the defendant of the securities themselves to his own use; and per Falconbridge, J.:—Even if it had been otherwise, the definition of property in sub-sec. (e) of sec. 2, of R.S.C. ch. 164, shewed the sufficiency of the indictment. It was objected that no proof was given at the trial that the sanction of the Attorney-General, required by R.S.C. ch. 164, sec. 65, sub-sec. 2, had been given:—Held, that this objection was not open to the Court upon a case reserved, not being a question that could properly arise at the trial. [Knowlden v. The Queen, 5 B. & S. 532, followed.] Reg. v. Barnett (1889), 17 O.R. 649.

POWER OF ATTORNEY TO SELL PROPERTY.

Indictment under 32 and 33 Vict. ch. 21, sec. 78, which is as follows:—"Whosoever, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property, fraudulently sells or transfers, or otherwise converts the same or any part thereof to his own use or benefit, or to the use or benefit of any person other than the person by whom he was so entrusted, is guilty of a misdemeanour, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned":—Held, that the power of attorney, mentioned in sec. 78 of 32 and 33 Vict. ch. 21, must be a written power of attorney, and oral testimony of a verbal power of attorney will not bring the defendant's act

within the scope of that statute. Regina v. Choinard (1874), 4 Que. L.R. 220.

CONVICTION OF MINOR UNDER AGE OF SIXTEEN.

Defendant was convicted before the stipendiary magistrate of the city of Halifax of the offence of stealing the sum of $30 and was sentenced to be imprisoned for the term of three years in the Halifax Industrial School, a reformatory for boys of the Protestant faith. His discharge was sought upon habeas corpus on the grounds that the conviction did not shew that defendant was a Protestant or that he was under the age of sixteen years:—Held, dismissing the application, that neither the age nor the religion of the defendant had anything to do with the offence of which he was convicted and that it was not necessary that they should be stated in the conviction. The Code, sec. 820, provides that "the justices before whom any party is summarily convicted of any offence hereinbefore mentioned may cause the conviction to be drawn up in the form UU. in schedule 1 hereto or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes":—Held, that the intention no doubt was to dispense with recital and averments in the particulars mentioned, and that the words "shall be good and effectual to all intents and purposes" might be regarded as the equivalent of a legislative declaration that it should not be necessary to refer the conviction to the age of the party, or to the justice's opinion on that subject; held, that the power of determining the age or apparent age of the party before him was given exclusively to the justices, and following Rex v. Simpson, 1 Str. that it must be assumed that he exercised it. Queen v. Quinn (1900), 36 C.L.J. 644.

BAILEE ABSCONDING WITH MONEY IN HIS CUSTODY.

In an action against a carrier for non-delivery of a package of money, defendant pleaded not guilty. The plaintiffs' witness, their agent, proved that within a week after his delivering the parcel to defendant he found that he had absconded; that he then sued out an attachment against him as an absconding debtor; and that, as he believed, defendant was at the time of the trial in gaol, charged with stealing money:—Held, that this evidence sufficiently shewed a felony, as defendant upon it might, as a bailee, be properly convicted of larceny, under Consol Stat. C. ch. 92, sec. 55; and a nonsuit was ordered. Hagarty, J., dissenting. Livingstone et al. v. Massey, 23 U.C.Q.B. 156.

CONVICTION OF BOY OF PROTESTANT FAITH; IMPRISONMENT IN INDUSTRIAL SCHOOL.

The Criminal Code, sec. 10, enacts that every person charged with having committed any offence which is punishable as theft, and whose age, at the commission of the offence, does not, in the opinion of the justice, exceed sixteen, shall, upon conviction, be committed to the common gaol, or other place of confinement, there to be imprisoned for any term not exceeding three months. It is further enacted, that the justices before whom any party is summarily convicted, may cause the conviction to be drawn up in the form UU. in schedule 1, or in any other form to the same effect, "and the conviction shall be good and effectual to all intents and purposes." By the Dominion Acts of 1890, ch. 37, sec. 34, it was enacted that whenever any boy who is a Protestant, and a minor, apparently under the age of 16 years, is convicted in Nova Scotia of any offence for which, by law, he is liable for imprisonment, the Judge, etc., by whom he is so convicted, may sentence such boy to be detained in the Halifax Industrial School, for any term not exceeding five years, and not less than two years. Defendant was convicted in the Police Court of the city of Halifax, before the stipendiary magistrate for the city, for unlawfully entering a vessel lying at one of the wharves, and stealing therefrom a sum of money, the property of the master of the vessel, and for this offence it was adjudged that he be imprisoned in the Halifax Industrial School for the space of three years. Defendant's discharge was sought upon habeas corpus, on the grounds, (a) that the conviction and commitment did not shew that defendant was a Protestant, or (b) that he was under the age of sixteen years:—Held, dismissing the application, that it was not necessary, in the conviction, to refer to the age of the party or the opinion of the justice on that subject, the intention of the statute being, no doubt, to dispense with recitals or averments in the particulars mentioned. Held, also, that the power of determining the age, or apparent age, of the party before him, being given exclusively to the justice, it was only reasonbale to assume that the power so given had been followed. Held, also, that as the questions of the age of the party, and whether he was, or was not, a Protestant, could not, or need not, be enquired into on the trial of the offence, they would properly form a subject of enquiry on the part of the justice after the conviction and before sentence, and it would not, therefore, be necessary to refer to them in the conviction. The Queen v. Herbert Brine, 33 N.S.R. 43.

EMBEZZLEMENT; DEFICIENCY IN THE BOOKS OF A CLERK; SUFFICIENCY OF CHARGE; UNLAWFUL APPROPRIATION.

A clerk in a bank may be convicted of embezzlement, on proof of a general deficiency supported by evidence of unlawful appropriation, though no precise sum paid

by any particular person is proved to have been taken. Evidence of a general deficiency in the books of a clerk alone, will not support an indictment for larceny. Regina v. Glass (1877), 21 L.C. Jur. 245, 1 Mont. Leg. News 41; Ramsay's Cas. 186.

EMBEZZLEMENT; MONEY RECEIVED NOT AS SERVANT OR CLERK.

The prisoner, not having been in the employ of the prosecutor, was sent by him to one Milner with a horse, as to which Milner and the prosecutor, who owned the horse, had had some negotiations, with an order to Milner to give the bearer a cheque if the horse suited. On account of a difference as to the price the horse was not taken and the prisoner brought him back. Afterwards the prisoner, without any authority from the owner, took the horse to Milner and sold it as his own property, or professing to have the right to dispose of it, and received the money, giving a receipt in his own name:—Held, that a conviction for embezzlement could not be sustained, as the prisoner, when he received the money, did not receive it as a servant or clerk, but sold the horse as his own and received the money to his own use. The Queen v. Topple, 3 Rus. & Ches. (N.S.) 566.

EMBEZZLEMENT BY SCHOOL TRUSTEE.

A school trustee having money in his hands, not as secretary and treasurer of a board, or in any official capacity, cannot embezzle such money, his duty as trustee not requiring or authorizing him to receive. Ferris v. Irwin, 10 U.C.C.P. 116.

LARCENY; FALSE PRETENCES.

A defendant indicted for misdemeanour in obtaining money under false pretences cannot, under Consol. Stats. C., ch. 99, sec. 62, be found guilty of larceny. That clause only authorizes a conviction for the misdemeanour, though the facts proved amount to larceny. Where a defendant on such an indictment had been found guilty of larceny:—Held, that the Court had no power under Consol. Stats. U.C. ch. 112, sec. 3, to direct the verdict to be entered as one of "guilty," without the additional words. Defendant held the title of certain land belonging to one A., who lived in the United States. A. exchanged it with H. (the prosecutor) for other land, and gave an order on defendant to convey to H. When H. presented this order defendant represented that a claim having been made against him for A.'s debts, he had sworn that the farm belonged to himself; and to keep up the appearance of this being true, it was agreed between H. and defendant that a certain sum should be paid over by H. to defendant on receiving the deed, as for the purchase money, and immediately returned. H. borrowed $700 for the purpose, and they, with H.'s brother and others, went to a solicitor's office, where the deed was drawn, with a consideration expressed of $3,150. The $700 was handed to defendant, and counted over by him as if it were $2,000, and notes given by H. and his brother for the balance, $1,150. Defendant, instead of returning the money and notes, ran away with them. Semble, that upon these facts an indictment for larceny might have been sustained, if the jury found that defendant when he obtained possession of the property intended to steal it. The public interest being concerned, the principle of estoppel would not apply, so as to prevent H. from asserting that the payment which he professed to make in good faith was in fact only a pretence. Regina v. Ewing (1863), 21 U.C.Q.B. 523.

REVENDICATION OF STOLEN HORSE; "DEALING IN SIMILAR ARTICLES."

Held, the words "a dealer trading in similar articles" in art. 1489, C.C., means a trader whose ostensible business is to deal in similar articles. Hence, a peddler of fruits and vegetables although he may occasionally buy and sell horses, is not a dealer trading in horses within the meaning of the article. Vezina v. Brosseau, 30 Que. S.C. 493.

DELAY IN PROSECUTION FOR TWO YEARS; SETTLEMENT FOR STOLEN GOODS BY ACCUSED; EFFECT.

On an indictment for stealing cooper's tools on the 5th of November, 1874, it appeared that the prisoner was not arrested for nearly two years afterwards. During that time—it was not shewn precisely when—he was proved to have sold several of the tools at much less than their value, representing that he was a cooper by trade, and was going to quit it, which was proved to be untrue. It was proved also that he was in the shop from which the tools were stolen the night before they were taken, and frequently; and that when arrested he offered the prosecutor $35 to settle and buy new tools, and offered the constable $100 if he could get clear:—Held, that though the mere fact of the possession by the prisoner, after such lapse of time, might not alone suffice yet that all the facts taken together were enough to support a conviction for larceny. Regina v. Starr (1876), 40 U.C.Q.B. 286.

INFERENCE FOR CONDUCT; PROOF OF INTENT.

For the purpose of proving "intent to steal" it is sufficient if an inference of such intent is deducible from the acts and conduct of the prisoner as shewn by the evidence. R. v. Gibbons, 1 Can. Cr. Cas. 340.

AMOUNT UNDER $10; SUMMARY TRIAL.

If the prisoner consents to be tried by a police magistrate having the extended powers of a Court of General Sessions where such consent is given, he is liable

to sentence for the more onerous punishment which the General Sessions might impose in excess of the powers of an ordinary magistrate. R. v. Conlin, 1 Can. Cr. Cas. 41.

[Referred to in R. v. McLeod, 12 Can. Cr. Cas. 77.]

THEFT; INTERPRETATION.

The word "theft" in Criminal Code, sec. 783, covers the offence of "stealing from the person." Ibid., 1 Can. Cr. Cas. 41.

SUMMARY TRIAL WITH CONSENT.

An appeal does not lie from the decision of a police magistrate who tries a charge of theft summarily with the consent of the accused. R. v. Egan, 1 Can. Cr. Cas. 112.

[Referred to in R. v. Laura Carter, 5 Can. Cr. Cas. 406; followed in R. v. Lyons (No. 2), 16 Can. Cr. Cas. 353.]

HOTEL-KEEPER'S LIEN; GOODS UNDER LAWFUL SEIZURE AND DETENTION; TAKING AWAY WITHOUT AUTHORITY.

(1) An hotel-keeper who locks up the room of a guest containing the latter's baggage and effects, for non-payment of charges for board and lodging, and who notifies the guest thereof, and requires him to leave the hotel on the same day or pay the bill, thereby places the guest's baggage, etc., under "lawful seizure and dentention," in respect of the landlord's common law lien; and the taking away of such baggage by the guest without the landlord's authority is "theft" under sec. 306 of the Criminal Code. (2) The landlord does not by afterwards granting permission to the guest to remove some specified articles, and by allowing him free access to the room for that purpose, abandon such seizure and detention as regards the other effects; and the owner who removes any baggage as to which the permission does not extend, is guilty of "stealing" the same under sec. 306 of the Criminal Code. (3) The fact that the amount in respect of which a lien is claimed is in excess of the amount legally due does not dispense with the necessity of a tender of the amount legally due nor invalidate the lien. R. v. Hollingsworth, 2 Can. Cr. Cas. 291.

AGREEMENT FOR STIFLING PROSECUTION; THEFT BY PARTNER.

A convenant for the payment of money, given by the accused and others for the purpose of stilling a prosecution for the alleged embezzlement, prior to the Criminal Code, of partnership property under the Larceny Act, R.S.C. ch. 164, sec. 58 (see Criminal Code, sec. 311), is not enforceable. Major v. McCraney, 2 Can. Cr. Cas. 547.

STEALING FROM THE PERSON; "POCKET-PICKING."

Where in a charge of pocket-picking the evidence in the opinion of a Court of Appeal goes no further than to support a reasonable surmise or suspicion that the accused was guilty of the offence and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal under Cr. Code, secs. 744 and 746. R. v. Winslow, 3 Can. Cr. Cas. 215.

[Referred to in R. v. Briandamour, 11 Can. Cr. Cas. 322; applied in R. v. Law, 15 Can. Cr. Cas. 388.]

EVIDENCE OF SIMILAR CRIMINAL ACTS.

Evidence of other similar criminal acts may be relevant in a charge of theft if it bears upon the question whether the taking was designed or accidental. Where such evidence is relevant to the issue, it is not necessary for its admission in evidence that it should establish conclusively that the accused had been guilty of such other criminal acts, but it will be received if it tends to shew that the accused had been so guilty. R. v. Collyns, 4 Can. Cr. Cas. 572.

[Referred to in R. v. Paul, 19 Can. Cr. Cas. 348, 5 D.L.R. 347.]

STEALING "IN OR FROM" A BUILDING; ONE OFFENCE.

A conviction for stealing "in or from" a building charges only one offence and is not, because of the disjunctive, void for duplicity and uncertainty. R. v. Patrick White, 4 Can. Cr. Cas. 430.

OF MONEY; POSSESSION BY ACCUSED OF MONEY NOT ACCOUNTED FOR.

If upon a summary trial for the theft of money from a locked box on a ship in port, effected by picking the lock, it is shewn that the accused, one of the ship's seamen, had access in common with the other seamen to the place where the box was kept, that shortly before the theft was committed he had borrowed a small sum of money on the plea that he had none, that shortly after the stolen money was missed he had considerably more money on him, that he had meanwhile received nothing in respect of wages, that on the money being missed he suggested that he should not be suspected as he had borrowed money from another party named, which latter statement was shewn to be untrue, such constitutes legal evidence to support a conviction. If, however, the trial Judge in making his finding, bases the same upon the theory that, as a matter of law, it would be presumed that it was possible for him to shew how he had come by the money seen in his possession and that the onus was upon him to do so, such is an error in law entitling the accused to a new trial. R. v. MacCaffery, 4 Can. Cr. Cas. 193.

AMOUNT LESS THAN $10; SUMMARY TRIAL.

A person accused of the theft of a sum of money less than $10, not charged as a "stealing from the person" (Cr. Code, sec. 344), is liable, on his summary trial with

his own consent before a police magistrate, to no greater term of imprisonment than six months (Cr. Code, sec. 787). R. v. Randolph, 4 Can. Cr. Cas. 165.

[Followed in R. v. Shing, 17 Can. Cr. Cas. 463; R. v. Hayward, 6 Can. Cr. Cas. 400; discussed in R. v. Graf, 15 Can. Cr. Cas. 29.]

CATTLE STEALING; RIGHT TO TRIAL BY JURY; N.W.T. ACT, SEC. 66.

The indictable offence of "stealing cattle" (Code, sec. 331) is theft within the provisions of the North-West Territories Act respecting summary trials without a jury. Although the punishment which may be awarded on a conviction for stealing cattle is greater than that which may be awarded on a conviction for stealing certain other classes of property, a person charged with having stolen cattle the value of which does not, in the opinion of the trial Judge, exceed $200, has not the right in the N.W. Territories to be tried by jury. The Queen v. Pachal, 5 Can. Cr. Cas. 34.

STEALING UNDER A POWER OF ATTORNEY; PARTICULARS.

An indictment for stealing under a power of attorney which charges that the money appropriated was the proceeds of a sale made by the defendant while acting under a power of attorney will not be quashed for failure to allege that the power of attorney was one for the sale or disposition of property (Code, sec. 369), but particulars will be ordered as to the date, nature or purport of the alleged power of attorney. The defect, being only a partial one, was cured by verdict, and cannot be given effect to upon a reserved case as to whether a verdict of guilty on such indictment was valid or not. A count in an indictment charging that the defendant acting and a power of attorney fraudulently sold certain bank shares and fraudulently converted the proceeds "and did thereby steal the said proceeds" is not bad as charging two offences, and the reference to the fraudulent sale and fraudulent conversions are to be taken as descriptive of the means whereby the offence of stealing under a power of attorney was committed. The Queen v. Fulton, 5 Can. Cr. Cas. 36.

FRAUDULENT CONVERSION; CONTINUITY OF ACTS; OFFENCE COMPLETED IN ANOTHER DISTRICT.

The offence of fraudulent conversion of the proceeds of a valuable security mentioned in Code, sec. 308, consists of a continuity of acts—the reception of the valuable security, the collection of the proceeds, the conversion of the proceeds, and lastly the failure to account for the proceeds; and where the beginning of the operation is in one district, and the continuation and completion are in another district, the accused may be arrested and proceeded against in either district. The Queen v. Hogle, 5 Can. Cr. Cas. 53.

[Referred to in R. v. O'Gorman, 15 Can. Cr. Cas. 186, 18 O.L.R. 427; Campbell v. Welsh, 18 Can. Cr. Cas. 313.]

CONVICTION FOR ATTEMPT; DESCRIPTION OF OFFENCE.

It is competent for a magistrate upon the summary trial before him of a prisoner charged under sec. 783 (a) of the Criminal Code with having committed theft, to convict him of the offence or attempting to commit it provided for in sec. 783 (b). A conviction on summary trial that the accused "attempted to pick the pocket" of a person namely, sufficiently describes the offence of attempting to commit theft. The King v. Morgan, 5 Can. Cr. Cas. 63, affirmed in 5 Can. Cr. Cas. 272, 3 O.L.R. 356.

[Followed in R. v. Graf, 15 Can. Cr. Cas. 193, 19 O.L.R. 238.]

THEFT BY MUNICIPAL OFFICER; COLLECTION OF UNAUTHORIZED RATE.

A charge against a city officer for collecting sums of money upon the pretence that they were payable to the city and not thereafter accounting for the same is not sustainable as a charge of theft, if in fact the sums collected were not payable to the city. To constitute the offence of theft (Code, sec. 305) or of theft by a clerk (see 319 (a)) or of theft by municipal employees (sec. 319 (c)) the person alleged to have been defrauded by the taking must have had a right at the time of the taking either to the ownership or to the possession of the property taken. An indictment against a Government or municipal officer for theft or embezzlement under Code, sec. 319 (c) would be demurrable if it did not allege that the officer had received the money by virtue of his employment, but on such being alleged and proved, the wrongful appropriation is an offence under sec. 319 (c) whether the property be public (or municipal) property or not. The Queen v. Tessier, 5 Can. Cr. Cas. 73.

DESCRIBING THE OFFENCE; PROOF OF PRINCIPAL OFFENCE ON A CHARGE OF ATTEMPT.

An indictment charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom the offence was committed, or the description of the property the accused attempted to steal, is sufficient. Where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the Court discharges the jury and directs that the prisoner be indicted for the complete offence. The Queen v. Taylor, 5 Can. Cr. Cas. 89.

THEFT OF BANK NOTES; SEARCHING PRISONER AFTER ARREST; IDENTIFICATION OF PROPERTY; ORDER FOR RESTITUTION.

To entitle the aggrieved party to an order for the restitution to him of money found on the prisoner convicted of stealing money from the person, proof must be adduced identifying the money so found as the money which was stolen. Where the accused was convicted of the theft of bank notes but there was no evidence to identify the same with the bank notes found on and taken from the prisoner at the time of arrest, and no application was made immediately after the conviction for an order of compensation to the prosecutor for his loss, an order may be properly made ex parte for the restoration to the prisoner of the money so taken from him. The King v. Haverstock, 5 Can. Cr. Cas. 113.

THEFT BY EMPLOYEE; FACTORY REGULATIONS FOR ENTRY AND CHECKING OF GOODS REMOVED TO WAREHOUSE; COLLUSIVE ARRANGEMENT WITH OTHER EMPLOYEES.

(1) Where the prisoner, being the manager of a branch store for the sale of goods supplied by the factory of his employers, arranged with the checker at the factory to load certain goods on a wagon going to the branch store without charging them or keeping the usual check on them which his employers' system required, and had the goods delivered to a customer of his branch without charging the customer, the prisoner stating that for the benefit of his employers he had merely postponed the charging of the goods in order to give the customer a longer credit than was customary and to so retain the customer's trade; these facts will constitute "theft" under the Code if credence is not given to the prisoner's explanation. (2) The goods having been taken by the prisoner with knowledge that his doing so was contrary to the employer's rules and regulations and with intent to deprive the owner thereof, the taking was fraudulent and without colour of right within Code, sec. 305. The King v. Clark, 5 Can. Cr. Cas. 235.

FRAUDULENT MISAPPROPRIATION BY CO-OWNER; FRAUDULENT RECEIVING BY ANOTHER CO-OWNER.

(1) Theft by the fraudulent appropriation by the principal and a fraudulent receiving by an accessory before the fact of the property so appropriated may take place at the same time and by the same act. (2) A conviction for receiving is good, although the same evidence would have supported a conviction for theft. (3) On a charge of fraudulently receiving stolen property the previous conviction of the principal for the theft is presumptive evidence that everything in the former proceeding was rightly and properly transacted, but it is competent for the alleged receiver to controvert the guilt of the principal. (4) A conviction for theft may be made against a co-owner fraudulently misappropriating the fund (Code, secs. 305, 311) although the facts also prove the offence of criminal breach of trust (Code, sec. 363). McIntosh v. The Queen, 5 Can. Cr. Cas. 254.

[Followed in R. v. Gilbert (No. 2), 12 Can. Cr. Cas. 141.]

THEFT BY AGENT; FRAUDULENT CONVERSION; "RECEIVED ON TERMS," MEANING OF.

(1) The fraudulent conversion by an agent of money received by him upon the account of his principal is punishable under Code, sec. 308, although no terms requiring him to account for or pay the same to the principal were imposed by the party paying. (2) Where the person receiving the money thereupon holds it on terms arranged between himself and a third party to whom the money belongs requiring him to account for or pay the same to such third party, such money is money "received on terms requiring him to account for or pay the same," etc., within Code, sec. 308. The Queen v. Unger, 5 Can. Cr. Cas. 270.

[Considered in R. v. Thompson, 21 Can. Cr. Cas. 80.]

SPEEDY TRIAL; FORM OF "CHARGE;" DESCRIBING THE OFFENCE.

(1) A charge of theft preferred under the Speedy Trials clauses of the Code is sufficient if it states that the accused "unlawfully did steal," etc., without specifically averring a taking or converting "fraudulently and without colour of right and with intent," etc., in the words of sec. 305 of the Criminal Code. (2) As the statutory form of record under the Speedy Trials clauses (Code forms MM and NN) framed in respect of a charge of theft, does not contain such particulars, the description of the offence following such form must be held sufficient in the "charge" and in all the proceedings prior thereto. The King v. Arthur George, 5 Can. Cr. Cas. 469. [Affirmed in 8 Can. Cr. Cas. 401.]

RECENT POSSESSION; PRESUMPTION; REBUTTAL; REASONABLE ACCOUNT OF POSSESSION.

Where a person charged with a theft has at the time of the finding of the goods in his possession given a reasonable account of the manner in which he became possessed of them, the presumption arising from his recent possession is rebutted, but semble, the same result does not of necessity follow from a like statement first made by the accused in his evidence given on his own behalf at the trial. The Queen v. McKay, 6 Can. Cr. Cas. 151.

SUMMARY TRIAL; THEFT OVER $10; PLEA OF NOT GUILTY; JURISDICTION OF CITY STIPENDIARY MAGISTRATE.

On a charge of theft where the value exceeds $10 and the accused consents to a summary trial before a city stipendiary magistrate, such magistrate is not bound to remand him under Code, sec. 790, upon his pleading "not guilty," but has a jurisdiction, apart from sec. 790, conferred by Code, sec. 785, under which he may try the charge and impose the same punishment as might be imposed by a Court of General Sessions in Ontario. The King v. Bowers (No. 2,), 6 Can. Cr. Cas. 264.

[Approved in R. v. McLeod, 12 Can. Cr. Cas. 76, 39 N.S.R. 121.]

THEFT UNDER $10; SUMMARY TRIAL; TRIAL BEFORE TOWN POLICE MAGISTRATE; LIMIT OF PUNISHMENT.

(1) The punishment upon summary trial for the theft of property not exceeding $10 in value (and not being the offence of stealing from the person) is governed by Code, sec. 783 and 787 and is therefore limited to six months' imprisonment. (2) In view of the marginal note to Code sec. 785, i.e., "summary trial in certain other cases," sec. 785 should be considered as applying only to cases not specifically mentioned in sec. 783. (3) Where the imprisonment directed by a warrant of commitment is in excess of that authorized by law, and the partial imprisonment actually served thereunder is of a different class to that specified in the warrant, the Court on habeas corpus should not order further detention under sec. 752 although the accused had pleaded guilty to the charge. The King v. Hayward 6 Can. Cr. Cas. 399.

[Followed in Ex parte David McDonald, 9 Can. Cr. Cas. 365.

FRAUDULENT CONVERSION; OBTAINING LOAN ON SECURITY OF GOODS FOUND.

(1) An unqualified instruction to the jury on a prosecution for theft against the finder of goods, that the pledging of same by him constitutes theft, is a misdirection entitling the accused to a new trial. (2) Whether or not the conversion by the finder is theft depends upon the attendant circumstances, such as the class of goods, the place of finding, the interval between the finding and conversion, and the probability of being able to discover the owner. The Queen v. Slavin, 7 Can. Cr. Cas. 175.

COMMITMENT FOR TRIAL; DESCRIBING THE OFFENCE; FAILURE TO STATE OWNERSHIP.

A warrant of commitment for trial on a charge of theft is sufficient if it states that the chattel was stolen from the informant's building, without also stating that the informant owned the chattel. The Queen v. Leete, 7 Can. Cr. Cas. 301.

STEALING TREES WORTH LESS THAN $25; EXCLUSIVE JURISDICTION OF JUSTICES.

(1) Whenever by the same clause of a statute an offence is declared and a special mode of prosecution for such offence is provided, that mode is presumed to be exclusive. (2) A theft of growing trees of a value of less than $25 from farm woodland is not an indictable offence but a matter of summary conviction under Code, sec. 337, except for a third offence, as thereby provided. The King v. Beauvais, 7 Can. Cr. Cas. 494.

EVIDENCE OF ALLEGED FORMER OFFENCE AND ACQUITTAL ON PRIOR INDICTMENT THEREFOR.

Upon a trial and conviction for theft the fact that evidence was admitted for the Crown in respect of a transaction between the complainant and the accused which had been the subject of a prior indictment against the accused for theft, on which prior indictment the accused had been acquitted, will not invalidate the conviction, if the jury were informed of such acquittal and instructed in accordance with the prior verdict that the first transaction was in fact a loan repayable on the date of the offence now charged. The King v. Menard, 8 Can. Cr. Cas. 80.

GOODS EXPOSED FOR SALE IN STORE; FINDING IN POSSESSION OF ACCUSED; TIME OF TAKING; NEGATIVING FACT OF SALE; ONUS OF PROOF.

(1) Upon a charge of theft of merchandise in bulk from a store, evidence of the finding at the defendant's house of the stolen goods and of false keys fitting the store doors, and of the fact that the goods were in a place exposed for sale at the time of the alleged theft and had not been sold, is sufficient to place the onus upon the defendant of accounting for his possession. (2) It is not necessary for the Crown under such circumstances to prove that the goods could not have been stolen by some one else while exposed for sale, or that the storekeeper had not given them away. (3) A proper instruction to the jury in such a case is to decide firstly whether the goods were stolen; if so, then to decide whether the prisoner's possession was exclusive, and, if they found affirmatively on both questions, they might convict unless the accused accounted for the possession. The King v. Theriault, 8 Can. Cr. Cas. 460.

[Compared in R. v. Lum Man Biers, 16 Can. Cr. Cas. 278.]

SPEEDY TRIAL; CHARGE OF THEFT; NEGATIVING "COLOUR OF RIGHT" IN DESCRIBING THE OFFENCE.

A charge of theft preferred under the "speedy trials" clauses of the Code is sufficient if it states that the accused "unlawfully did steal," etc., without specifically averring a taking or converting "fraudu-

lently and without colour of right and with intent," etc., in the words of sec. 305 of the Criminal Code. George v. The King, 8 Can. Cr. Cas. 401, affirming 5 Can. Cr. Cas. 469.

[Referred to in Ead v. R., 13 Can. Cr. Cas. 353.]

STEALING LETTERS; LETTER CARRIER; DECOY LETTER.

A decoy letter upon which postage has been paid, written by a post office inspector and delivered by him to the proper sorting officer for distribution, is a "post letter" within the meaning of Cr. Code, secs. 326 and 327 and of the Post Office Act as amended by 1 Edw. VII. (Can.) ch. 19, sec. 1. The King v. Ryan, 9 Can. Cr. Cas. 347.

THEFT UNDER $10; SUMMARY TRIAL; LIMIT OF SENTENCE.

Upon a summary trial before a city stipendiary magistrate for theft of property not exceeding $10 in value, the limit of punishment on conviction is six months' imprisonment. [R. v. Hayward (1902), 6 Can. Cr. Cas. 399, followed.] Ex parte David McDonald, 9 Can. Cr. Cas. 368.

THEFT; POSSESSION OF STOLEN PROPERTY; PRESUMPTION.

On a charge of theft, where the circumstances were such as to warrant the jury in drawing an inference of guilt from the prisoner's possession of one of the stolen articles, the Judge's comment in his charge that, if the defendant's witness is disbelieved, the prisoner has not given a "satisfactory account" of how he came into possession of the article is not comment on the failure of the accused to give evidence prohibited by the Canada Evidence Act. The King v. Burdell, 10 Can. Cr. Cas. 365.

THEFT BY AGENT; RAILWAY CONDUCTOR; RECEIVING MONEY FOR PASSENGER'S TRANSPORTATION; FAILURE TO ACCOUNT.

(1) A railway conductor who takes from a passenger for his transportation a sum much less than the authorized fare and issues no ticket or receipt therefor is guilty of theft under Code, sec. 308, if he fraudulently omits to account for and pay to the railway company the money so received. (2) Money so taken for transportation is money received by the railway conductor "on terms requiring him to account for or pay the same" to the company within the meaning of Code, sec. 308. The King v. McLellan (No. 1), 10 Can. Cr. Cas. 1.

[Disapproved in R. v. Thompson, 21 Can. Cr. Cas. 80.]

THEFT BY AN AGENT; STOCK BROKER; PURCHASE OF STOCKS; OBTAINING MONEY TO MAINTAIN MARGIN.

A broker who receives money from a customer to purchase stocks on margin from a firm of correspondents, holds them in his own name and allows them to be sold on his account, but subsequently rearranges with his correspondents to resume business and carry the same stocks, receiving in the meantime remittances from his customer to maintain the margin, without informing him of what has taken place, and who afterwards severs anew his connection with his correspondents and receives at the same time from his customer instructions to sell the stocks, which would have resulted in a comparatively small loss, but instead of doing so, replaces them by purchase of a like quantity of the same kind from another firm whose subsequent failure causes their total loss, is not guilty of the offence of "theft by an agent" under the Criminal Code. The King v. Bastien, 11 Can. Cr. Cas. 306.

"SPECIAL PROPERTY OR INTEREST;" FRAUDULENT TAKING OR CONVERSION; USE OF RAILWAY CAR.

(1) The appropriation, for purposes of loading and shipment, of a railway car intended by the railway company for another person who had a prior statutory right to be supplied with a car, is not a fraudulent taking or conversion of the car from such other person under Code, sec. 305, if the latter had not received notice from the railway company that the car had been assigned to him. (2) An applicant for a railway car under the Manitoba Grain Act (Can.) does not acquire a temporary "special property or interest" in the car within Code, sec. 305 (1a) until he is informed of its assignment to him. The King v. McElroy, 11 Can. Cr. Cas. 34.

PART OWNER; FRAUDULENT CONVERSION BY MINOR OF CHATTEL ENTRUSTED TO HIM BY HIS GUARDIAN.

A minor entrusted by his tutor or judicial guardian with chattel property of which he is part owner, who fraudulently converts it to his own use, with intent to deprive his tutor of it, is guilty of theft. Guillet v. The King, 12 Can. Cr. Cas. 186.

THEFT UPON FOREIGN SHIP IN HARBOUR.

(1) A sea harbour enclosed within headlands such as the harbour of Halifax, is within the body of the adjacent county, and criminal offences committed in such harbour even upon foreign ships are not within the jurisdiction of the Admiralty except in the special cases provided by statute. (2) A charge of theft by foreigners upon and from a foreign ship while lying in a harbour forming part of the body of the county may be prosecuted in the county without obtaining the leave of the Governor-General under sec. 591 of the Revised Criminal Code. The King v. Schwab, 12 Can. Cr. Cas. 539.

MAXIMUM SENTENCE; SUMMARY TRIAL BY CITY POLICE MAGISTRATE; ADDITIONAL PUNISHMENT FOR SECOND OFFENCE.

(1) On a summary trial before a city

police magistrate for theft (Code, sec. 386) the maximum penalty is seven years' imprisonment unless a previous conviction has been charged in the information by analogy to the procedure under Code, sec. 851, for charging previous convictions in indictments in cases in which a greater punishment may be imposed by reason thereof. (2) The Court of Appeal will set aside a sentence for more than seven years for theft where no previous conviction has been charged in the proceedings, and will impose instead the sentence which it deems appropriate, notwithstanding the admission of the accused made to the magistrate after conviction that he had been previously convicted of theft. (3) On a motion to the Court of Appeal to set aside a sentence as erroneous, the personal attendance of the prisoner is not necessary while the question of law is being argued, but if the Court substitutes a different sentence the prisoner should be brought into Court to receive sentence. The King v. Edwards, 13 Can. Cr. Cas. 202.

STEALING HAY ON INDIAN RESERVE; FRAUDULENT CONVERSION BY CARETAKER OF PROPERTY.

(1) Where a person who is a caretaker of land for another on an Indian reserve, fraudulently and without colour of right removes and converts to his own use the hay grown thereon with intent to deprive of the same the party for whom he is caretaker, he is guilty of theft, although the party for whom he is caretaker had not a good title to the hay. (2) For the purposes of theft, the person entitled to the possession of the goods is the owner as against the taker, and the latter cannot set up jus tertii against such owner unless the taking was effected either with the authority of the third person having the superior title or under the belief on the part of the taker that he had the authority of such third person. The King v. Beboning, 13 Can. Cr. Cas. 405.

FRAUDULENT CONVERSION BY CHATTEL MORTGAGOR.

(1) The title of the mortgagee under a chattel mortgage is not a "special property or interest" in the goods under Code, sec. 347, defining the offence of theft. (2) The phrase "special property or interest" applies to the rights of mere pledgees or bailees where the terms of the bailment are such that the legal property in the goods has not passed to the bailee; and if the property or legal title passes to the mortgagee by the terms of a chattel mortgage the charge of fraudulent conversion against the mortgagor should not be limited to a special property or interest. (3) A document purporting to be a chattel mortgage of the wheat grown on 25 acres at an estimated yield per acre then in stack with and not set apart from other wheat is ineffective to pass any property and the chattel mortgage is void for uncertainty. (4) The invalidity of a chattel mortgage may be pleaded in a criminal proceeding against the mortgagor for selling the goods. The King v. Ripplinger, 14 Can. Cr. Cas. 111.

THEFT OVER $10; ROBBERY.

Semble, the offence of robbery is not within Code, sec. 782, as a class of theft. The King v. Macdonald, 16 Can. Cr. Cas. 121.

ROBBERY; THEFT FROM THE PERSON.

(1) On the trial of an indictment charging robbery with violence and stealing from the person if there is evidence on which the jury might find simple theft, a new trial must be ordered if the trial Judge in effect directed the jury that the accused must be acquitted unless they found not only that the accused stole the money, but that he stole it from the person of the prosecutor. (2) Where a crime of less degree than that charged in the indictment and for which lesser crime a verdict might be given under Code, sec. 951, is presented on the evidence, the jury must be instructed regarding such lesser crime as well as the greater crime stated in the indictment. (3) While the accused by reason of such misdirection derived a chance of acquittal to which the law did not entitle him, the jury may have been led to convict of "theft from the person" through unwillingness to wholly acquit the prisoner, while they might, if properly instructed, have convicted of simple theft only. (4) Where there is a prejudicial misdirection by the trial Judge, the accused is not deprived of his right to a new trial because of his failure to complain of the misdirection at the time. (5) Semble, an admission or confession made to a police officer on money being found on the prisoner after his arrest for robbery is not rendered inadmissible because it followed a statement made by the officer to the prisoner at the time of the search that "this looks bad." The King v. Daley, 16 Can. Cr. Cas. 168.

SEIZURE OF PROCEEDS AS WELL AS GOODS; ORDER OF RESTITUTION AND COMPENSATION.

(1) Where on a conviction for theft, it appears that a part of the goods stolen had been sold by the accused and both the purchase money and the goods sold were brought into Court, an order may be made for restitution to the owner of the goods sold but not for payment also to him of such purchase money on account of the owner's loss of the remainder of the goods with which the purchaser had no concern. (2) Certiorari proceedings may be taken to bring into a Superior Court of criminal jurisdiction an order for compensation or restitution made on a speedy trial by a

County Court Judge which in its terms exceeds the jurisdiction of a speedy trial Court. Ex parte Selig, 17 Can. Cr. Cas. 70.

MISAPPROPRIATION OF CHATTEL RECEIVED FOR DELIVERY IN SPECIE.

(1) A charge of having received a chattel for gratuitous delivery to a third person and of having fraudulently converted it to his own use is one of ordinary theft under Code, sec. 347, and not theft by an accounting party under Code, sec. 355, and an arrest can legally be made on such charge only upon a warrant or in fresh pursuit. The King v. Shyffer, 17 Can. Cr. Cas. 191.

WHAT SUBJECT OF; SUBSTITUTION BY OWNER OF BARREL OF WATER FOR BARREL OF WHISKEY; ATTEMPT.

(1) Where the defendant, with intent to steal a barrel of whiskey, induced the servant of the owner to consent to bring it to him, there cannot be a conviction for the theft of a barrel of liquid, where the master, upon being informed by his servant of such plan, directed the latter to deliver the defendant a barrel of water instead, which was done, as the owner of the whiskey deliberately substituted a different article for that which the defendant intended to steal. (2) One who induced a servant to steal for him a barrel of whiskey owned by his master is guilty of an attempt to steal, where the servant, who informed his master of the plan, delivered a barrel of water instead of whiskey to the defendant, as his master directed him to do. The King v. Montgomery, 19 Can. Cr. Cas. 233.

WHAT SUBJECT OF; RAILWAY FARE; DENIAL OF RECEIVING.

(1) A railway conductor who does not account to the railway company for a cash fare he received from a passenger, and who denies the receipt thereof, may, under such facts, be convicted of theft under sec. 355 of the Criminal Code (1906), where he omitted to issue a duplex ticket or to account for the money in the usual course. (2) A prima facie case of theft under sec. 355 of the Criminal Code is established by the facts that a railway conductor failed to account, as his duty required, to a railway company for cash received from a passenger in payment of fare, which he denied receiving. (3) The denial by a railway conductor of the receipt of a cash fare from a passenger, for which he did not account to the railway company, indicates a purpose to fraudulently convert it, sufficient to deprive him, on a trial for theft under sec. 355 of the Criminal Code, of the defence that he might have accounted for it at some other time and place than on the occasion when he made returns to the company for the trip on which he received it. (4) A railway conductor may be prosecuted in Alberta under sec. 355 of the Criminal Code, for the theft of cash paid him therein, by a passenger as fare, notwithstanding it was his duty to account for it in British Columbia, where, in Alberta, he denied to the railway company the receipt of the money, since such denial amounted to a refusal to account therefor in the latter province. The King v. Martin, 19 Can. Cr. Cas. 376, 4 D.L.R. 650.

BANK OFFICER; MARKING NOTE "PAID" WHEN ONLY PAID IN PART.

It is no objection to a warrant for the extradition to a foreign state of a bank officer on a charge of embezzlement of money from the bank, who caused a note endorsed by him to be marked "paid" and to be surrendered upon a part payment of the amount due thereon charging the balance to the bank's interest and discount account, which act was undoubtedly embezzlement under the law of the state to which extradition was demanded, that by sub-sec. (b) of sec. 359 Crim. Code, 1906, such method of getting a note from a bank was theft and not embezzlement. [Rex v. Stone (1911), 17 Can. Cr. Cas. 377, applied.] In Re O'Neil, 19 Can. Cr. Cas. 410, 5 D.L.R. 646.

WITH BREAKING AND ENTERING; CR. CODE 1906, SECS. 11, 460.

The offence of breaking into a counting house and stealing money therefrom as declared by the English statute 7-8 Geo. IV. ch. 29, sec. 15, was a part of the criminal law of British Columbia prior to its admission into Confederation, and remains in force under Cr. Code, sec. 11, subject to the change made by the Criminal Code as to the nature of the punishment. Re Dean, 20 Can. Cr. Cas. 374, 9 D.L.R. 364. [See Cr. Code, sec. 460.]

BRIBE TO RAILWAY CONDUCTOR TO TRAVEL WITHOUT FARE; SECRET COMMISSIONS.

A payment made by a passenger to a railway conductor for his own use of a much lower sum than the regular fare by way of bribe for not collecting the fare which it was the conductor's duty to collect for the railway company is not money received "on terms requiring him to account" for or pay the same to the company, and will not support a charge of theft in respect of his wilful failure to turn in the amount with his returns of money and tickets to the company; but, semble, there was an offence by both giver and receiver under the Secret Commissions Act, 8 and 9 Edw. VII. (Can.) ch. 33. [R. v. McLennan, 10 Can. Cr. Cas. 1, disapproved; R. v. Unger, 5 Can. Cr Cas. 270; R. v. Cullum, L.R. 2 C.C. 28, and R. v. Harris, 6 Cox C.C. 363,

considered.] R. v. Thompson, 21 Can. Cr. Cas. 80.

[Disapproved in R. v. Sinclair, 27 Can. Cr. Cas. 327, 31 D.L.R. 265.]

REVIEW OF CONVICTION ON QUESTION OF LAW; SUFFICIENCY OF EVIDENCE.

Although the evidence of theft is contradictory and unsatisfactory in the opinion of the Court determining merely the question of law on a case reserved as to the sufficiency of the evidence to sustain a conviction, the Court will uphold the finding of guilt if supported by sufficient legal evidence. R. v. Edmunds, 23 Can. Cr. Cas. 77, 18 D.L.R. 770.

RECEIVING STOLEN GOODS; ALLEGING THE THEFT.

A magistrate's conviction under Cr. Code, sec. 399, should show not only that the accused received the goods knowing them to have been stolen but should contain an allegation as to the goods having theretofore been stolen, it being possible that prior to the goods reaching the accused they may have lost the character of stolen goods and yet be known to him to have been stolen. [R. v. Schmidt, 35 L.J.M.C. 94, referred to.] R. v. Watchman, 23 Can. Cr. Cas. 362, 20 D.L.R. 201.

EMBEZZLEMENT; VARIOUS DEFALCATIONS AS ONE CONTINUOUS ACT.

A conviction for theft of an entire sum, although it may have been taken in numerous small amounts at different times during the deficiency period, may be supported without proving the taking of each or any of such several amounts and the case treated as one continuous act of theft although there were a number of distinct takings, if a deficiency had occurred equal to the amount by which the accused had falsified an entry in his employer's books at or about the date at which he is charged with having embezzled the sum, if the evidence adduced also warrants the inference that the money stolen had reached his hands and had been misappropriated by him. R. v. Henwood, 11 Cox. C.C. 526, 22 L.T.R. 486, referred to.] Minchin v. The King, 23 Can. Cr. Cas. 414, 18 D.L.R. 340, affirming 22 Can. Cr. Cas. 254, 15 D.L.R. 792.

OBTAINING MONEY FROM IMBECILE; KNOWLEDGE.

If a person gets another to give him money to which he has no right or claim, knowing the giver to be an imbecile and that consequently the latter could have no will to give the money to him, he is properly convicted of theft. (Per Harvey, C.J., and Simmons, J., in a divided Court.) R. v. Wallace, 24 Can. Cr. Cas. 95, 24 D.L.R. 825.

ABSTRACTING ELECTRICITY.

Where no claim for compensation under Code, sec. 1048 was made by the electric company from which the accused is found guilty of theft in fraudulently abstracting electricity (Cr. Code, sec. 351), the conviction is irregular in directing that part of the fine be paid to the electric company. R. v. Sperdakes, 24 Can. Cr. Cas. 210.

WATER FROM WATER WORKS; FRAUDULENT TAKING.

Water conveyed in pipes may be the subject of larceny at common law, and where it was deliberately taken from the pipes through which an adjoining property owner got his water supply from the city municipality at a flat rate, after the refusal of permission from such owner and without any permission from the city, the person wrongfully appropriating the water is properly convicted on a charge alleging the theft thereof from the city. [Ferens v. O'Brien, 11 Q.B.D. 21, 52 L.J.M.C. 70, and R. v. White, 1 Dears C.C. 203, 22 L.J.M.C. 123, applied.] R. v. Hutton, 24 Can. Cr. Cas. 212.

GOODS UNDER SEIZURE BY SHERIFF.

A sheriff who has seized under a writ of execution for debt a number of hogs in possession of the execution debtor and who at the latter's request takes a bond from the debtor and his surety for the purpose of continuing the seizure without the expense of leaving a man in possession has a special property or interest in the hogs sufficient to make the selling of the same by the accused while under such bond a theft thereof under Cr. Code, secs. 347 and 386; the seizure was valid as against those who had notice of it and the accused could not justify by setting up the alleged title of another and the latter's authorization to sell on his behalf. [Dodd v. Vail, 9 D.L.R. 534, 6 S.L.R. 22, affirmed in Dodd v. Vail (No. 2), 10 D.L.R. 694, applied; Dixon v. McKay, 21 Man. L.R. 762, and R. v. Knight, 1 Cr. App. R. 186, referred to.] R. v. Huyczink, 24 Can. Cr. Cas. 283, 25 D.L.R. 490.

OF GROWING TREES OR SHRUBS; PROCEDURE: PROOF OF DAMAGE.

Where it is sought to make a summary conviction under Cr. Code, sec. 374, for stealing growing trees or shrubs of less value than $25, the value should appear in the information, it being essential to the jurisdiction of the Justice that the amount of the damage be at least twenty-five cents; the inclusion, as part of the penalty, of the sum of one dollar for the damage or injury done does not establish the Justice's jurisdiction to make a conviction where no value was proved before him; nor could the conviction be supported as for the indictable offence of theft under $10 triable under Cr. Code, sec. 773, by a magistrate having summary trials jurisdiction under sec. 771, as there was no proof that the value of the property stolen did not exceed $10 nor

did the record shew that the accused, who had pleaded "not guilty," was put to his election of mode of trial under Cr. Code, sec. 778, as would be necessary for the indictable offence of theft of the wood after cutting the trees into firewood. [R. v. Beauvais (1904), 7 Can. Cr. Cas. 494, referred to.] Ex parte Legere; R. v. Dugas, 24 Can. Cr. Cas. 377.

OF MAIL; POST OFFICE ACT.

Criminal Code, sec. 400, originated with the Post Office Act while the preceding sec. 399, originated in the Larceny Act, and in reconciling the language of these two sections which in their ordinary meaning might seem to apply different punishments for the same offence, the words "hereby declared to be an indictable offence" contained in sec. 400, must be limited at least to stolen property as to which the offence has been declared to be theft by some specific reference in the Code apart from the general declaration of sec. 399, if indeed it may not be further limited to such chattels, parcels or other things, the stealing whereof was specially punishable under the Post Office Act. [Note the language of Code, sec. 6, as to the meaning of expressions where the subject-matter is dealt with in another statute, and compare secs. 364, 365 and 366 taken from the Post Office Act.] R. v. Nimchonok, 25 Can. Cr. Cas. 66, 26 D.L.R. 38.

OF PROCEEDS HELD "UNDER DIRECTION."

Cr. Code, sec. 357, declaring the offence of theft by misappropriating proceeds held "under direction" has reference to cases other than those for theft or embezzlement by a clerk or servant. R. v. McDonald, 25 Can. Cr. Cas. 106, 28 D.L.R. 377.

OF GOODS UNDER HIRE-PURCHASE CONTRACT; RE-POSSESSION WITHOUT DEMAND; MISDIRECTION; NEW TRIAL.

It is a question to be passed upon by the jury upon a charge of theft in repossessing a sewing machine under a hire purchase contract in default of payment, whether the accused, acting under the instructions of the conditional vendor, took possession under colour of right and in the honest belief that the contract so authorized, where he repossessed the machine in the absence of the conditional vendee, and without a demand for its return in terms of the contract, although the contract stipulated for entry and repossession without resort to legal process in case of default of payment, and of failure to deliver back the machine upon demand; and it is a substantial wrong entitling the accused to a reversal of the conviction or a new trial (Cr. Code, sec. 1019) if the trial Judge in such case practically withdrew that question from the jury by an instruction that if no demand had been made for the machine itself, as distinguished from the arrears of the hire-purchase price, the prisoner ought to be found guilty. [R. v. Lyon, 2 Can. Cr. Cas. 242; R. v. Johnson, 8 Can. Cr. Cas. 123, 7 O.L.R. 525, and R. v. Ripplinger, 14 Can. Cr. Cas. 111, cited.] R. v. Comeau, 25 Can. Cr. Cas. 165, 27 D.L.R. 692.

RECEIVING STOLEN GOODS; KNOWLEDGE.

It is not essential to the offence of retaining stolen goods in possession that the goods should have been found in the possession of the accused; unlawful possession and knowledge of the theft may be shewn from the secret meetings between the defendant and the gang of young boys who stole these and similar goods and sold them to him from time to time. Medres v. The King, 26 Can. Cr. Cas. 241.

PROOF OF OWNERSHIP OF STOLEN GOODS.

On a charge of theft proof of ownership in someone other than the accused is essential because it is only by indicating the owner that it can be established that the taking or conversion (Cr. Code, sec. 347), was against the will of the owner. R. v. Jennings; R. v. Hamilton, 26 Can. Cr. Cas. 270, 29 D.L.R. 604. See 28 Can. Cr. Cas 164.

OWNERSHIP OF STOLEN PROPERTY; MATERIALITY OF PROOF; MISDIRECTION; ANIMUS.

Where an indictment for theft states the ownership of the property alleged to have been stolen to be in a person named, the proof of such ownership is material to the offence so long as the indictment remains unamended in that respect; and if it appear that a Judge trying the charge without a jury stated in his reasons for finding the defendant guilty that the ownership assigned was not a material part of the crime, and the Court of Appeal is of opinion that this was equivalent to a misdirection of himself which had affected the finding of guilt, the conviction will be set aside (Per Beck, J.). On a charge of theft the prosecution must not only give satisfactory proof of the corpus delicti by shewing that the offence charged had been committed by someone, but must prove that the accused was the person who committed the offence; the animus furandi is not established unless it be proved that the taking or conversing was against the consent of someone having ownership, whether absolute or special, and even where the owner may be unknown there must be some evidence from which he can be individualized by description and an inference drawn that there was no consent on his part. R. v. Carswell, 26 Can. Cr. Cas. 288, 29 D.L.R. 589.

INDICTMENT FOR THEFT AND RECEIVING.

The same person cannot be convicted both of the theft and of receiving unless he had parted with the stolen article, as by selling it, and had afterwards received it. [R. v. Lum and Bow, 16 Can. Cr. Cas. 274, 15

B.C.R. 22, referred to.] R. v. Carmichael, 26 Can. Cr. Cas. 443.

RECEIVING; AIDER AND ABETTER.

It is the only the receiving done in the commission of the principal offence of theft that cannot be treated as a separate offence of unlawfully receiving and a count charging the latter is not bad for duplicity because of its setting out matter which, if true, would constitute the accused an aider and abetter in the principal offence. [Reg. v. Hodge (1898), 2 Can. Cr. Cas. 350, 12 Man. L.R. 319, followed.] R. v. Kelly (No. 1), 27 Can. Cr. Cas. 94, affirmed in 27 Can. Cr. Cas. 140, 282; 34 D.L.R. 311.

THEFT OF PUBLIC FUNDS; FALSE PRETENCES; RECEIVING; PARTIES.

If an order-in-council were passed with a fraudulent and unlawful design by a provincial government authorizing certain payments for government work to be made to a contractor, which in fact were not earned or intended to be earned by him, but represented a fund out of which the public were to be defrauded by means of false estimates and progress certificates, by connivance with certain members of the provincial government, neither the conniving ministers of the government nor the contractor charged with false pretences and receiving would be protected from criminal proceedings because of a statute giving to all the orders-in-council the like effect as that of a statute. R. v. Kelly (No. 2), 27 Can. Cr. Cas. 140, affirming 27 Can. Cr. Cas. 94; affirmed in 27 Can. Cr. Cas. 282, 34 D.L.R. 311.

SALE OF CROP BY TENANT IN FRAUD OF LANDLORD.

Where the terms of an agricultural tenancy are such that the landlord is to receive an aliquot part of the crop as his rent, ex. gr., a one-third share to be taken to a grain elevator by the tenant and stored on account of the landlord and in the landlord's name as owner thereof, the landlord does not become the owner of any specific portion of the crop until it is divided, notwithstanding the provision in Manitoba statutes 1915, ch. 13, sec. 2, giving the landlord in such case certain preferential civil rights in regard thereto. The tenant who sells the entire crop in fraud of his landlord is not subject to indictment on a charge of stealing the number of bushels of wheat which would have constituted the landlord's share had a division actually been made; but, quære, whether Cr. Code, sec. 352, would not apply to the statutory right declared by the Manitoba statute upon an indictment for theft of the undivided one-third share. R. v. Hassal, 27 Can. Cr. Cas. 322, 34 D.L.R. 370.

RAILWAY CONDUCTOR; MISAPPROPRIATION OF FARES; PUNISHMENT.

A railway conductor who receives from a passenger money for which he issues a "hat check" and makes a return to the company of the hat-check but accompanying the same with a smaller amount as the fare of the passenger to whom it was issued, may be taken as recognizing the passenger's money so paid to him as money of the company and not merely a personal bribe, and may properly be convicted of theft of the excess wilfully retained and misappropriated by him. [R. v. McLellan, 10 Can. Cr. Cas. 1, approved; R. v. Thompson (1911), 21 Can. Cr. Cas. 80, disapproved.] A fine of $100 imposed on summary trial by a city police magistrate acting under subsec. 5 of Code, sec. 777, is warranted in respect of a conviction for theft under $10. R. v. Sinclair 27 Can. Cr. Cas. 327, 31 D.L.R. 265; appeal quashed in 28 Can. Cr. Cas. 350, 32 D.L.R. 796.

UNLAWFUL USE OF ANOTHER'S MOTOR CAR.

The marginal note "theft of motor car" appended to sec. 285B. of the Criminal Code (amendment of 9-10 Edw. VII., ch. 11), cannot enlarge the effect of the provision which that section enacts; and the summary conviction offence which it creates, of taking a motor car with intent to operate it without the consent of the owner is not theft but a minor offence. Hirschman v. Beal, 28 Can. Cr. Cas. 319, 32 D.L.R. 680, reversing 37 O.L.R. 529.

SALE OF CROPS BY WIDOW OF DECEASED MORTGAGOR.

The widow of a decedent mortgagor who died intestate and of whose estate no administrator was appointed does not become an executor de son tort by putting in a crop on the decedent's land for her own benefit notwithstanding the Devolution of Estates Act, R.S.S. 1909, ch. 43; the grain on being threshed is not subject to seizure by the land mortgagees under the attornment clause of a mortgage made by her husband in his lifetime to which she was not a party, and the widow's agent who removed and sold the grain after a pretended seizure of same by the mortgagees, although he knew of such seizure, is not liable to be convicted of theft. R. v. Tschetter, 29 Can. Cr. Cas. 179, 39 D.L.R. 688.

BY PERSON REQUIRED TO ACCOUNT.

A conviction under sec. 355 C.C. will be quashed where the evidence does not shew that the person who receives the money is a person who stands in the relation of an agent to the person to whom he is to pay or account, but shews that he is a person who by virtue of some contract under which there are mutual obligations is under an obligation arising out of the contract to pay or account, but does not become under it

either a trustee of the fund or an agent for the payee. R. v. Mackay, 29 Can. Cr. Cas. 194, 46 D.L.R. 37.

MORTGAGOR; BAILEE; SALE OF GOODS.

A mortgagor who gives an undertaking to hold goods seized under a mortgagee's warrant of distress, as agent and bailee, but who subsequently sells the goods and gives no account of the proceeds, cannot be convicted of theft by failing to account for the proceeds under sec. 355 of the Criminal Code. But the general definition of "theft" may be applicable. R. v. Kimbrough, 30 Can. Cr. Cas. 56, 41 D.L.R. 40.

CONVERSION OF VALUABLE SECURITY OR "OTHER THINGS;" INDICTMENT.

To be guilty of theft under sec. 355 of the Criminal Code, the accused must have received money or valuable security or other things on terms requiring him to hand over the thing received or the proceeds thereof to some person other than the person from whom he received it, and have fraudulently converted it to his own use. The "other things" to which the section refers must be things ejusdem generis with money and valuable security. An indictment charging failure to account for merchandise does not sufficiently charge failure to account for the proceeds of sale thereof. R. v. Fraser, 30 Can. Cr. Cas. 70, 40 D.L.R. 691.

ILLEGAL POSSESSION OF GOLD OR SILVER ORES; PRESUMPTIONS.

A person found in possession of silver ore under reasonable suspicion of such possession being illegal, within the meaning of Code, secs. 424 and 424A, has thrown upon him the onus of satisfactorily accounting at the trial for such possession when charged under Code, sec. 424A, and it is not necessary that before arrest or before the prosecution was begun he should have been asked by a police officer to explain his possession of the ore. R. v. Karp, 30 Can. Cr. Cas. 115.

BREACH OF TRUST; INTENT.

On a charge of criminal breach of trust (Cr. Code, sec. 390) an intent to defraud must be shewn and if there is no evidence of that intent before the magistrate holding the preliminary enquiry he exceeds his jurisdiction in ordering a committal for trial. R. v. Moreney 30 Can. Cr. Cas. 395.

FROM RAILWAY PARLOR CAR; "WAREHOUSE."

A compartment of a railway car parlor used for sorting supplies is not a "warehouse" within Cr. Code, sec. 460. Theft from a railway car is punishable under Cr. Code, sec. 384, but not under sec. 460. R. v. Levy and Gray, 31 Can. Cr. Cas. 19.

PRIVATE POSSESSION OF LETTERS BY POST OFFICE EMPLOYEE; CRIM. CODE, SECS. 347, 359, 364.

The mere fact of finding in the coat pocket of a post office employee letters containing money, addressed to another person, may or may not be evidence of theft, according to circumstances. Richard v. The King, 31 Can. Cr. Cas. 64.

THIRD OFFENCE.

Time of, as regards proceedings for prior offences. 7 Can. Cr. Cas. 459, 485.

THREATS.

See also Extortion; Menaces.

THREATENING LETTER; COMPARISION OF HANDWRITING TO BE MADE IN OPEN COURT BY JURY; DISPUTED WRITING.

Defendant was tried on a charge of sending a threatening letter to McD. The letter, which purported to be signed by defendant, was to the effect that defendant was in possession of evidence upon which he could have McD. fined for selling liquor after hours, and concluded with the words. "now if you like to settle the account between us it will be all right. Send me a receipt for the amount by the morning and all is well, otherwise you know what to expect." The evidence for the prosecution consisted of a letter, admitted to have been written by defendant, in which B., the inspector of licenses, was informed of the sale of liquor after hours by McD., a statement of the clerk who took the evidence on the trial of the charge that, on that occasion, defendant was shewn the letter upon which the present prosecution was based, and was examined in reference to it; and a statement by B. that, after his arrest, he had a conversation with defendant, in which the latter said he had written McD. a letter "that if he would square up some matter between them all would be well; otherwise he would inform against him." On this evidence the learned trial Judge received the letter tendered by the prosecution, being of the opinion that a prima facie case had been made out. Subsequently, evidence was given by one of the witnesses called for the defence, shewing that the letter defendant was accused of sending to McD. was the letter which the latter's counsel produced on the occasion of the former trial, and in reference to which defendant was then examined. The learned trial Judge, in charging the jury, after all the evidence was in, allowed them to compare the letter admitted to have been written by defendant with the letter in dispute, and to draw their own conclusion from the comparison of the two:—Held that he was justified in doing so. Held, also, that the prisoner's admission that he had written a threatening letter to the prosecutor, the identification of the particular letter in the conversation with the license

inspector, the examination of defendant in reference to the letter on he former prosecution, and the fact that the threat made had been actually carried out, furnished sufficient evidence to enable the jury to convict. Held, also, that all that is necessary to entitle a jury to compare a doubtful or disputed writing with one admitted to be genuine, is that the two writings should be in evidence for some purpose in the clause. Held, also, assuming that the trial Judge erred in receiving the disputed writing at the close of the case for the prosecution, that the evidence given subsequently clearly identified it, and connected defendant with it, and justified its submission to the jury. Held, also, that a document once having been received, is before the Court at every subsequent stage of the cause, and there is no necessity for tendering it a second time. Held, also, that the reception of the letter by the Judge did not necessarily imply that the defendant had written it or that it contained the elements necessary to shew defendant's guilt. These were questions exclusively for the jury. Held, also, that defendant's guilt being evident, there was no substantial wrong or miscarriage of justice, and no reason for quashing the conviction or awarding a new trial. Held, also, that if the letter had been tendered a second time, in view of the evidence given subsequently, the trial Judge would have been bound to receive it, and the question therefore resolved itself into a mere matter of form, not involving any question of substance. (Per Weatherbe and Henry, JJ.) Held, that the trial Judge erred in receiving the letter when he did in the absence of proof of handwriting, and that it was improperly submitted to the jury. (Per Weatherbe, J.) Held, that no handwriting can be compared by the jury unless it has first been received in evidence, on prima facie evidence of admission of handwriting. Held, also, that where a conviction depends upon proof of handwriting by comparison, the comparison must be made in open Court. (Per Henry, J.) Held, that, assuming that the letter was improperly admitted in the first instance, evidence received subsequently could not justify its being submitted to the jury, unless, after the giving of the additional evidence, it was tendered or received a second time. Held, also, assuming that there was no ground for receiving the letter at the time it was received, and that the adjudication made by the trial Judge at that time was wrong, the fact that oher evidence was given later, upon which he might have made a good adjudication, was immaterial. Held, also, that whether the accused should have been convicted on other evidence, independently of the letter, was a question for the jury, and should not have been submitted for the opinion of the Court. Held, also, that, in the absence of a direct and unmistakable enactment, the Court should not, upon a case reserved, affirm a conviction, where material evidence has been improperly received, because, in the opinion of the Court, there is sufficient good evidence to support a verdict. The Queen v. Dixon, 29 N.S.R. 462.

DEMANDING MONEY ACTUALLY DUE.

Demanding with menaces money actually due, is not a demand with intent to steal, under 4 and 5 Vict. ch. 25, sec. 11. Regina v. Johnson, 14 U.C.Q.B. 569.

SENDING A LETTER; WHEN A FELONY.

A crime punishable by law with imprisonment for not less than seven years means a crime the minimum punishment for which is seven years; and, as no minimum term is prescribed for the crime of abortion, sending a letter threatening to accuse a person of that crime is not a felony within the meaning of R.S.C. ch. 173, sec. 3. Regina v. Popplewell (1890), 20 O.R. 303.

THREATENING LETTER; "OFFENCE," MEANING OF.

The "offence" to accuse, or threaten to accuse, a person thereof with intent to extort or gain anything from him is made an indictable offence by Cr. Code, sec. 406, need not be an offence under the Code or other Dominion law, but may be an offence under a provincial law. R. v. Dixon, 2 Can. Cr. Cas. 589.

[Referred to in R. v. Cornell, 8 Can. Cr. Cas. 416, 6 Terr. L.R. 105.]

THREATENING WITH INTENT TO EXTORT.

Where, in a charge of sending a threatening letter to a person with intent to extort money, it is proved that the accused had stated that he had written a letter to such person, and that he had stated its purport in language to the like effect as the threatening letter, it is not error for the Court to admit the threatening letter in evidence without further proof of the handwriting, and to submit it to the jury for comparison with an exhibit, already in evidence, admittedly written by the accused. R. v. Dixon (No. 2), 3 Can. Cr. Cas. 220.

LETTER DEMANDING MONEY WITH MENACE OF PROSECUTION; PRELIMINARY INQUIRY; CROSS-EXAMINATION; CREDIBILITY.

The accused charged with having sent a letter demanding money with menaces by threatening the addressee with prosecution for an alleged infraction of the law (Cr. Code, 1906, secs. 451, 453) is not entitled to shew, upon the preliminary inquiry, that the addressee was in fact guilty as charged in the letter, such not being material to the existence of the offence; but the complainant may be cross-examined as to its truth to shake his credit as a witness. [R. v. Johnson, 14 U.C.Q.B. 569, distinguished; R. v.

Cracknell, 10 Cox C.C. 408, applied; compare R. v. Richards, 11 Cox C.C. 43.] On a charge of sending a threatening letter with intent to extort money, the accused may be heard in explanation of what he understood to be the meaning of the words he had used in the letter, where the expression is ambiguous in view of the surrounding circumstances disclosed by the testimony. [R. v. Hendy, 4 Cox C.C. 242, referred to; and see R. v. Tucker, Mood. C.C. 135; R. v. Hatch, 18 Can. Cr. Cas. 125 (B.C.).] R. v. Odell, 22 Can. Cr. Cas. 39.

TICKET OF LEAVE.

REVOCATION OF, WITHOUT FRESH CONVICTION.

The license issued under the authority of 62-63 Vict. ch. 49, and by which a convict while undergoing a term of imprisonment in penitentiary is conditionally allowed at large, may be revoked by the Governor-General either with or without cause assigned. The revocation by the Crown, without cause assigned, of such license works no interruption in the running of the sentence which shall terminate at the same time as if such license had never been granted. R. v. Johnson, 4 Can. Cr. Cas. 178.

SUBSEQUENT CONVICTION.

Where a convict has been released on ticket of leave from a provincial prison, and, while still under license, is convicted and sentenced to a term in a penitentiary, the remainder of the original sentence which he must serve out on forfeiture of his ticket of leave cannot be added to his penitentiary sentence, but he must, on the expiry of the latter, be sent to the gaol or prison named in the original sentence or, if the second conviction is in another province, then to a gaol or prison of the same class. The King v. McColl, 19 Can. Cr. Cas. 59.

TIME.

See Limitation.

TRADE COMBINATIONS.

See also Strikes.

CONSPIRACY TO DEPRIVE NON-UNION MEN OF EMPLOYMENT; TRADE UNION PURPOSES.

The defendants, members of a trade union, in conspiring to injure a non-unionist workman, B., by depriving him of his employment, were guilty of an indictable misdemeanour, and that what they conspired to do was not for the purposes of their trade combination within the meaning of R.S.C. ch. 173, sec. 13, sub-sec. 2; and that upon the evidence the conviction of the defendants for unlawfully conspiring together to injure B. in his trade and to prevent him from carrying it on, was right. Regina v. Gibson (1889), 16 O.R. 704.

LIMITATION OF PROSECUTION; CONTINUING OFFENCE.

(1) A person who organizes an association to restrict and control the business of retail coal dealing to the members of the association, and to prevent anyone else from obtaining coal from the foreign shippers at wholesale rates for resale in the district in which the association operates is properly convicted under Code, sec. 520 (d) of conspiracy to prevent competition in the sale of a commodity which is the subject of trade. (2) Even if Code, sec. 930, which limits certain proceedings to two years after the offence, could be held to apply to a prosecution by indictment, it did not apply to bar this prosecution, for the offence was a continuing one, the association remaining in active operation under the presidency of the defendant up to the commencement of the prosecution. The King v. Elliott, 9 Can. Cr. Cas. 505.

[Referred to in R. v. Gage (No. 2), 13 Can. Cr. Cas. 431; R. v. Beckett, 15 Can. Cr. Cas. 433; followed in R. v. Clarke (No. 2), 14 Can. Cr. Cas. 63; specially referred to in Weidman v. Shragge, 20 Can. Cr. Cas. 117, 2 D.L.R. 734.]

CONSPIRACY; ILLEGAL COMBINE THE OBJECT OF INCORPORATION.

(1) Two or more corporations may be indicted for conspiracy in furtherance of a trade combine under sec. 498 of the Revised Code, 1906, without joining a personal defendant. (2) For the purpose of proving the motive and effect of certain corporate acts, evidence is properly admissible on a charge of conspiracy laid against two corporations, to shew that the formation and operation of an illegal trade combine was the object of the incorporation of each of them, and that the formal agreements whereby the property and assets of unincorporated trade associations were respectively assumed by them, were made in furtherance of that design. (3) Evidence of the nature of the conspiracy alleged may be given before proof of the criminal agreement. The King v. Central Supply Association, Limited, 12 Can. Cr. Cas. 371.

[Referred to in R. v. Beckett, 15 Can. Cr. Cas. 434.]

EMPLOYERS' AGREEMENT IN ANTICIPATION OF THREATENED STRIKE; VALIDITY OF "LOCK-OUT" AGREEMENT.

(1) A lock-out agreement made by an employers' association following a demand from the employees' trade union for an increase in wages, is not a contravention of sec. 498 of the Criminal Code, 1906, as to trade combinations, although the contracting parties thereby agree to discharge from

their employ all members of the employees' union and not to re-employ them on a higher scale of wages than the rate prevailing at the date of the agreement. (2) On proof of damage to the other signatories of the agreement through breach of the conditions, a civil action lies upon the promissory note given by the defaulting subscriber to trustees for the association to ensure the carrying out of such agreement. Lefebvre v. Knott, 13 Can. Cr. Cas. 223.

CONSPIRACY IN RESTRAINT OF TRADE.

(1) A conspiracy "to restrain or injure trade" in relation to any commodity under Code, sec. 498, sub-sec. (b) must from the context be taken to refer to "undue" restraints of trade such as malicious restraints or those not justified by any personal interest for the protection of which the trade arrangement is made. (2) Traders may legally organize for the protection and advancement of their common interests, provided that the interests of the public are not to be unduly impaired. (3) A regulation of a grain buyers' association which required that its members on purchasing wheat from producers should pay therefor not more nor less than one cent per bushel below the export market price and so allow a fixed profit of one cent per bushel on the trade done by members of the association on its own exchange or market, does not constitute an undue restraint of trade, if it appears that such profit is a fair and reasonable one. The King v. Gage (No. 1), 13 Can. Cr. Cas. 415.

[Affirmed in R. v. Gage (No. 2), 13 Can. Cr. Cas. 428; discussed in R. v. Beckett, 15 Can. Cr. Cas. 437, 20 O.L.R. 401; examined in R. v. Clarke, 14 Can. Cr. Cas. 63; specially referred to in Weidman v. Shragge, 20 Can. Cr. Cas. 117, 2 D.L.R. 734.]

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[Specially referred to in Weidman v. Shragge, 20 Can. Cr. Cas. 117, 2 D.L.R. 734.]

CONSPIRACY TO UNDULY LESSEN COMPETITION IN SUPPLY.

(1) The offence of conspiring to unduly prevent or lessen competition in the sale or supply of an article of commerce under Cr. Code, sec. 498 (d) may exist without regard to the question whether the effect of the combine has been to raise or lower prices. (2) Such a charge as regards the lumber trade is supported by evidence that a trade association for whose actions the defendant was responsible assumed to fix a regular price of lumber in the various localities in which their members traded and to prevent persons from engaging in the lumber trade in those localities except with the consent and approval of the association through its officers and subject to its control both as to the minimum prices to be charged the public and as to the places in which new lumber yards should be started. The King v. Clarke (No. 1), 14 Can. Cr. Cas. 46.

[Distinguished in R. v. Beckett, 15 Can. Cr. Cas. 437, 20 O.L.R. 401.]

CONSPIRACY TO UNDULY LESSEN COMPETITION IN SUPPLY; FALSE HOLDING OUT AS COMPETITORS.

(1) The definition of a trade combination or conspiracy in Code, sec. 496 applies to sub-sec. (b) of sec. 498, but not to subsecs. (a), (c) and (d) thereof which in themselves define the classes of offence to which they relate. (2) A conviction on indictment for conspiring with certain persons named and other persons unknown "or with some or one of them" is not invalid for indefiniteness or uncertainty, the names of the persons being in the nature of particulars only and not material to the constitution of the offence. (3) Where a defendant is arraigned and tried alone upon a charge of conspiracy, he may be convicted and sentenced without first proceeding with the trial of the co-conspirators. (4) On an appeal both on the facts and the law under Code, sec. 1012 in a trade combine case tried without a jury, the Court of Appeal is to decide whether the judgment below should have been for the accused or whether there was evidence on which the judgment against him could reasonably be supported. (5) An agreement between two or more parties not to enter into competition with each other while holding themselves out as in active competition is an illegal contract. The King v. Clarke (No. 2), 14 Can. Cr. Cas. 57.

WHOLESALE GROCERS' ASSOCIATION; PROTECTION OF INTERESTS OF JOBBING TRADE; NO "UNDUE" RESTRAINT OF TRADE.

Where a trade association has been formed between wholesale grocers with the

bona fide desire of protecting the interests of the trade generally and without any malicious intent to injure others, with the object of arranging with manufacturers to allow regular trade discounts to jobbers not doing a retail trade whether members of the association or not, and to disallow such discounts to retailers or retailing jobbers, and the objects of the association do not contemplate the raising of the manufacturer's prices nor the prices to be paid by the consumer, there is no "undue" restraint of trade or impairment of public interests upon which to base a charge of trade conspiracy under the Criminal Code, sec. 498. The King v. Beckett, 15 Can. Cr. Cas. 408.

CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE.

(1) An agreement between an association of plumbers and an association of jobbers in plumbers' supplies made with the object of restricting the jobbers who joined the jobbers' association from selling to nonmembers of the plumbers' association and of restricting the plumbers who joined the plumbers' association from buying from jobbers who were nonmembers of the jobbers' association is illegal, as it is made to unduly limit the facilities for dealing in articles of commerce, to restrain or injure commerce, to unreasonably enhance prices and to unduly lessen competition in contravention of Cr. Code, sec. 498. (2) An officer of one of the signing companies who as its representative took part in the negotiations which led up to such agreement, and the issuing of lists of signatures to be sent out to the respective trades, and who endeavoured to have his company conform to such agreement is personally liable as an aider and abettor in the illegal trade combine and may be punished as a principal. The King v. McMichael, 18 Can. Cr. Cas. 185.

TRADE-MARK.

Assent of proprietor; Onus of proof. 1 Can. Cr. Cas. 73, 243.

At common law. 1 Can. Cr. Cas. 73.

Resemblance "calculated to deceive." 1 Can. Cr. Cas. 68, 245.

ENGLISH DECISIONS ON; REFERENCE TO.

The Canadian law respecting trade-marks being derived from English legislation, reference for its interpretation should be had to English decisions, more especially as the law extends throughout the Dominion, and it is desirable that the jurisprudence should be uniform. R. v. Authier, 1 Can. Cr. Cas. 68.

FALSELY APPLYING; PROPRIETOR'S ASSENT; ONUS.

(1) On a charge of falsely applying a trade-mark the onus of proving that the assent of the proprietor of the trade-mark has not been given is upon the prosecution. (2) Cr. Code, sec. 710 applies only to cases of forgery of a trade-mark and not to cases of "falsely applying" to shift the onus to the defendant to proving such assent. R. v. Howarth, 1 Can. Cr. Cas. 243.

FORGERY OF.

Where a trade-mark is complained of as being forged and as infringing the rights of the proprietor of a duly registered trade-mark, any resemblance of a nature to mislead an incautious or unwary purchaser, or calculated to lead persons to believe that the goods marked are the manufacture of some person other than the actual manufacturer, is sufficient to bring the person using such trade-mark under the purview of art. 448 of the Criminal Code, which prohibits the sale of goods falsely marked. R. v. Authier, 1 Can. Cr. Cas. 68.

FALSE TRADE DESCRIPTION; JURISDICTION OF MAGISTRATE.

Magistrates have no summary jurisdiction to adjudicate upon a charge under Cr. Code, sec. 448 of selling goods to which a false trade description was applied. Proceedings upon such a charge against a corporation should be instituted by indictment under Cr. Code, secs. 635-639, and not by a preliminary enquiry before a magistrate. R. v. T. Eaton Company, Limited, 2 Can. Cr. Cas. 252.

SODA WATER MANUFACTURER RE-FILLING BOTTLES; NAME NOT REGISTERED AS TRADE-MARK.

(1) A soda water manufacturer who fills for the purpose of sale bottles having the name of another manufacturer permanently placed thereon is guilty of an indictable offence under sec. 449 of the Criminal Code unless the manufacturer whose name appears on the bottles has given a written consent to such filling. (2) It is not essential to the offence that the name on the bottles should be registered as a trade-mark. The King v. Irvine, 9 Can. Cr. Cas. 407.

TRADE-MARK OFFENCES; FALSELY APPLYING A REGISTERED TRADE-MARK; INVALIDITY OF REGISTRATION A DEFENCE TO CRIMINAL PROSECUTION.

(1) Upon a prosecution for falsely applying an imitation of a trade-mark with intent to defraud, under Code, sec. 447 (b), it is open to the accused to attack the validity of the registered trade-mark. (2) If upon the evidence it appears that the registered trade-mark merely denotes the component parts of the goods, the registration is invalid. The King v. Cruttenden, 10 Can. Cr. Cas. 223.

BEVERAGE TRADE-MARK; RE-LABELING OF BOTTLES.

Section 655 of the Crim. Code, 1906, does not make it obligatory upon the magistrate to hear witnesses before issuing a warrant or summons for an infraction of Crim. Code, sec. 490, as to the unlawful use of beverage trade-marks and trade-names, if, after having issued a search warrant, the return of the constable shews that a large quantity of bottles, bearing the trade-mark of an opposition company, had been seized in defendant's possession with his own label added. The King v. Coulombe, 20 Can. Cr. Cas. 31, 6 D.L.R. 99.

FALSELY APPLYING; ADVERTISEMENT.

Offering for sale at his store by means of a newspaper advertisement under a description embodying a registered trade mark covering goods of a particular class may constitute the offence of falsely applying the trade mark where the accused had no goods which could properly be described in the manner advertised, and fraudulently used the advertisement to attract buyers for other goods of the same kind. R. v. Gross and Miller, 31 Can. Cr. Cas. 35.

TRADE UNIONS.

See Strikes; Conspiracy; Trade Combinations.

TRADING STAMPS.

VOTING CONTESTS.

A voting ticket given by a trader to each purchaser of goods to enable the latter to become a contestant for prizes to be distributed in a voting contest or to aid another contestant by voting for him or by transferring the ticket to him, is a "trading stamp" within Cr. Code, secs. 335 (*u*) and 505. R. v. Pollock, 26 Can. Cr. Cas. 24, 28 D.L.R. 545.

TRAIL.

See Highway.

TRANSLATION.

EVIDENCE OF FRENCH-SPEAKING WITNESSES AGAINST ENGLISH-SPEAKING PRISONER NOT TRANSLATED INTO ENGLISH; SUFFICIENT THAT PRISONER REPRESENTED BY FRENCH-SPEAKING COUNSEL.

Where an English-speaking prisoner in the Province of Quebec is represented at his trial by counsel speaking the French language, and no request is made for a translation of the testimony of French-speaking witnesses into English, for the benefit of the prisoner, the failure to so translate as to enable the prisoner to personaly understand the evidence is not a limitation of his right to make "full answer and defence" to the charge, and will not invalidate a conviction. The King v. William Long, 5 Can. Cr. Cas. 493.

TREASON.

See also Sedition.

TRIAL BY MAGISTRATE OR JUSTICE OF THE PEACE PROCEDURE.

(1) In the North-West Territories a stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, have power to try a prisoner charged with treason. The Dominion Act, 43 Vict. ch. 25, is not ultra vires. (2) The information in such case (if any information be necessary) may be taken before the stipendiary magistrate alone. An objection to the information would not be waived by pleading to the charge after objection taken. (3) At the trial in such case the evidence may be taken by a shorthand reporter. (4) A finding of "guilty" will not be set aside upon appeal if there be any evidence to support the verdict. (5) To the extent of the powers conferred upon it, the Dominion Parliament exercises not delegated, but plenary powers of legislation. Insanity as a defence in criminal cases discussed. The Queen v. Riel (No. 2), 1 Terr. L.R. 23.

EVIDENCE OF; PRESENCE AT THE SCENE OF ACTION; COMMON DESIGN.

The prisoner, having been indicted under Consol. Statutes, U.C. ch. 98 (3 Vict. ch. 12), as a citizen of the United States of America, was convicted of having, as such, joined himself to divers other evil disposed persons, and having been unlawfully and feloniously in arms against the Queen within Upper Canada, with intent to levy war against Her Majesty. It was sworn that the prisoner had said he was an American citizen and had been in the American army, and there was no evidence offered to contradict this:—Held, evidence against the prisoner, as his own admissions and declarations, of the country to which he belonged. It was proved that several hundreds of armed men landed in this province from the United States of America; that very shortly afterwards the prisoner came from the same place; that he was with them all the night previous to an attack made by them on the Canadian volunteers, and was early in the morning of that attack seen carrying a rifle and bayonet similar to those carried by the invaders, and altogether different from those used by Her Majesty's troops. It was also shewn that this armed body was organized; that it encamped and marched in military order; that it took prisoners, engaged Her Majesty's troops, and killed several of them.

Held, evidence of an intent, on the part of the prisoner, to levy war against Her Majesty the Queen. This intent, as laid down in Frost's Case, 9 C. & P. 150, may be collected from the acts of the accused, and does not require the passing of a resolution, or a verbal or written declaration plainly expressive of a purpose to levy war. It was further proved that the prisoner was in arms at Fort Erie, in Upper Canada, at four o'clock of the morning of the attack made upon the volunteers, and that he had been there with the armed enemy the night before. Held, evidence that he was in arms in Upper Canada with intent to levy war, notwithstanding his statement that he had found the weapons with which he was armed upon the road, and the fact that there was evidence of his having been unarmed the night before. It is not necessary, in order to render a party amenable to the statute, that he should actually have arms on his person; it is quite sufficient that he is present and concerned with those who are armed, even though he do not carry arms himself. Whenever a joint participation in an enterprise is shewn, any act done in furtherance of the common design is evidence against all who were at any time concerned in it. In this case evidence was admitted against the prisoner of the engagement above alluded to, although the same took place several hours after his arrest. Held, that the evidence had been properly received as shewing to some extent that the engagement in question had been contemplated by the parties while prisoner was with them before his arrest. The Imperial statute, 11 and 12 Vict. ch. 12, does not override 3 Vict. ch. 12 of this province, for the latter is re-enacted by the consolidation of the statute which took place in 1859. Regina v. Slavin (1866), 17 U.C.C.P. 305.

ASSISTING ENEMY DURING WAR; ATTEMPT.

Assisting an enemy alien to leave Canada to join the enemy's forces is treason under Cr. Code, sec. 74, sub-sec. (i); a mere attempt so to assist is not treason but is indictable under Cr. Code, secs. 72 and 570, where an intention to assist the enemy is manifested by any overt act. [By the Code amendment, 1915, assisting alien enemies "to leave Canada" is made an offence if the circumstances do not exclude the possibility that assistance to the enemy is an intended object and if the assisting does not amount to treason. This is new, sec. 75A of the Code.] A conviction for an attempt to assist a public enemy with which His Majesty is at war by agreeing to ferry four enemy aliens over the Niagara River to the United States whence they might proceed to join the enemy's forces, is not sustainable where there was no incitment by the accused and the enemy aliens had no intention of leaving Canada and no knowledge that the purpose of their being brought to the accused was that they should be ferried across the river, the fact being that they were being used in the make-up of a police trap to get evidence against the accused because of a suspicion that he had committed similar offences; the aliens could not be said to have been "assisted" without a desire or willingness on their part to be assisted, and the sham plot having been terminated by the arrest of the accused after he took the consideration money paid in advance by another person who had solicited the accused in furtherance of the plot arranged by the authorities and the transportation not having begun, there was no evidence of an attempt. [R. v. Linneker, [1906] 2 K.B. 99, applied; R. v. Taylor, 1 F. & F. 511, referred to.] R. v. Synder, 24 Can. Cr. Cas. 101, 25 D.L.R.1.

[Referred to in R. v. Bleiler, 28 Can. Cr. Cas. 9, 35 D.L.R. 274.]

SUFFICIENCY OF INDICTMENT; NAME OF ENEMY.

An indictment for treason under sec. 74, sub-sec. (i), of the Can. Crim. Code must be so framed as to afford notice to the accused in terms which he cannot mistake of the acts with which he is charged and which the Crown intends to establish by evidence. An indictment under that section should be quashed where it fails to state the name of the public enemy the accused is charged with assisting, and does not in sufficient terms state any definite overt act of treason. R. v. Fehr, 26 Can. Cr. Cas. 245, 29 D.L.R. 111.

ASSISTING PUBLIC ENEMY; OVERT ACT; ATTEMPTS.

The overt act of assisting another to aid a public enemy is in itself a treasonable act; the Criminal Code (Canada) does not contemplate such an offence as an attempt to commit treason. [R. v. Synder (1915), 24 Can. Cr. Cas. 101, 25 D.L.R. 1, 34 O.L.R. 318, referred to.] R. v. Bleiler, 28 Can. Cr. Cas. 9, 35 D.L.R. 274.

STATING OVERT ACTS IN INDICTMENT; SUFFICIENCY; CR. CODE, SECS. 74, 75, 75A, 847.

It is not essential that the overt acts charged in an indictment of treason should in themselves amount to treason apart from the criminal intent with which they are alleged to have been committed. Re Schaefer, 31 Can. Cr. Cas. 22.

TRESPASS.

RE-TAKING OF GOODS UNLAWFULLY TAKEN FROM OWNER.

When A.'s goods have been wrongfully taken by another and placed on the land of B. and the latter, although requested by A. to allow him to remove them, does

not permit him to do so:—Held, that A. may then lawfully enter and remove his goods. Hamilton v. Calder, 23 N.B.R. 373.

TRESPASS TO LAND; JURISDICTION OF MAGISTRATE; DISPUTE OF TITLE.

Where the defendants had been convicted, under 32-33 Vict. ch. 22, sec. 60, of trespass to land, and it appeared on the evidence before the magistrate, set out below, that there was a dispute between the parties as to the ownership:—Held, that it was a case in which the title to land came in question, and that the defendants had been improperly convicted, even though the magistrate did not believe that the defendants had a title, it not being within his province to decide on the title, but merely on the good faith of the parties alleging it. Regina v. Davidson et al. (1880), 45 U.C. Q.B. 91.

TRESPASS BY MAGISTRATE; ARREST FOR FAILURE TO PROSECUTE.

The plaintiff had laid information before the defendant, a magistrate, against G., for an assault, but afterwards decided not to proceed further. Defendant issued a summons, addressed to her, reciting the information, and requiring her presence on a day named, and there to testify, etc., but she said she did not wish to go on; and on the same day she was arrested under a warrant issued by the defendant, which recited that she had refused to appear before him, and commanded her arrest "to answer to the charge, and to be further dealt with according to law." She was brought before defendant but refused to go on with the charge, and a friend paid the costs for her, when she was discharged. These proceedings were taken, the defendant said, in order to get the constable's fees:—Held, that defendant was liable in trespass, for the plaintiff was not bound to proceed with the charge; and defendant had no right to issue the summons under sec. 16 of 32-33 Vict. ch. 31 (D.) or the warrant under sec. 17. Cross v. Wilcox, 39 U.C.R. 187.

FAIR AND REASONABLE SUPPOSITION OF RIGHT.

S. owned lot 38 in the 8th concession of N. In 1866 he sold the west half of the lot to complainant, reserving a strip of thirty feet along the north line thereof as a road for himself and successors in title to and from the east half of the lot. S. put up a gate at the west limit of the land where it met the highway, which gate had been there since 1866 until removed by the defendants. Defendants were successors in title to S., and removed the gate in question as an obstruction, and were convicted for unlawfully and maliciously breaking and destroying the gate erected at the west end of said road, as the property of the complainant:—Held, that defendants were acting in good faith in claiming the right to remove the gate, and under fair and reasonable supposition of right, and the conviction was therefore quashed. Held, also, that the question of a fair and reasonable supposition of right to do the act complained of was a fact to be determined by the justice, and his decision upon a matter of fact would not be reviewed, but that this rule did not apply where, as here, all the facts shewed that the matter or charge itself was one in which such reasonable supposition existed; that is, where the case and the evidence were all one way and in favour of the defendant. Quære, whether a gate across a right-of-way is an obstruction in law. Held, also, that the proviso in 32 and 33 Vict. ch. 22, sec. 60 (d), is to be read as applicable to sec. 29 and to the whole Act. [Regina v. Malcolm, 2 O.R. 511, distinguished.] Regina v. McDonald (1886), 12 O.R. 381.

JURISDICTION OF MAGISTRATE; FAIR AND REASONABLE SUPPOSITION OF RIGHT.

The defendants were convicted of a trespass under C.S.U.C. ch. 105, as amended by 25 Vict. ch. 22. They appealed to the Sessions, which affirmed the conviction. The conviction was then brought into the High Court, and a motion was made to quash it on the ground of want of jurisdiction in the convicting justice, inasmuch as it appeared by the evidence, and by affidavits filed, that the defendants acted under a fair and reasonable supposition that they had the right to do the acts complained of within the meaning of the above statutes:—Held, that that was a fact to be adjudicated upon by the convicting justice upon the evidence, and, therefore, that a certiorari would not lie for want of jurisdiction. Regina v. Malcolm (1883), 2 O.R. 511.

LIABILITY OF MAGISTRATE; EXCEEDING JURISDICTION.

A party applying to a magistrate for a warrant to arrest another for an alleged offence, is deemed only to appeal to the magistrate to exercise his jurisdiction, and is not liable in trespass for an arrest under the warrant; but, if he goes beyond this, and interferes in the exercise of the ministerial powers under the warrant, he will be liable. Kingston v. Wallace et al. (1886), 25 N.B.R. 573.

SEARCH WARRANT EXECUTED IN ONE COUNTY; OBJECT DETAINED IN ANOTHER.

In an action of replevin brought in the County Court of Haldimand for a mare taken by the defendants from the plaintiff's close in that county, removed to the county of Brant, and there detained until replevied:—Held, that the taking could not be justified under a warrant issued for the arrest of the plaintiff on a charge of stealing the mare; and although the original taking was justified under a search warrant issued in Haldimand to search the plain-

tiff's premises in Haldimand, for the mare and to bring it before a justice of that county, yet the subsequent removal to the county of Brant, and detention there were not, and constituted the defendant a trespasser ab initio, and therefore the County Court of Haldimand had jurisdiction to replevy the goods in Brant. Hoover v. Craig and Hunter, 12 O.A.R. 72.

"FAIR AND REASONABLE SUPPOSITION OF RIGHT."

(1) Under Cr. Code, sec. 511, the magistrate's jurisdiction in respect of a charge of wilful injury to property is not ousted unless the act was done under a fair and reasonable supposition of right, and the magistrate has jurisdiction to summarily try the charge notwithstanding the mere belief of the accused that he had a right to do the act complained of. (2) The same rule applies to a charge of trespass made under R.S.O. 1897, ch. 120, sec. 1, under which the magistrate's jurisdiction is ousted if the accused "acted under a fair and reasonable supposition that he had the right to do the act complained of." R. v. Davy, 4 Can. Cr. Cas. 28.

[Referred to in R. v. Watier, 17 Can. Cr. Cas. 14, R. v. Law Bow, 7 Can. Cr. Cas. 469; followed in R. v. Daigle, 15 Can. Cr. Cas 58.]

TRESPASS TO LAND; QUASHING CONVICTIONS UNDER ONTARIO STATUTES; POWER TO AWARD COSTS AGAINST MAGISTRATE AND PROSECUTOR.

Upon a motion to quash a summary conviction under the Ontario statute respecting petty trespasses, the Court has power under the Ontario Judicature Act, R.S.O. 1897, ch. 51, sec. 119, to award costs against the magistrate and prosecutor. The King v. Mancion, 8 Can. Cr. Cas. 218.

PRIVATE DWELLING HOUSE; SEARCH FOR INTOXICATING LIQUORS WITHOUT WARRANT.

In a civil action against a constable for trespass, the question whether the constable, in doing the act complained of, was acting bona fide in the discharge of his duty, is a question for the jury. Bell v. Lott, 9 Can. Cr. Cas. 341.

TRIAL.

See Indictment; Separate trial; Speedy trial; Summary conviction; Summary trial; Instructions to Jury.

Absence of accused as a bar to trial. 8 Can. Cr. Cas. 242.

Separate charges; Intermixing of trials. 8 Can. Cr. Cas. 8, 14, 15.

POSTPONEMENT; ABSENCE OF MATERIAL EVIDENCE; AFFIDAVIT OF MATERIALITY.

An application to postpone a trial, in consequence of the absence of material witnesses, must be supported by special affidavits shewing that the witnesses are material. R. v. Dougall, 18 L.C. Jur. 85.

RIGHTS OF ACCUSED TO ADDRESS JURY IN PERSON; REPLY BY PROSECUTION.

A prisoner on his trial, defended by counsel, may, at the conclusion of his counsel's address, himself make a statement of facts to the jury, but the prosecution will be entitled to reply. Queen v. Rogers (1884), 1 B.C.R. pt. 2, 119.

SEPARATE COUNTS; DISCRETION AS TO SEPARATE TRIAL.

(1) It is within the power of the trial Court to try the two counts together or in its discretion to direct a separate trial under Code, sec. 857. (2) The trial of both counts together might have been properly proceeded with, notwithstanding that the testimony of the girl in swearing to the first offence tended to shew that at the time of the second offence she was not "of previously chaste character," under Code, sec. 211. (3) The fact that the second count was struck out by direction of the trial Judge after the close of the evidence, does not have a retroactive effect and make the trial illegal on the ground that that part of the evidence which had been taken upon the second count alone may have influenced the jury on the first count, although withdrawn with the striking out of the additional count. (Per Maclaren, J.A.) (4) The accused having applied to the trial Judge at the close of the evidence to strike out the second count on other grounds cannot well complain that it was subsequently struck out on a ground not urged. (Per Maclaren, J.A.) The King v. Hughes, 17 Can. Cr. Cas. 450.

RIGHT OF PRIVATE PROSECUTOR TO BE HEARD AT TRIAL.

Where a prosecution for a criminal offence was instituted by a private prosecutor and he is still in charge of the prosecution, he has the same right to be heard on the trial, both as to the question of guilt and the quantum of punishment as the Attorney-General would have on a Crown prosecution. [Stephen's History of the Criminal Law, 419, 495, referred to.] Re McMicken, 20 Can. Cr. Cas. 334, 8 D.L.R. 550.

OPENING CASE; ALLEGED CONFESSION.

Counsel for the Crown in a criminal prosecution may not, in opening the case to the jury, disclose the facts relied upon as constituting a confession by the accused until the court has decided that the evidence is admissible. (Dictum per Galt, J.) R. v. Willis and Pople, 21 Can. Cr. Cas. 64, 9 D.L.R. 646.

STATEMENTS OF COUNSEL; CROSS-EXAMINATION OF ACCUSED.

Where questions are put to the accused by

the Crown counsel in cross-examination when the accused becomes a witness on his own behalf and such questions overstep the bounds allowable in cross-examination as making suggestions not warranted by the evidence and from which the jury might draw inferences prejudicial to the accused, the validity of the conviction will not be affected thereby if the trial judge has instructed the jury to disregard those questions and any inferences suggested by them. [R. v. Long, 5 Can. Cr. Cas. 493; R. v. Rose, 18 Cox C.C. 717; R. v. Bridgewater, [1905] 1 K.B. 131; and R. v. Hudson, [1912] 2 K.B. 464, 7 Cr. App. R. 256, referred to.] R. v. Hurd, 21 Can. Cr. Cas. 98, 10 D.L.R. 475.

ORDER OF ADDRESSES TO JURY; NO WITNESSES FOR DEFENCE.

In a criminal case where the defence calls no witnesses, the order of addresses to the jury is first the prosecution, second, the defence, and lastly a right of reply to counsel representing the Attorney-General where the Crown is prosecuting; but the latter privilege is commonly waived, leaving the prisoner with the last word to the jury when he calls no witnesses. R. v. Cook, 22 Can. Cr. Cas. 241, 23 Can. Cr. Cas. 50, 18 D.L.R. 706. See also 23 Can. Cr. Cas. 86, 19 D.L.R. 318.

RIGHTS OF ACCUSED; FORMAL PROCEEDINGS; ANSWER AND DEFENCE; SPECIFIC CHARGE.

A person upon a trial for a crime has a right to hear all the evidence adduced against him and to insist, as a matter of right, that the formalities of the law as to criminal trials are complied with; and when formal proceedings are in strict law required, ex. gr., an arraignment upon a specific charge made known to the prisoner at the hearing before a magistrate, the absence of the required proceedings is a ground for setting aside the conviction without regard to the question whether or not any substantial injustice had resulted to the accused. [Martin v. Mackonachie, 3 Q.B.D. 730, 770, applied.] R. v. Roach, 23 Can. Cr. Cas. 28, 19 D.L.R. 362.

COUNSEL FOR DEFENCE; STATING OR READING LAW TO JURY.

The right of the prisoner's counsel at the close of the testimony on a criminal trial is to "sum up the evidence" (Cr. Code, sec. 944), and it is in the judge's discretion whether counsel will be permitted in his address to the jury to read to them extracts from legal text-books or law reports, even though the extract sought to be used may be of an English judicial opinion of accepted authority. R. v. Cook, 23 Can. Cr. Cas. 50, 22 Can. Cr. Cas. 241, 18 D.L.R. 706. See also 23 Can. Cr. Cas. 86, 19 D.L.R. 318.

STATEMENT OF COUNSEL ON DEFENDANT'S FAILURE TO TESTIFY; RETRIAL.

Where there is a clear contravention of sec. 4 of the Canada Evidence Act by a comment by the prosecuting counsel in his address to the jury on defendant's failure to take the witness stand in his own behalf, the jury may be discharged and the sheriff directed to summon a new jury for the retrial of the indictment. R. v. Beaulieu, 24 Can. Cr. Cas. 65.

SUBSTANTIAL WRONG OR MISCARRIAGE; CONSTITUTION OF GRAND JURY.

In determining whether or not any "substantial wrong or miscarriage" has been occasioned on the trial within the meaning of Cr. Code, sec. 1019, as to criminal appeals, the Appellate Court hearing a case reserved upon an objection to the constitution of the grand jury which the trial Judge refused to allow on motion to quash the indictment (Cr. Code, sec. 899) must have regard also to the curative provisions of Cr. Code, sec. 1011, as to the preparation of jury lists and jury panels and to the limitation made by sec. 899 (2) whereby an objection to the constitution of the grand jury is not to be allowed on a motion to quash unless the accused has suffered or may suffer prejudice by the subject matter of such objection. [R. v. Hayes, 9 Can. Cr. Cas. 101, 11 B.C.R. 4; R. v. Brown, 19 Can. Cr. Cas. 237, 45 N.S.R. 473, referred to.] R. v. Morrow, 24 Can. Cr. Cas. 310.

FINDINGS BY COURT WHERE NO JURY.

An accused person has a right where the trial takes place without a jury to have the judge's decision based upon a correct apprehension of the facts proved. (Per Stuart, J.) R. v. O'Neil, 25 Can. Cr. Cas. 323.

JUDGE'S CHARGE; SHORTHAND; OPINION; APPEAL.

It is not obligatory in other than capital offences that the Judge's charge to the jury should be taken down in shorthand. It is not a ground for appeal that the trial Judge told the jury what verdict he would give if he were a juror. Rivet v. The King, 25 Can. Cr. Cas 235, 27 D.L.R. 695.

COMMENT BY JUDGE; PREJUDICE; APPEAL.

A conviction will not be set aside, or leave to appeal granted, because the Judge presiding at the trial had in his charge to the jury erroneously commented on secondary matters unless in the opinion of the appeal Court the accused has suffered prejudice therefrom. R. v. Shayanez, 26 Can. Cr. Cas 438.

INFLAMMATORY ADDRESS OF COUNSEL; DISCRETION OF TRIAL JUDGE.

It is with the discretion of the trial Judge to interfere if he deems the address of the prosecuting counsel to be improper as being inflammatory and tending to prejudice the

jury; no question of law arises thereon which can be made the subject of a reserved case by the trial Judge. [R. v. Nerlich, 24 Can. Cr. Cas. 256, 25 D.L.R. 138, 34 O.L.R. 298, and R. v. Webb, 22 Can. Cr. Cas. 424, 16 D.L.R. 317, 24 Man. L.R. 437, referred to.] R. v. Kelly (No. 2), 27 Can. Cr. Cas. 140, affirming 27 Can. Cr. Cas. 94; affirmed in 27 Can. Cr. Cas. 282, 34 D.L.R. 311.

PRISONER'S STATEMENT IN COURT; JUDGE'S DIRECTION TO JURY.

Where the accused person in addressing the jury on his own behalf has made statements of alleged facts outside of the sworn testimony, the trial Judge should warn the jury against treating the statement as the equivalent of sworn testimony; such warning is not an infraction of sec. 4 of the Canada Evidence Act, R.S.C. 1906, ch. 145, under which the failure of the accused to testify is not to be made the subject of comment by the Judge or by counsel for the prosecution. R. v. Kelly (No. 3), 27 Can. Cr. Cas. 282, 34 D.L.R. 311, affirming 27 Can. Cr. Cas. 140.

INSTRUCTION FAIRLY BEFORE THE JURY.

The jury are entitled to have the assistance of the presiding Judge in directing them in a criminal case and to have the case put to them in such a way as to ensure their due appreciation of the value of the evidence, but this does not necessarily require that he should emphasize and elborate the various discrepancies set up by the defence in regard to the evidence of the Crown's principal witness; the Judge is to call attention with due care to the salient or essential details of the case and their bearing on the guilt or innocence of the accused in such a way as to let the jury understand what the defence really is. [R. v. Finch, 12 Cr. App. R. 7, applied.] R. v. Baugh, 28 Can. Cr. Cas. 146, 33 D.L.R. 191. See 27 Can. Cr. Cas. 373, 31 D.L.R. 66.

JOINT TRIAL; ADMISSIONS BY ONE; DUTY TO INSTRUCT JURY.

Where two persons are being jointly tried, and particularly where an order for a separate trial has been refused, and proof is offered of statements made by one of the accused not in the presence of the other and not admissible as against the latter, but likely to be considered by the jury as evidence against both unless a proper direction is given to them, it is error in law for the trial Judge to omit to give an instruction to the jury that the statement so sworn to have been made by the one accused is evidence only against him and not against his co-defendant. R. v. Murray & Mahoney (No. 3), 28 Can. Cr. Cas. 247, 38 D.L.R. 395. See 25 Can. Cr. Cas. 214, 28 D.L.R. 372; 27 Can. Cr. Cas. 247, 33 D.L.R. 702.

JUDGE EXPRESSING OPINION ON FACTS TO JURY.

The trial Judge in summing up in a criminal case may express his own opinion upon the facts and this will not be a ground for a new trial if he made it clear to the jury that they were the judges of the facts and were to exercise their own judgment without being bound to accept his view. R. v. Moke, 28 Can. Cr. Cas. 296, 38 D.L.R. 441.

READING CHARGE TO JURY; MINOR INACCURACIES.

In determining whether the instruction to the jury was a proper one or not, the Appellate Court is to look at the charge as a whole; a new trial will not be granted, even in a capital case, because of minor inaccuracies in the charge if the inaccuracies have misled the jury and the defence was fairly put before them. R. v. Hogue, 28 Can. Cr. Cas. 419, 39 D.L.R. 99.

DUTY OF CROWN PROSECUTOR; FAIRNESS.

Where the Crown prosecutes in a magistrate's court, counsel for the Crown owes a special duty both to the court and to the defence to guide the proceedings upon principles of fairness. (Per Stuart, J.) R. v. Dominion Drug Stores, Ltd., 31 Can. Cr. Cas. 86, affirming 30 Can. Cr. Cas. 318, 44 D.L.R. 382.

ULTRA VIRES.

See Constitutional law; Municipal by-law.

UNCERTAINTY.

See describing the offence; Summary conviction; Indictment; Information; Separate trial; Speedy trial; Summary conviction; Summary trial; Jury.

UNLAWFUL ENTRY.

ENTERING HOUSE FOR PURPOSE OF ASSAULT; REQUEST TO LEAVE.

There is a manifest distinction between endeavoring to turn a person out of a house into which he has previously entered quietly, and resisting a forcible attempt to enter; in the first case a request to depart is necessary; but not in the latter. In a criminal prosecution by the wife of O. for assault made upon her on entering her husband's house, the defence was, that she had no right to go to her husband's house, and that her intention in going there was to take away property which she had no legal right to take; but:—Held, on a case reserved, that this would not justify the assault, there being no previous request made of her to leave the house, nor any statement of her intention, or attempt

made, to take anything. The Queen v. O'Neill, 3 P. & B. 49 (N.B.).

ENTERING A DWELLING HOUSE IN THE NIGHT TIME WITH INTENT; ASSAULT IN EFFORTS TO BREAK OUT.

(1) On an indictment for being unlawfully in a dwelling house by night with intent to assault, a written verdict, of "guilty of being in the house unlawfully, also guilty of assault," is a good verdict of guilt on the charge, as the assault necessarily includes the intent. (2) To complete the offence of being unlawfully in a dwelling house with intent to assault, it is sufficient that the intent originated after the entry, and that the assault was threatened by the accused in his efforts to escape from the house after being discovered therein. (3) Semble, the verdict as to intent while in the house is not affected by the circumstance that the same count of the indictment charged also the entering of the house with intent to make the assault. The King v. Higgins, 10 Can. Cr. Cas. 456.

UNLAWFUL FEES.

See Extortion.

UNNATURAL OFFENCE.

MINOR UNDER 14; INCAPACITY FOR CRIME; PRESUMPTION.

It is to be conclusively presumed that a boy is physically incompetent to commit an unnatural offence under Cr. Code, sec. 174, if under the age of fourteen; but he may, if the act be committed against the will of the other party, be punished for an assault under Cr. Code, sec. 260. R. v. Hartlen, 2 Can. Cr. Cas. 12.

USURY.

PROOF THAT ACCUSED IS A MONEY LENDER; EVIDENCE OF PRIOR LOANS.

(1) A conviction under the Money Lenders Act, R.S.C. 1906, ch. 122, will be quashed if no evidence is given that the accused made a practice of lending money at a higher rate than ten per cent. (2) Oral evidence is admissible on a prosecution under the Money Lenders' Act to shew that the true transaction was one of loan and not, as claimed by the defence, a purchase of unearned salary from the party to whom the money was given. The King v. Clegg, 14 Can. Cr. Cas. 217.

PRETENDED DISCOUNT AT BANK ON BORROWER'S ACCOUNT AFTER CASH ADVANCED BY ACCUSED.

(1) On a prosecution for usury under the Money Lenders' Act, R.S.C. 1906, ch. 22, it is a question of fact whether the accused himself lent the money which the borrower received from him or whether he acted as the borrower's agent or broker to procure the loan and deliver the proceeds less his brokerage charges. (2) Where the transaction charged as an usurious discount under the Money Lenders' Act was a colourable one taking the form of a discount procured by the accused at a chartered bank upon his guarantee of payment, but the proceeds, less alleged brokerage fees, were advanced in cash by the accused to the borrower prior to the pretended discount made by the accused at the bank on the borrower's behalf, the magistrate may convict if he finds there was in fact no brokerage arrangement and that the alleged discount at the bank was merely a blind to cover up the real transaction. The King v. Dubé, 14 Can. Cr. Cas. 436.

MANAGER OR CLERK IN MONEY LENDER'S OFFICE.

As by Code, sec. 69 every one is a party to, and guilty of, an offence, who abets any person in the commission of it, a clerk or manager in a money lender's office, who takes part in an act which amounts to the offence of usury, is guilty as a principal, and it is no defence to the charge that he acted merely as an agent. Lalonde v. The King, 15 Can. Cr. Cas. 72.

[Followed in R. v. Kehr (No. 2), 18 Can. Cr. Cas. 66.]

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[Followed in R. v. Kehr (No. 2), 18 Can. Cr. Cas. 66.]

CRIMINAL USURY; LENDING SUMS OF MONEY LESS THAN $500 AT MORE THAN 12 PER CENT.

(1) Where a money lending business is carried on through a corporation which collects from the borrower out of the money advanced a commission for procuring the loan in addition to the maximum contract rate payable on the securities which are taken payable to an individual, and both the individual lender and the corporation are represented by the same person, evidence is admissible on a prosecution of the latter for an infraction of the Money Lenders' Act to shew that there were not in fact two separate businesses and that the methods adopted were colourable and a mere attempt at evasion of the provisions of the statute. (2) An employee of a money lender may be convicted of criminal

usury under the Money Lenders' Act if he carries on the business of money lending for his employer and makes for him contracts for prohibited interests and commissions, or if he aids and abets in the illegal transactions. The King v. Smith and Luther, 17 Can. Cr. Cas. 445.

LENDING OF CREDIT; ENDORSEMENT OF NOTE FOR A CONSIDERATION; CHARGE IN EXCESS OF LEGAL RATE.

(1) If it is shewn there is a lending of credit by endorsing a promissory note for a consideration to be paid the endorser which is larger than is lawful as interest upon a loan, and that this method of doing business in collusion with the third party, who discounted the note, is a device to evade the Money Lenders' Act, the endorser is a money lender, under the statute and may be held liable for criminal usury. (2) The local manager of an endorsing corporation who on behalf of the corporation makes the usurious bargain for endorsement charges, and directs the borrower to the discounter who makes a further charge of the full legal rate of discount, is an aider and abettor of the offence and is criminally liable under Code, sec. 69 as a principal offender. The King v. Kehr (No. 2), 18 Can. Cr. Cas. 57.

MONEY LENDER; DISCOUNT AND GUARANTEE; EVIDENCE OF COLLUSION BETWEEN ENDORSER AND DISCOUNTER.

(1) Where the endorsement of the borrower's note is offered for a consideration as a means of obtaining a loan and the borrower uniformly directed to the same discounter, there is evidence of collusion which will support a conviction of the endorsing party as an aider and abettor in the usury constituted by grouping the two transactions, when the whole sum paid or to be paid by the borrower for the guarantee and for interest upon a loan of less than $500, exceeds twelve per cent. (2) Sec. 69 of the Criminal Code as to aiders and abettors applies to a charge of criminal usury under the Money Lenders' Act, R.S.C. 1906, ch. 122. (3) To support a conviction as an aider or abettor of an offence under the Money Lenders' Act, it is not essential that the accused should be a "money lender" as defined by the statute. The King v. Kehr (No. 3), 18 Can. Cr. Cas. 202.

BY DISCOUNTS; "LENDING;" MONEY LENDERS' ACT.

The offence of "lending" money at a greater interest than is authorized by the Money Lenders' Act, R.S.C. 1906, ch. 122, for which a money lender may be indicted under sec. 11 of that statute, includes discounts made contrary to sec. 6 thereof which in terms prohibits a money lender from stipulating for, allowing or exacting on any negotiable instrument, contract or agreement, concerning a loan of money the principal of which is under $500, "a rate of interest or discount greater than 12 per cent. per annum." A person is shewn to be a "money lender" within the Money Lenders' Act, R.S.C. 1906, ch. 122, if it be proved that he discounted promissory notes at a prohibited rate at various times each of less than $500 and so within the statute, although all for the same customer. A person who is a money lender within the terms of the Money Lenders' Act, R.S.C. 1906, ch. 122, is guilty of a criminal offence under sec. 11 of that Act if he discounts for the customer at one time several notes made by various other persons maturing at various dates for less than $500 each, although the notes aggregate more than $500 and the net amount of the advance after deducting the discount was also more than $500, where the discount charge was separately computed and retained on each note at a rate of more than 12 per cent. per annum, if there was no contract of open credit and the discount was made directly upon such notes without the customer himself giving his own note for the gross amount exceeding $500 as the subject of discount with the smaller notes as collateral only to the advance, so as thereby to make the transaction a single one for more than $500, to which the statute would not apply. R. v. Eaves, 21 Can. Cr. Cas. 23, 9 D.L.R. 419. See also 8 D.L.R. 1026.

MONEY LENDERS' ACT.

One who, at intervals extending over a year makes various loans of money at usurious rates is a "money lender" within the meaning of the Money Lenders' Act, R.S.C. 1906, ch. 122, notwithstanding all the loans were made to the same person. R. v. Morgan, 21 Can. Cr. Cas. 225, 11 D.L.R. 794.

VAGRANCY.

See also Disorderly house; Gaming house.

Disorderly house; Being inmate of Form of conviction. 5 Can. Cr. Cas. 401.

AVERMENTS NECESSARY TO SUSTAIN CHARGE; PUBLIC DISTURBANCE WHILE DRUNK.

Under the Vagrant Act, 32-33 Vict. ch. 28, it is not sufficient to allege that the accused was drunk on a public street, without alleging further that he caused a disturbance in such street by being drunk. Ex parte Despatie, 9 Mont. Leg. News 387.

CONVICTION FOR FREQUENTING A HOUSE OF ILL-FAME; PENALTY.

Held, that a conviction under 32-33 Vict. ch. 32, sec. 2, sub-sec. 6 (Dom.), 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. That section makes the being such habitual frequenter a substantial offence, punishable as in sec. 17, and does

not merely create a procedure for trial and punishment. Regina v. Clark, 2 O.R. 523.

DRUNKENNESS; NEGATIVING CAUSE OF DISTURBANCE.

The Act of R.S.C. ch. 157, sec. 8 (f) provides that "all persons who cause a disturbance in any street or highway by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers are loose, idle or disorderly persons within the meaning of this section." 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 respecting vagrants." 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:—Held, that no offence of the nature described in the conviction and commitment was committed by the defendant, and an order was made for his discharge. Regina v. Daly, 24 C.L.J. 156, 12 Ont. P.R. 411.

ESSENTIALS OF THE OFFENCE; EVIDENCE.

A conviction under 32-33 Vict. ch. 28 (D.), for that V. L. was in the night time of the 24th February, 1870, a common prostitute, wandering in the public streets of the city of Ottawa, and not giving a satisfactory account of herself, contrary to this statute:—Held, bad, for not shewing sufficiently that she was asked, before, or at the time of being taken, to give an account of herself, and did not do so satisfactorily. Semble, proceedings having been taken under 29-30 Vict. ch. 45 (D.), that the evidence might be looked at; and if so it was plainly insufficient, in not shewing that the place in which she was found was within the statute, or that she was a common prostitute. The conviction having been brought up by certiorari, when, under 32-33 Vict. ch. 31 (D.), no such writ could issue. It could not be quashed, but the Court could only discharge the defendant. (Per Richards, C.J., and Morrison, C.J.) Semble, that being before the Court it might be quashed. (Per Wilson, J.) Regina v. Levecque (1870), 30 U.C.Q.B. 509.

[Dissented from in Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

LICENSED CARTER SOLICITING PASSENGERS IN FRONT OF HOTEL.

Held, that a licensed carter who, contrary to a city ordinance, loitered near to the entrance to a hotel in the city of Montreal, and solicited passengers for conveyance in his cab, is not a loose, idle or disorderly person or a vagrant, within the meaning of R.S. Que. ch. 157, sec. 8, more especially where it is not proved that such loitering obstructed passersby, or incommoded guests in the hotel. R. v. Smith, 4 Mont. L.R. 325.

NO VISIBLE MEANS OF SUPPORT; POSSESSION OF CHEQUES AND MILEAGE TICKET.

The defendant registered his name and address at the American Hotel, Toronto, and on the same day was arrested at the Union Railway Station, having been pointed out to the police by some of the railway officials as a suspicious character. On his person were found two cheques, one for $700 and the other for $900, which were sworn to be such as are used by "confidence men," a mileage ticket nearly used up in favour of another person, and $8 in cash. He offered no explanation of the cheques or the ticket, and gave no information about himself:—Held, that the Vagrant Act did not warrant his arrest, much less his conviction. Before a person can be convicted of being a vagrant of the first class named in the Act "All idle persons who not having visible means of maintaining themselves live without employment" he must have acquired in some degree a character which brings him within it as an idle person, who having no visible means of maintaining himself, i. e., not "paying his way or being apparently able to do so, yet lives without employment." Regina v. Bassett, 10 Ont. Prac. Rep. 386.

EVIDENCE NECESSARY TO CONVICT ONE FOR BEING A VAGRANT.

The defendant was summarily convicted under 32 and 33 Vict. ch. 28, sec. 1 (D.), as "a person who, having no peaceable profession or calling to maintain himself by, but who does, for the most part, support himself by crime, and then was a vagrant" etc. 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:—Held, that it was not to be inferred that the defendant supported himself by crime; 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. Reg. v. Organ, 11 P.R. (Ont.) 497.

PROSTITUTION AS EVIDENCING.

A woman who is kept by a married man and who surrenders herself to sexual intercourse with him alone, does not come under the purview of Cr. Code, sec. 207 (1), which declares any one to be a vagrant who, having no peaceful profession or calling to maintain herself by, for the most part supports herself by the avails of prostitution. R. v. Rehe, 1 Can. Cr. Cas. 63.

[Referred to in R. v. Misse, 13 Can. Cr. Cas. 488.]

NO VISIBLE MEANS OF SUPPORT; GAMING.

(1) The evidence on a charge of vagrancy laid under Cr. Code, sec. 207 on the ground that the accused had for the most part supported himself by gaming and crime, must shew that the gaming or crime took place during the time within or for which he is charged in the information with having been a vagrant. (2) If the accused resides for a portion of the year with his parents at their request, they being able and willing to provide for his support, a conviction for vagrancy under Cr. Code, sec. 207 (a) because "not having had any visible means of maintaining himself he had lived without employment" should be quashed. (3) Semble, although it may appear that part of the money by which the accused is supported with his parents had been acquired by him by his gaming, etc., prior to the time of the offence charged, and that the accused while so resident with his parents idled away his time in places of public resort, such does not justify a conviction for vagrancy. R. v. Riley, 2 Can. Cr. Cas. 128.

[Referred to in R. v. Munroe, 19 Can. Cr. Cas. 88.]

HUSBAND AND WIFE; VAGRANCY BY NON-SUPPORT OF WIFE.

In order to constitute a wilful refusal or neglect on the part of a husband to maintain his family, under Cr. Code, sec. 207 (b), it is necessary that he should be under legal obligation to do so, and his failure to maintain his wife, who had left him without valid cause and refused to return, is not an offence under that section. R. v. Leclair, 2 Can. Cr. Cas. 297.

INSULTING LANGUAGE; IMPEDING OR INCOMMODING PASSENGERS.

Slandering a person in a restaurant open to the public is not an offense under sec. 207 of the Criminal Code, either as an obstruction to passenger by using insulting language, or as a disturbance incommoding passengers. A restaurant open to the public is not a "public place" within the meaning of Code, sec. 207. The King v. Mercier, 6 Can. Cr. Cas. 44.

ASSEMBLY IN PUBLIC STREET; PERSONS OF GENERAL GOOD CHARACTER.

The mere fact of holding a meeting in a street does not necessarily imply the impeding or incommoding of peaceable passengers, and proof of actual impeding or incommoding is essential to justify a conviction. Cr. Code, sec. 207 does not apply to persons of general good character, but is intended to apply to loose, idle and disorderly persons only. The King v. Kneeland, 6 Can. Cr. Cas. 81.

CONVICTION VOID FOR UNCERTAINTY UNLESS PARTICULARS STATED.

A summary conviction for being "a loose, idle person or vagrant" without specifying in what the vagrancy consisted under Code, sec. 207, is void for uncertainty. The King v. McCormack, 7 Can. Cr. Cas. 135.

[Approved in R. v. Lecoule, 11 O.L.R. 408; referred to in R. v. Young, 12 Can. Cr. Cas. 111; R. v. Harris, 13 Can. Cr. Cas. 398; followed in R. v. Code, 13 Can. Cr. Cas. 377.]

IMPRISONMENT IN DEFAULT OF FINE; ILLEGAL CONDITION OF PAYMENT OF COSTS BEFORE DISCHARGE FROM IMPRISONMENT.

(1) A recorder has no right in condemning the accused to pay a fine and costs for vagrancy and to imprisonment in case of non-payment, to impose as a condition of the discharge of the accused at the expiry of the fixed term of imprisonment, the payment of such costs and of the expenses of conveyance to gaol, and such conviction will be quashed on certiorari. (2) Semble, a conviction containing an adjudication so far in excess of that which might lawfully have been imposed will not be amended upon certiorari. Leonard v. Pelletier, 9 Can. Cr. Cas. 19.

[Referred to in Collette v. R., 16 Can. Cr. Cas. 289.]

SUPPORT BY CRIME; MEANS OF LIVELIHOOD; ASSOCIATE OF PICK-POCKETS.

A conviction for vagrancy under Code, sec. 207 (1) is not warranted where the accused had at the time of his arrest sufficient money for his immediate needs and had been regulary employed in another city until two months prior thereto, although he was shewn to have been an associate of pick-pockets in the city from which he came. The King v. Collette, 10 Can. Cr. Cas. 286.

[Referred to in R. v. Munroe, 19 Can. Cr. Cas. 89.]

DESCRIBING THE OFFENCE; DISORDERLY CONDUCT; SUMMARY CONVICTION.

A conviction under the vagrancy clauses of the Criminal Code (former secs. 207, 208, now Revised Code, secs. 238, 239) must find that the accused is a loose, idle or disorderly person or vagrant and a conviction which merely declares that the accused was guilty of being drunk and causing a disturbance (sec. 238 (f)) is invalid. The King v. Harkness, 12 Can. Cr. Cas. 54.

DISORDERLY CONDUCT IN PUBLIC PLACE.

A licensed saloon and billiard hall is a "public place" under Rev. Cr. Code, secs. 197 and 238, and a person causing a disturbance therein by being drunk is liable as a vagrant. The King v. Kearney and Denning, 12 Can. Cr. Cas. 349.

PROSTITUTE WANDERING IN STREETS; ESSENTIAL INGREDIENT OF OFFENCE; ONUS ON PROSECUTION TO PROVE.

(1) A conviction for vagrancy against a

prostitute for wandering in the public streets and not giving a satisfactory account of herself is bad if it omits to set out that the accused was asked, before the arrest, to give an account of herself. (2) It is an essential ingredient of the offence that a request for an explanation should have first been made, and the onus is on the prosecution to prove both the request and the failure to give a satisfactory explanation. (3) Notwithstanding sec. 723 of the Code making valid the description of an offence in the words of the creating statute, it is still necessary to specify in a summary conviction whatever the accused has done which brings him within the words of the statute. The King v. Harris, 13 Can. Cr. Cas. 393.

[Followed in Rex v. Pepper, 19 Man. L. R. 209, 15 Can. Cr. Cas. 314; dissented from in Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

INMATE; INMATE NOT LIABLE AS FREQUENTER.

(1) The mere fact that a woman is an inmate of a bawdy house is not sufficient to sustain a conviction under Code, sec. 238 (j) unless she is an inmate for the purpose of prostitution. (2) Proof that a woman is an inmate of a bawdy house will not sustain a conviction upon a charge of being a frequenter thereof. The King v. Misse, 13 Can. Cr. Cas. 485.

BAWDY HOUSE; POLICE RAID; FREQUENTERS; FAILURE TO GIVE "SATISFACTORY ACCOUNT."

(1) A person arrested on the charge of being a frequenter of a bawdy house (Cr. Code, sec. 238 (k)) should first be asked to give an account of his presence in the house and a summary conviction is bad if that statutory requirement has not been complied with. (2) A police officer asking such explanation from a person in a bawdy house should first disclose the fact that he is a police officer if not then in official uniform. The King v. Regan, 14 Can. Cr. Cas. 106.

GAMBLER; POSSESSION OF MEANS OBTAINED BY GAMBLING.

(1) A summary conviction for being an idle person living without employment or means of support (Cr. Code, sec. 238 (a)) is bad if the accused had on his person at the time of arrest sufficient money for his temporary living expenses. (2) It is immaterial upon such charge that the money in the possession of the accused had been obtained by gambling. The King v. Sheehan, 14 Can. Cr. Cas. 119.

[Not followed in R. v. Munroe, 19 Can. Cr. Cas. 89.]

PROSTITUTE WANDERING ON STREETS; NOT GIVING SATISFACTORY ACCOUNT; REQUEST TO EXPLAIN IS AN ESSENTIAL.

(1) A prostitute found wandering around becomes amenable as a vagrant under Code, sec. 238 (i) only when upon request she is unable to give a satisfactory account of herself to the police officer. (2) The request and inability to give a satisfactory explanation are material ingredients of the offence and must be set out both in the information and in the conviction. (3) Where the information charged that the accused was a common prostitute on the streets not giving a satisfactory account of herself and that she was thereby a vagrant, but omitted to charge that she was asked to give an account of her presence on the streets, a plea of guilty to the information goes no further than the matter charged and a conviction cannot be supported. The King v. Pepper, 15 Can. Cr. Cas. 314.

[Specially referred to in R. v. Johnson, 19 Can. Cr. Cas. 203, 1 D.L.R. 548; referred to in R. v. Johnson, 20 Can. Cr. Cas. 10; 5 D.L.R. 523; dissented from in Re Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.]

GAMING AND BETTING; MEANS OF LIVELIHOOD; CHARGE OF VAGRANCY.

The mere taking of personal bets with individuals on horse races is not "gaming," and the admission of the accused that he made his living principally by making such bets in the streets is not sufficient on which to convict him of vagrancy under Code, sec. 238 (1). The King v. Ellis, 15 Can. Cr. Cas. 379.

WILFUL REFUSAL OF PARENT TO MAINTAIN HIS FAMILY.

(1) A wilful refusal by the father to support his illegitimate infant child, when able to do so, is an offense under the Vagrancy clauses of the Criminal Code, (secs. 238, 239). (2) An illegitimate child, whether resident with the father or not, is included in the term "family" as used in sec. 238 of the Criminal Code. The King v. Barthos, 17 Can. Cr. Cas. 459.

LIVING BY GAMBING.

Where it appears on a charge of vagrancy under Code, sec. 238 (1) that the accused had six months previously left off working at his trade and that his only means of livelihood since were the running a gambling resort and obtaining the rake-off on poker games, he may properly be convicted under the statutory definition of vagrancy, although he had not failed to support his family or himself. The King v. Kolotyla, 19 Can. Cr. Cas. 25.

BEING WITHOUT VISIBLE MEANS OF MAINTENANCE; BEGGING.

(1) A conviction for vagrancy in being without visible means of maintaining himself is justified in respect of a person who solicits alms for himself on the streets without the official certificate mentioned in Code, sec. 238 (d) on a claim that he is

unable to work and who had no way of maintaining himself without becoming a public burden or a nuisance on the public streets. (2) The possession of a sum of money sufficient for the maintenance of the accused for several days will not bar his conviction as a vagrant if it appears that the money had been obtained for the most part by the defendant's begging in the public streets. The King v. Munroe, 19 Can. Cr. Cas. 86.

[The King v. Sheehan (1908), 14 Can. Cr. Cas. 119, not followed; The Queen v. Riley, 2 Can. Cr. Cas. 129, 7 Que. Q.B. 198, referred to.]

DEFINITION OF; SEC. 238 OF CR. CODE 1906.

A summary conviction for being the keeper of a disorderly house under secs. 238 and 239 of the Cr. Code 1906, is sufficient, although it does not in terms contain a finding that the accused is a "vagrant" or a "loose, idle or disorderly person" in the words of said sections of the Code which declares such offence to be vagrancy. [R. v. Leconte, 11 Can. Cr. Cas. 41, 11 O.L.R. 408, followed; R. v. Keeping, 4 Can. Cr. Cas. 494, not followed.] The King v. Demetrio (No. 1), 20 Can. Cr. Cas. 316.

RECORD OF CONVICTION; STATING THE OFFENCE; SUFFICIENCY.

Though a woman cannot be convicted as a vagrant under sec. 238 (i) of the Criminal Code unless she has failed to give a proper account of herself on being asked to do so, when she found wandering at night in the public streets, the absence from the conviction of the allegation that she was asked to do so is not fatal to its validity, where the offence is charged in the language of sec. 723 (3) of the Criminal Code, 1906. Regina v. Leveeque, 30 U.C.Q.B. 509; Regina v. Arscott, 9 O.R. 541; Rex v. Harris, 13 Can. Cr. Cas. 393; Rex v. Pepper, 15 Can. Cr. Cas. 314, dissented from; Cotterill v. Lempriere, 24 Q.B.D. 634; Smith v. Moody, [1903] 1 K.B. 56, applied.] Re Effie Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.

[Cited in R. v. Campbell, 26 Can. Cr. Cas. 196, 28 D.L.R. 385.]

WANDERER WITHOUT MEANS OF SUBSISTENCE.

A commitment under Cr. Code, sec. 238 for vagrancy does not disclose an offence where it recites that the prisoner was a "loose, idle person found wandering abroad and not giving a good account of himself, thereby being a vagrant," unless it is also recited that he had no visible means of subsistence, and a discharge will be ordered on habeas corpus where the conviction on which the commitment was based was similarly defective. [Compare R. v. Hayes, 6 Can. Cr. Cas. 357, 5 O.L.R. 198; R. v. Young, 5 O.R. 184 (a); Re Effie Brady, 21 Can. Cr. Cas. 123, 10 D.L.R. 424.] R. v. Kolenczuk, 23 Can. Cr. Cas. 265, 20 D.L.R. 341.

LIVING ON AVAILS OF PROSTITUTION.

A woman who continues to have unlawful sexual relations with one man only is not a prostitute within the terms of the Cr. Code; but if she successively becomes the mistress of several men within the limitation period of six months covered by a charge of vagrancy brought under Cr. Code, sec. 238, sub-sec. (1), without having other means of subsistence and in such a manner as to create a public scandal in the locality where she happens to reside, she may be convicted of vagrancy by reason of her supporting herself by the avails of prostitution. [See Annotation on Prostitute Vagrancy at end of this case.] Bedard v. The King, 26 Can. Cr. Cas. 99, 30 D.L.R. 326.

MAINTENANCE BY PROSTITUTION; CR. CODE, SEC. 238.

Where a woman's only visible means of maintaining herself is by prostitution, she is liable to summary conviction for vagrancy under Cr. Code, sec. 238 (a) making it an offence for a person not having any visible means of maintenance to live without employment. R. v. Cyr, 29 Can. Cr. Cas. 77, 38 D.L.R. 601, affirming 12 A.L.R. 320.

PROSTITUTION; STREET-WALKER.

On a charge of vagrancy brought under Code, sec. 238 (i) for being a common prostitute wandering in the streets, the arrest by a police officer and the subsequent prostitution and conviction of the accused will be justified if the woman was caught in the act of soliciting although the police officer did not before arresting her ask her to give "a satisfactory account of herself" (Code sec. 238 (i.) R. v. Jackson, 20 Can. Cr. Cas. 352.

COMMON PROSTITUTE IN PUBLIC PLACE.

The "satisfactory account of herself" which a common prostitute or night walker found wandering in public places must give to avoid being classed as a vagrant under Code, sec. 238, sub-sec. (i) is an account of her presence on the street or other public place and not of her character or calling. R. v. Levine, 30 Can. Cr. Cas. 305.

VENUE.

Insufficient laying of, in indictment. 1 Can. Cr Cas. 548.

CHANGE OF VENUE; CHARGE OF MANSLAUGHTER; APPLICATION TO DISTRICT JUDGE WHERE OFFENCE WAS COMMITTED.

The Court of Queen's Bench sitting in apeal, will not entertain an application for change of venue on behalf of a person charged with manslaughter in the district of Three Rivers, where no reason why the application should not have been made be-

fore the Judge resident in the district of Three Rivers, where the offence would otherwise be triable. Ex parte Corwin, 24 L. C.J. 104.

CHANGE OF VENUE; DISCRETION TO GRANT; RIGHT OF ACCUSED; PREJUDICED JURY.

The statute 32 and 33 Vict. ch. 29, sec. 11, enacts that "whenever it appears to the satisfaction of a Judge that it is expedient to the ends of justice that the trial of any person charged with any felony or misdemeanour should be held in some place other than that in which the offence is supposed to have been committed, or would otherwise be triable, may order that the trial should be proceeded with in some other district or place." The power is purely discretionary, and should be used with great caution, but where the application is made on the part of the accused, it will be sufficient to justify such discretion, that persons might be called on the jury whose opinions might be tainted with prejudice, and whom the prisoner could not challenge. The Queen v. Russell (1878), Ramsay's Cas. (Que.) 199.

CHANGE OF VENUE BY CONSENT.

The venue in the action was laid at the city of Toronto, and subsequently, by consent, an order was made, striking out the jury notice and directing the trial to take place at Port Arthur:—Held, that in view of this order, the objection that the venue was improperly laid could not be sustained. Bond v. Conmee (1889), 16 Ont. A.R. 398.

PROVINCE NOT DIVIDED INTO DISTRICTS; PROVINCE ONE VENUE.

The prisoner charged with the commission of the crime of murder in the Kootenay district, was brought for trial in a Court of Oyer and Terminer held at Kamloops, under the Assize Court Act, 1885, by one of the Judges of the Supreme Court, who was also named in the Commission of Oyer and Terminer issued by the Lieutenant-Governor. The prisoner pleaded to the jurisdiction, stating that the scene of the alleged homicide was in Kootenay district; that no order changing the venue had been made under sec. 11 of 32-33 Vict. ch. 29; that in the absence of such an order the prisoner could not be tried elsewhere than in Kootenay district, and by a jury of the venue, and further, that the Court profession to sit and act under a commission from the Lieutenant-Governor was improperly constituted:—Held, that as British Columbia had never at any time been divided into districts for that purpose relative to the administration of justice in criminal cases, the province was but one venue; that, therefore, there was no necessity for an order under sec. 11 to entitle the Crown to proceed at Kamloops; that the jury, having been summoned under the Jurors Act, 1890, was a proper and lawful jury:—Held, (following the McLean case), that the Lieutenant-Governor is authorized, under sec. 129, B.N.A. Act, to issue commissions of oyer and terminer. And held that even if the commission was invalid, a Court of Oyer and Terminer, if presided over by a Judge of the Supreme Court, would be, under the combined effect of sec. 14 of the Judicature Act, 1879, and the Assize Court Act. 1855, properly constituted. Regina v. Malott (1885), 1 B.C.R. pt. II., 207.

IN CONSPIRACY.

The venue in an indictment for conspiracy may be laid either where the agreement was entered into or where any overt act was done in pursuance of the common design. R. v. Connolly, 1 Can. Cr. Cas. 468.

CHANGE OF VENUE; APPLICATION FOR BY CROWN ON GROUND OF POPULAR SYMPATHY FOR ACCUSED.

(1) A charge of venue shall not be made in a criminal case whereby the trial would be transferred from the county in which the crime is alleged to have been committed, unless facts are proved, as distinguished from sworn opinions, plainly indicating that a fair and impartial trial cannot be had in that county. (2) A change of venue should be granted on the ground of popular sympathy with the prisoner and prejudice against the prosecution, where there is nothing to shew that the class of citizens from whom the jury would be drawn are likely to be prejudiced except by those feelings which arise from the nature of the offence and which are common in all counties. R. v. Ponton (No. 1), 2 Can. Cr. Cas. 192.

[Followed in R. v. Lynn, 17 Can. Cr. Cas. 354, 3 Sask. L.R. 354, 15 W.L.R. 336; referred to in R. v. Nicol, 4 Can. Cr. Cas. 3; R. v. Lynn (No. 2), 19 Can. Cr. Cas. 129, 4 Sask. L.R. 324; referred to in R. v. Stauffer, 19 Can. Cr. Cas. 205.]

CHANGE OF VENUE; HOSTILE DEMONSTRATION AGAINST JUDGE.

A change of venue may be ordered under Cr. Code, sec. 651, on the application of the Crown, where at an abortive trial, at which the jury disagreed, a hostile demonstration was made against the Judge by a mob assembled in the streets during a short adjournment of the trial. The change is rendered "expedient to the ends of justice" (Cr. Code, sec. 651) because the conduct of the mob tended to bring the administration of justice into contempt, and because of its possible influence on a jury at the next trial; and this notwithstanding the sworn statements of every juror at the abortive trial that they were in no way intimidated or influenced by the mob demonstration, part of which took place within hearing of the jury during their deliberations. Affidavits from the jurors denying intimidation are properly ad-

missible in evidence on a motion to change the venue where such intimidation is charged. R. v. Ponton (No. 2), 2 Can. Cr. Cas. 417.

CHANGE OF VENUE; TERMS CONCERNING ADDITIONAL EXPENSE.

An order for change of the place of trial (Cr. Code, sec. 651) is not open to objection on the ground that it makes no provision for the additional expense to which the accused might be put by the change, if the Judge making such an order was not asked to make an order as to such additional expense, and if it was not shewn to such Judge that additional expense would be occasioned. R. v. Coleman, 2 Can. Cr. Cas. 523.

CHANGE OF VENUE; ADDITION OF NEW CHARGE IN INDICTMENT.

Where after a committal for trial for an offence under the Criminal Code, an order is made changing the place of trial to another county, an indictment may be preferred in the latter county not only for the offence for which the accused was committed for trial, but for any other offence disclosed in the depositions taken before the committing justice. R. v. Coleman, 2 Can. Cr. Cas. 523.

CHANGE OF; CHARGE OF DEFAMATORY LIBEL.

In order to obtain a change of venue in a prosecution for defamatory libel such facts must be shewn as will satisfy the Court that a fair trial cannot be had at the present venue, and it is not sufficient that the applicant's solicitor swears to a belief that a fair trial is impossible there because of the prosecutor's interest in political affairs. The fact that two abortive trials of the cause have already taken place at both of which the jury disagreed, is not of itself a ground for ordering a change of venue. R. v. Nicol, 4 Can. Cr. Cas. 1.

[Referred to in R. v. Stauffer, 19 Can. Cr. Cas. 214.]

CHANGE OF; CONDITIONS LIKELY TO PREJUDICE THE JURY.

(1) The balance of convenience as regards the distance which the witnesses would have to travel is not alone a ground for changing the venue in a criminal case. (2) The principal ground for a change of venue under Revised Code, sec. 884 is a reasonable probability of partiality and prejudice in the locality from which the jury would be drawn if the venue were not changed. The King v. O'Gorman, 12 Can. Cr. Cas. 230.

[Followed in Lynn, R. v. 15 W.L.R. 336, 17 Can. Cr. Cas. 357.]

CHANGE OF VENUE; ORDER TRANSFERRING TRIAL TO ANOTHER DISTRICT; DEFENDANT'S APPLICATION FOR CHANGE ON GROUND OF POPULAR PREJUDICE.

(1) The power of changing the venue for a criminal trial with a jury is not exhausted by a single order transferring the case to another county or district, and there still remains power on cause being shewn to make a second transfer or to retransfer the trial to the place from which it was first transferred. (2) Unless the Crown shews good causes for making a different order, an application by the defendant to change the place of trial back to the district in which the offence is alleged to have been committed should be granted where the place of trial had been changed on the defendant's own application on the ground that popular resentment against him in respect of the failure of a bank would prevent a fair trial, if the defendant now shews that the cause of prejudice has ceased and that the original venue is the more convenient place of trial. (3) The general rule is that offences should be tried at the place where they are alleged to have been committed. The King v. Roy, 14 Can. Cr. Cas. 368.

[Followed in Lynn, R. v., 17 Can. Cr Cas. 357.]

LOCALITY OF THE CRIME; RIGHT OF ACCUSED TO LOCAL VENUE UNLESS CHANGED BY COURT ORDER.

(1) A charge or indictment is not to be preferred against an accused person outside of the judicial district or county in which the offence is alleged to have been committed, unless an order of the Court has been made for a change of venue under Code, sec. 884. (2) A formal charge in lieu of an indictment made by the Attorney-General in the province of Saskatchewan and Alberta under Code, sec. 873A, must be made in the judicial district in which the offence was committed in like manner to an indictment in the other provinces. (3) The jurisdiction of a Supreme Court of criminal jurisdiction under Code, secs. 557 and 580 to try any indictable offence in the province for which it is created, is to be exercised subject to the right of the accused at common law and under Code, sec. 884 to be tried in the locality of the offence unless an order has been made to change the venue. The King v. Lynn (No. 1), 17 Can. Cr. Cas. 354.

PRELIMINARY EXAMINATION; COMMITMENT TO CUSTODY; DISTRICT WITHOUT GAOL; JURISDICTION OF PARLIAMENT AS TO PLACE OF TRIAL.

(1) As a justice of the peace of Saskatchewan is an officer of the whole province he may hold a preliminary examination and commit an accused person for trial, notwithstanding the offence with which he is charged was supposed to have been committed in another judicial district in which there was no gaol to which the accused could be remanded to custody. (2) Where there is no gaol in the judicial dis-

trict in which an offence was supposed to have been committed, a justice of the peace of another district may, under sec. 577 of the Criminal Code, commit an accused person to custody for trial in the latter district without an order under sec. 884 of the Criminal Code, from a Court or Judge directing trial to be held in such district. [Regina v. Ponton (1898), 2 Can. Cr. Cas. 192; Mallet v. The Queen, 1 B.C.R. (Part II.) 212; Rex v. Smith (1858), 1 F. & F. 36; Rex v. James (1836), 7 C. & P. 553; and Queen v. Burke (1900), 5 Can. Cr. Cas. 29, referred to.] (3) Parliament may take away the right of an accused person to be tried in the district, county or place where a criminal offence is supposed to have been committed. The King v. Lynn (No. 2), 19 Can. Cr. Cas. 129.

[Referred to in R. v. Stauffer, 19 Can. Cr. Cas. 205, 4 Sask. L.R. 284.]

EVIDENCE; APPLICATION TO CHANGE VENUE: GROUNDS FOR REFUSING; RIGHT TO TRIAL WHERE OFFENCE COMMITTED.

(1) As the question of the guilt or innocence of an accused person cannot be considered upon an application to change the place of trial, a copy of his cross-examination on a trial which resulted in a disagreement, will not be referred to, although filed with such application. [Regina v. Palmer, 5 A. & E. 1023, specially referred to.] (2) An application of the Crown to have the place of trial changed, on the ground that it would be difficult, on account of the favourable sentiment prevailing in favour of the accused, to obtain an impartial jury, will be denied, where, on empanelling a jury which disagreed in a criminal case, the Crown did not make any challenges for cause, nor exhaust the jury panel, and made no attempt to obtain further jurors than those on the panel returned. (3) An accused person cannot be deprived of his prima facie right to be tried in the district where an offence is supposed to have occurred, unless it plainly appears that a fair and impartial trial cannot there be obtained. [Mallett v. The Queen, 1 B.C.R. Pt. II., 212; Regina v. Ponton (1898), 2 Can. Cr. Cas. 192, and The King v. Lynn, 4 Sask. L.R. 324 (No. 2), 19 Can. Cr. Cas. 129, ante, referred to.] (4) The place of trial of an accused person will not be changed upon unsupported assertions to the effect that the Crown cannot, on account of the favourable sentiment prevailing in favour of the accused, obtain a fair and impartial jury, where all of the facts tend to shew that an impartial jury can be obtained with no more difficulty than is experienced in any criminal trial. The King v. Stauffer, 19 Can. Cr. Cas. 205.

CHANGE OF VENUE; NEWSPAPER COMMENTS; PUBLICATION OF THE NAMES OF JURORS IN VIOLATION OF STATUTORY PROHIBITION.

(1) A change of venue will not be ordered in a criminal case on the ground that comments upon the crime made in the local press are likely to prejudice the accused persons in their trial, notwithstanding that such comments, in the opinion of the Court, are such as ought not to have been made, unless something more than the possibility of prejudice is disclosed, the rights of peremptory challenge and challenge for cause being regarded as a sufficient protection in such cases. (2) Under sec. 884 of the Criminal Code 1906, giving to the Court before which any accused is, or is liable to be, indicted, or to any Judge thereof, authority to make an order to hold the trial in some other place than that in which the offence was supposed to have been committed or would otherwise be tried, whenever it appears to the satisfaction of the Court or Judge that it is expedient to the end of justice to make such order, it is sufficient reason for changing the venue where the public officer charged by ch. 52 of N.S. Laws 1912, with the custody of the lists of jurors drawn from time to time when the lists not required by the purposes of this Act, permitted a newspaper reporter to copy for publication the names of the jurors on a list drawn by him and other officers, in violation of another requirement of such statute that the public officers upon whom devolved the duty of drawing the lists of jurors must keep secret the names on the list except as otherwise directed by the Court until four days before the opening of the term of Court at which the jurors on such list are summoned to attend. The King v. Graves et al., 19 Can. Cr. Cas. 402, 5 D.L.R. 474.

CRIMINAL CASE; INFORMATION IN ONE DISTRICT; ARREST IN ANOTHER DISTRICT; TRIAL IN EITHER.

The Court of Sessions at Montreal has jurisdiction to try a charge for which the accused was arrested in Montreal and committed for trial there, although upon an information laid in another judicial district of the same province; it is not essential that the accused shall, on his arrest, be sent for trial to the local venue at which the information was laid. The King v. McKeown, 20 Can. Cr. Cas. 492, 8 D.L.R. 611.

ORDER CHANGING PLACE OF TRIAL; AUTHENTICATION.

An order for a change of venue in a criminal case in British Columbia is sufficiently authenticated when signed by the clerk of assize and sealed with the seal of the Supreme Court although not signed by the presiding judge. A second order changing the place of trial at the instance of the

Crown, after an abortive trial at the venue fixed by the first order on the prisoner's application, is within the discretion of the presiding judge (Cr. Code, sec. 884); and where there was not a sufficient panel of jurors for a new jury at the same assize and where the trial judge was seized of facts from which it could properly be inferred that it was expedient to the ends of justice to make the second order, his decision becomes one of fact and not one of law, and cannot be interfered with on appeal although the usual practice of putting the facts forward on affidavit was not adopted. R. v. Spintlum (No. 1), 22 Can. Cr. Cas. 483, 15 D.L.R. 778.

NON-INDICTABLE OFFENCES; PROVINCIAL LAW.

The general rule of the common law requiring the venue of trials of indictable offences to be laid in the county where the crime was committed, is to be applied also to trials of purely statutory offences otherwise than on indictment (as for example offences under a provincial liquor law), unless there is some statutory provision to the contrary. [R. v. West, 4 Burr. 2507; R. v. Harris, 3 Burr. 1336, referred to.] R. v. Brady, 23 Can. Cr. Cas. 35.

VERDICT.

Note on the matter of taking a verdict in a criminal case. 5 Can. Cr. Cas. 525.

QUESTIONING JURY GROUNDS OF VERDICT; RIGHT OF COUNSEL; POWER OF COURT.

Counsel is not entitled to question the jury directly as to grounds of their verdict; but the Judge may ask them if he sees fit. R. v. Ford, 3 U.C.C.P. 217.

VARIANCE BETWEEN PRONOUNCEMENT AND FORMAL RECORD ASSENTED TO; MISTAKEN REFERENCE TO TWO COUNTS IN INDICTMENT CONTAINING ONLY ONE.

The verdict of the jury in a criminal case must be taken to be that which was recorded by the trial Judge on the back of the indictment and read over to and formally assented to by the jury; and, where the same is in due form, it is immaterial that prior thereto the foreman of the jury on stating their verdict to the Court had erroneously referred to the two propositions submitted in the Judge's charge as the first and second count respectively, and had stated that they disagreed on the first count and found the prisoner guilty on the second count, there being in fact only one count in the indictment. The King v. Rice, 5 Can. Cr. Cas. 509.

INDICTMENT FOR WOUNDING WITH INTENT BY SHOOTING; VERDICT OF "GUILTY WITHOUT MALICIOUS INTENT;" MENS REA.

Slaughtenwhite v. The King, 9 Can. Cr. Cas. 173, reversing 9 Can. Cr. Cas. 53.

DIRECTION TO RECONSIDER VERDICT; RECORDING ON SECOND RETURN OF SAME VERDICT.

If a jury sent back to reconsider its verdict of guilty brings in the same verdict a second time contrary to the Judge's direction upon a point of law, such verdict must be recorded, and the accused left to his remedy by reserve case or appeal. The King v. Wasyl Kapij, 9 Can. Cr. Cas. 186.

UNCERTAINTY; VERDICT OF "GUILTY OF ASSAULT AS CHARGED."

(1) On an indictment for "robbery with violence and wounding" which does not expressly charge either common assault or assault occasioning bodily harm, a verdict of "guilty of assault as charged but not guilty of robbery" is improperly recorded and the result is a mistrial. (2) The jury should have been directed to reconsider the case with a view to finding definitely the character of the assault and as to the wounding and should have been instructed as to the different verdicts which they might find on the indictment. (3) Under the circumstances a new trial should be granted on the whole case as if no verdict had been rendered. The King v. Edmonstone, 13 Can. Cr. Cas. 125.

QUALIFICATION OF JUROR; RIGHT TO QUESTION VERDICT.

After verdict rendered and sentence passed it is too late to urge that one of the jurors who sat on the case was not qualified and that his name was not on the sheriff's list of jurors as sec. 1010 Cr. Code (1906) establishes the legal presumption that all those who rendered a verdict were competent to have served on the jury where no objection was taken at the trial of an indictment. [Rex. v. McCrae, 12 Can. Cr. Cas. 253, 16 Que. K.B. 193, distinguished; Brisebois v. Regina, 15 Can. S.C.R. 421, referred to.] R. v. Battista, 21 Can. Cr. Cas. 1, 9 D.L.R. 138.

JURY; STATUTORY DIRECTIONS; CHALLENGE OF THE ARRAY.

Cr. Code, sec. 1011, which directs that certain omissions of statutory directions as to the jury or jurors shall not be a ground of impeaching any verdict nor be allowed for error upon any appeal, applies to an objection raised by challenge of the array of jurors, as well as to objections taken after verdicts. [R. v. Edmonds, 4 B. & Ald. 471, 1 St. Tr. N.S. 785, and Carmarthen v. Evans, 10 M. & W. 274, referred to.] R. v. Morrow, 24 Can. Cr. Cas. 310.

MESSAGE TO JUDGE FROM JURY ROOM.

Where the jury are deliberating in a criminal case and the trial judge has taken up the trial of another case, the fact that the foreman of the jury sent a note to the judge asking for a certain letter which had been mentioned in the evidence, but which

had not been filed as an exhibit, and that the judge directed the clerk of assize to inform the foreman that the letter itself was not in possession of the court, is not a ground of objection against the verdict. [Wilmont's Case (1914), 10 Cr. App. R. 173, distinguished.] R. v. Batterman, 24 Can. Cr. Cas. 351.

VERDICT; AS JUDGMENT.

The verdict itself is not a "judgment for the defendant" in terms of Cr. Code, sec. 1045; but the order of the Court directing the defendant's discharge and made in the enforcement of the jury's verdict of not guilty is a "judgment" for the defendant upon which an order may be made against the private prosecutor for payment of costs in a criminal prosecution for defamatory libel. [R. v. Blackley, 8 Can. Cr. Cas. 405, approved.] R. v. Fournier; Martin v. Fournier, 25 Can. Cr. Cas. 430, 28 D.L.R. 379.

"GUILTY WITHOUT HIS KNOWLEDGE"; TRADEMARK.

Knowledge is not an ingredient of the offence of re-filling bottles bearing the trademark of another dealer created by sec. 490 (b) of the Criminal Code; a verdict by the jury of "guilty without his knowledge" is in effect a verdict of guilty. R. v. Newcombe, 29 Can. Cr. Cas. 249, 40 D.L.R. 85.

REASONABLE DOUBT.

The Court of Appeal is not to set aside a verdict in a criminal case on the ground that it does not accord with its views of what the verdict should be. To do so it must be satisfied that the evidence does not constitute such legal evidence as could satisfy honest men. (Per Stuart, J.) In a criminal case it is for the jury to decide whether there is reasonable doubt, and when instructed that they should convict only if guilt be shewn beyond a reasonable doubt, their verdict of guilty is not to be disturbed on the ground that they ought to have had a reasonable doubt if there was evidence from which a reasonable inference of guilt could be made. R. v. Green; R. v. Bosomworth, 29 Can. Cr. Cas. 425.

VIEW.

View of locus in quo in criminal trial; 21 Can. Cr. Cas. 72.

VIEW OF LOCUS IN QUO BY A COUNTY COURT JUDGE.

The prisoner was tried without a jury by a County Court Judge, exercising jurisdiction under the Speedy Trials Act, upon an indictment for feloniously displacing a railway switch. After hearing the evidence and the addresses of counsel, the Judge reserved his decision. Before giving it, having occasion to pass the place, he examined the switch in question, neither the prisoner nor anyone on his behalf being present. The prisoner was found guilty:—Held, that there was no authority for the Judge taking a "view" of the place, and his so doing was unwarranted; and even if he had been warranted in taking the view, the manner of his taking it, without the presence of the prisoner, or of anyone on his behalf, was unwarranted; held, also, that the question whether the Judge had the right to take a view was a question of law arising on the trial, and was a proper question to reserve under R.S.C. ch. 174, sec. 259. Review of the cases on the questions whether either a Judge or a juror can be properly a witness in a case which he is trying. Regina v. Petrie (1890), 20 O.R. 317.

VIEW OF LOCUS IN QUO BY MAGISTRATE; CERTIORARI TAKEN AWAY BY STATUTE; DEFECT IN PROCEDURE DEPRIVING ACCUSED OF FAIR TRIAL.

(1) In a summary proceeding for an illegal sale of liquor under the Indian Act, a conviction will be quashed if, after the close of the evidence, the magistrate went alone and took a view of the place of sale, and so stated when giving his judgment, and this notwithstanding that the defendant was present when the view was had. (2) A statute which declares that convictions thereunder shall not be removed by certiorari into any Superior Court is not a bar to the issue of a certiorari upon the ground of improper conduct of the magistrate, by which the accused was deprived of a fair trial. (3) The powers of amendment conferred by Code, sec. 889, in respect of convictions removed by certiorari do not apply where there is an inherent defect in procedure which has deprived the accused of a fair trial, ex. gr., a view of the locus in quo taken by the magistrate in the absence of the parties. Re Sing Kee, 5 Can. Cr. Cas. 86.

VIEW BY COURT; TRIAL BY MAGISTRATE.

A police magistrate sitting as such under Part 16 of the Criminal Code (1906), and summarily trying an indictable offence, has no right during the trial to take a view of the land in respect of a transaction in which the charge of fraud was made which he was trying as such magistrate, at least where there is no consent of both the Crown and the accused to his so doing. [R. v. Petrie, 20 O.R. 317, applied.] Although sec. 958 of the Criminal Code (1906) empowers the Court to order that the jury on a criminal trial shall have a view of any place, person or thing, it is not to be inferred that a magistrate exercising a limited statutory power of a summary trial without a jury in respect of certain indictable offences, may in like manner take a view of lands which are the subject matter of the offense charged. [See Annotation to this case.] R. v. Crawford, 21 Can. Cr. Cas. 70, 10 D.L.R. 96.

VOTING.

See also Election.

WILFULLY AND CORRUPTLY VOTING WITHOUT LEGAL RIGHT.

(1) Where the doing of a particular act is prohibited by statute on public grounds, and the statute does not declare a mode of enforcing the prohibition, the offence is indictable. (2) A person who without lawful excuse wilfully and corruptly votes more than once at a municipal election for city alderman by general vote under sec. 158 (a) of the Ontario Municipal Act is guilty of an indictable offence by virtue of sec. 138 of the Criminal Code (disobedience of statutes). (3) Wrongfully voting twice at an election would not be indictable at common law unless prohibited by statute, and, semble, every contempt of a statute is indictable at common law where no other mode of punishment is provided. The King v. Meehan (No. 2), 5 Can. Cr. Cas. 312.

WAIVER.

Note on waiver in criminal cases. 2 Can. Cr. Cas. 93.

Statutory conditions; Jurisdiction. 7 Can. Cr. Cas. 116.

Statutory conditions; Jurisdiction; Speedy trial; Waiver of depositions. 8 Can. Cr. Cas. 234.

ABSENCE OF COMMITMENT OR RECOGNIZANCE; POSTPONEMENT OF CASE AS WAIVER.

The appellant having been convicted of an assault under Consol. Statutes (c) ch. 91, sec. 37, appealed to the Quarter Sessions. On the first day of the Court, after he had approved his notice of appeal, at the respondent's request, the case was postponed until the following day; and the respondent then objected to the jurisdiction, as it was not shewn that the apellant had either remained in custody or entered into a recognizance, as required by sec. 117 of Consol. Statutes (c) ch. 99. The Court held that this objection had been waived by the application to postpone, and they quashed the conviction. On motion for a prohibition to the Quarter Sessions from further proceeding in the matter:—Held, that this was an appeal under sec. 117 above mentioned, not under Consol. Statutes, U.C. ch. 114, sec. 1; that it was clearly incumbent on the appellant to shew his right to appeal by proving compliance with that section; and that the necessity for such proof was not waived by the respondent's application for delay. The prohibition was therefore granted. Re Meyers and Wonnacott, 23 U.C.Q.B. 611.

WAR MEASURES.

See also Aliens; Military Law.

REQUIRING CITIZENS TO ENGAGE IN USEFUL OCCUPATION; KEEPING POOL-ROOM.

The business of keeping a pool-room is properly held to be an occupation which is not "useful" under the terms of the war regulation contained in Order-in-Council of April 4, 1918, Can., requiring all male persons domiciled in Canada to be regularly engaged in some useful occupation in the absence of reasonable cause to the contrary, under penalty of summary conviction for default. Re Salhani, 31 Can. Cr. Cas. 7.

WAR TAX.

See Inland Revenue.

WARRANT.

See Arrest; Commitment; Remand.

WEIGHTS AND MEASURES ACT.

IMPRISONMENT IN DEFAULT OF DISTRESS.

The defendant was convicted by two justices of the peace under the Weights and Measures Act, 42 Vict. ch. 16, sec. 14, subsec. 2 (D.), as amended by 47 Vict. ch. 36, sec. 7 (D.), of obstructing an inspector in the discharge of his duty, and was fined $100 and costs, to be levied by distress, imprisonment for three months being awarded in default of distress. At the hearing before the justices the defendant tendered his own evidence, which was excluded. The defendant appealed to the Quarter Sessions, and on the appeal again tendered his own evidence, which was again excluded, and the conviction affirmed. On motion for certiorari:—Held, that the conviction having been affirmed in appeal certiorari was taken away except for want or excess of jurisdiction, and that there was no such want or excess of jurisdiction, inasmuch as the justices and the Quarter Sessions had jurisdiction to determine whether the defendant's evidence was admissible or not, and that such determination, even if erroneous in law, could not be reviewed by certiorari. That even if the determination on this point could be reviewed the justices were right in excluding the evidence of the defendant, inasmuch as the offence charged was a crime. (Per Armour, J.) Held, also (Armour, J., dissenting), that although irregularly directed imprisonment was justified in default of distress by sec. 62 of 32 and 33 Vict. ch. 31 (D), incorporated in the Weights and Measures Act by sec. 53 thereof; but that if such imprisonment were not so justified the whole conviction would be bad, there being no power to amend by

striking out the award of imprisonment. Regina v. Dunning (1887), 4 O.R. 52.

WHIPPING.

Suspension in habeas corpus proceedings; Quashing writ of habeas corpus; Directions. 11 Can. Cr. Cas. 159.

WILFUL ACTS.

Meaning of "wilful" as applied to statutory crimes. 8 Can. Cr. Cas. 136, 140.

WITHDRAWAL.

OF SUMMARY PROCEEDINGS; LEAVE OF MAGISTRATE.

(1) After the evidence has been heard in summary proceedings the justice is not bound either to convict or discharge the defendant; he may allow the prosecutor to withdraw the charge. (2) Such withdrawal may be allowed even when another information covering the same offence has been laid by the same prosecutor against the same defendant, and the determination thereof is still pending. Ex parte Wyman, 5 Can. Cr. Cas. 58.

[Followed in Ex parte Mitchell, 16 Can. Cr. Cas. 212; disapproved in R. v. Chew Deb, 21 Can. Cr. Cas. 20, 9 D.L.R. 266.]

SUMMARY CONVICTION; LEAVE TO WITHDRAW CASE; PROCEDURE.

On a summary trial, where all the evidence offered by the prosecution has been heard and the case closed, the prosecutor cannot, upon objection taken that material proof is lacking, withdraw the charge and lay a new information charging the identical offence. [Ex parte Wyman, 5 Can. Cr. Cas. 58, disapproved; Bradshaw v. Vaughton, 30 L.J.C.P. 93, followed.] Where on the trial of summary conviction proceedings the evidence produced is insufficient to prove the charge, the duty of the magistrate is to dismiss it and grant a certificate of the dismissal as provided by the Criminal Code, 1906. [Criminal Code, 1906, secs. 720, 726, referred to.] R. v. Chew Deb, 21 Can. Cr. Cas. 20, 9 D.L.R. 266.

SUMMARY CONVICTION; WITHDRAWAL OF COMPLAINT.

The person who has laid the complaint in a summary proceeding for keeping a disorderly house and who thereafter declares under oath before the magistrate that she laid the charge without understanding it and under duress of detectives may be permitted to withdraw it and so terminate the proceedings. [Baxter v. Gordon Ironsides and Fares Co., 13 O.L.R. 598, and Tamblyn v. Westcott, 23 Can. Cr. Cas. 391, 21 D.L.R. 31 referred to.] R. v. Rousseau, 24 Can. Cr. Cas. 390.

WITNESS.

See also Evidence.

Certificate for protection of witness giving incriminating answers under Controverted Elections Act. (Can.) 1 Can. Cr. Cas. 389.

Claim of privilege by, in civil case, as affecting subsequent criminal proceedings. 1 Can. Cr. Cas. 487, 501.

Former deposition of; Admissibility to contradict testimony. 1 Can. Cr. Cas. 157.

Protection of, against incriminating questions, where privilege claimed. 1 Can. Cr. Cas. 397.

Note on protection of witness from arrest. 2 Can. Cr. Cas. 281.

Resident in another province. 3 Can. Cr. Cas. 581.

Warrant to arrest material witness. 3 Can. Cr. Cas. 581.

Bringing up a prisoner as a witness. 3 Can. Cr. Cas. 582.

Evidence taken under commission. 3 Can. Cr. Cas. 583.

Note on cross-examination of accused tendering himself as a witness. 5 Can. Cr. Cas. 413.

Competent witness also compellable; Canada Evidence Act construed. 7 Can. Cr. Cas. 139.

Failure to call certain witnesses; Privilege from comment at trial respecting. 7 Can. Cr. Cas. 38.

Incriminating answers; Objection to answer; Canada Evidence Act. 4 Can. Cr. Cas. 269.

Competency of wife as witness in criminal prosecution against husband; Non-support; Cr. Code, sec. 242A; 23 Can. Cr. Cas. 69.

ADMISSIBILITY OF EVIDENCE OF DEFENDANT.

On the trial of an offence against a city by-law in the erection of a wood building within the fire limits, the defendant is not either a competent or compellable witness; and, therefore, where in such a case the defendant's evidence was received, and a conviction made against him, it was quashed with costs. Regina v. Hart, 20 O.R. 611.

CO-DEFENDANT A COMPETENT WITNESS.

Four prisoners being indicted together for robbery, one severed in his challenges from the other three, who were first tried: —Held, that he was a competent witness on their behalf. Regina v. Jerrett (1863), 22 U.C.Q.B. 499.

COMPELLING THE ATTENDANCE OF; RE-ARREST AFTER ESCAPE.

Plaintiff was summoned to appear as a witness for the prosecution on the trial of an information for a violation of the Canada Temperance Act of 1878. He was served with the summons, and was 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 the plaintiff arrested and brought before him to testify, and adjourned the hearing of the cause from time to time for that purpose. Plaintiff evaded arrest under the first three warrants, but was arrested under the fourth. Having escaped he was re-arrested by defendants, who gained access to a house in which he had taken refuge, by raising a window. On his refusal to give bail he was placed in gaol:—Held, (1) that as the magistrate had jurisdiction to enter on the enquiry as to the fact of the proclamation of the Act, and whether licenses were outstanding or not, he had authority to compel the attendance of witnesses. (2) With regard to defendants opening the window and entering the house to make the arrest;—(a) That the prosecution being a criminal proceeding the warrant was not subject to the limitations which attach to civil process, but had many of the characteristics of an attachment, for which it was a substitute. (b) That the evidence shewing a previous arrest and an escape, the defendants might lawfully enter the house in fresh pursuit. (3) That the placing of the plaintiff in gaol, under the circumstances, was justifiable. (4) That sec. 46 of the Summary Convictions Act is not intended to prevent more than one adjournment, or, if so, the plaintiff could not take the objection. Messenger v. Parker et al. (1885), 18 N.S.R. 237.

TESTIMONY OF ACCOMPLICE TRIED SEPARATELY; ADMISSIBILITY.

Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution. Regina v. Viau, 7 Que. K.B. 362.

PROOF OF ABSENCE FROM CANADA TO ADMIT A DEPOSITION OF WITNESS TAKEN AT PRELIMINARY HEARING.

Per Walkem, J., on a trial under the Speedy Trials Act: (1) Evidence that the captain of a schooner had cleared from a Canadian port a week before the trial and put to sea is insufficient evidence of his being out of Canada to satisfy sec. 222, Criminal Procedure Act, and his deposition, taken on the preliminary examination, refused. Regina v. Morgan, 2 B.C.R. 329.

INFORMER AS WITNESS.

The informer is a competent witness in cases arising under 32 Vict. ch. 32 (Ont.) Reg. v. Strachan (1870), 20 U.C.C.P. 182.

COMPETENCY; DEFENDANT NOT COMPELLABLE WITNESS.

On an appeal to the Divisional Court, a conviction for unlawfully and maliciously pointing a loaded firearm at a person, was quashed on an objection taken for the first time, and the defendant who was called as a witness at the trial, was not a competent or compellable witness. [Regina v. Hart, 20 O.R. 611, followed.] Regina v. Becker, 20 O.R. 676.

SUBPŒNA TO IN ANOTHER PROVINCE.

Under the provisions of secs. 684 and 843 of the Criminal Code 1892, it is competent for a Judge of the High Court or County Court to make an order for the issue of a subpœna to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under secs. 879 and 881. Regina v. Gillespie, 16 P.R. (Ont.) 155.

TAMPERING WITH; LIQUOR LICENSE ACT.

By sec. 57 of R.S.O. ch. 181, the Liquor License Act, any person who in any prosecution under the Act tampers with a witness either before or after he is summoned or appears as such witness on any trial or proceeding under the Act, or by the offer of money or by threats or in any other way induces or attempts to induce any such person to absent himself, or swear falsely, shall be guilty of an offence under the Act, and liable to a penalty of $50; and by sec. 59 such penalty is recoverable in default of distress by imprisonment not exceeding thirty days:—Held, affirming the judgment of Gwynne, J., that this was ultra vires of the local Legislature, for the acts declared by sec. 57 to be offences were criminal offences at common law, and within the exclusive jurisdiction of the Dominion Legislature and were not brought within the local Legislature by sub-sec. 15 of sec. 92 of the B.N.A. Act, either as coming under municipal institutions or as being enactments to enforce the law as to shop, saloon, etc., licenses, in order to raise a revenue for provincial, local or municipal purposes. A conviction, therefore, under the Act for inducing a witness to absent himself, etc., was quashed. Quære, per Gwynne, J., whether under sec. 77 a conviction imposing an unauthorized sentence, such as imprisonment at hard labour, could be amended on motion to quash by striking out the words "with hard labour." Regina v. Lawrence (1878), 43 U.C.Q.B. 164.

PRIVILEGE; CRIMINATING ANSWERS.

The excuse from answering questions which may tend to criminate himself is only removed by the Canada Evidence Act, secs. 2 and 5, where the witness is being examined in a criminal proceeding, or in some civil proceeding or matter respecting which the Dominion Parliament has authority to determine the admissibility of the evidence. R. v. Douglas, 1 Can. Cr. Cas. 221.

FAILURE TO CLAIM PRIVILEGE.

If a party entitled in civil proceedings to be excused from answering questions on

the ground that the answers might tend to criminate him does not object to answer, his evidence is deemed to be voluntary. R. v. Douglas, 1 Can. Cr. Cas. 221.

INCRIMINATING QUESTIONS; COMPULSORY EVIDENCE.

(1) A witness before a Coroner's Court is compelled under the Canada Evidence Act to answer incriminating questions, such Court being a criminal Court and a Court of record, and proceedings before the Coroner are within the jurisdiction of the Federal Parliament, although no one is there charged with the offence of causing the death of the deceased. (2) A witness at a coroner's inquest, who is sent for by the coroner and returns with the constable, acting as the coroner's messenger, and who is bound in law to answer incriminating questions whether or not he objects, is none the less giving evidence under compulsion because he expresses before the coroner a wish to give his evidence, and such evidence is not a voluntary confession or admission. R. v. Hammond, 1 Can. Cr. Cas. 373.

[Referred to in R. v. Clark, 5 Can. Cr. Cas. 241.]

PRIVILEGE FROM ARREST; OFFENCE COMMITTED BY WITNESS WHILE AWAY TO GIVE EVIDENCE.

The privilege from arrest allowed to a witness summoned before a Court sitting in another judicial district from that in which he lives, does not apply where he is charged with a criminal offence committed by him during the time in which he is in such district for the purpose of giving evidence. Ex parte Robert Ewan, 2 Can. Cr. Cas. 279.

SEPARATE INDICTMENT AGAINST, FOR RECEIVING STOLEN GOODS.

A witness who is not a party to the indictment for theft submitted to the jury, cannot be excused from answering questions on the ground that he himself is indicted with another as receiver of the goods stolen, and that his answers might incriminate him; but his objection should be noted and the evidence should not be used against him at his trial. R. v. McLinehy, 2 Can. Cr. Cas. 416.

PRIVILEGE; LIQUOR LICENSE ACT (ONT.).

Upon the prosecution under the Ontario Liquor License Act of a person charged as a licensee with having sold liquor during prohibited hours, a witness, other than the defendant or the wife or husband of a defendant, may properly refuse to answer any question which he swears may tend to subject him to prosecution for a penalty under that Act. Re Askwith, 3 Can. Cr. Cas. 78.

CALLING PRESIDING MAGISTRATE AS WITNESS.

(1) Where in summary proceedings it is desired to call the presiding magistrate as a witness, the application should be supported by an affidavit stating not only that the magistrate is a necessary and material witness, and that the application is made in good faith, but disclosing specifically what the party proposes to prove by the magistrate's testimony. (2) Where on an application to quash a summary conviction on the ground that the magistrate refused to give evidence on the trial before himself, the Court is satisfied, from the magistrate's affidavit and the evidence taken in the proceeding, that the magistrate was not a material witness and that the application to have him sworn as such was not made bona fide, the conviction should not be disturbed. Ex parte Herbert, 4 Can. Cr. Cas. 153.

[Explained in R. v. Allingham, 21 Can. Cr. Cas. 268, 12 D.L.R. 9.]

REFUSAL OF WARRANT FOR ARREST OF DEFAULTING WITNESS.

The erroneous decision of a magistrate as to whether or not a defaulting witness was bound to attend his Court in respect of a trial for an offence against a provincial statute without pre-payment of witness fees, and as to the liability of such witness to arrest, is not reviewable upon habeas corpus, although the accused was deprived of such witness's testimony through the refusal of the magistrate to issue a warrant for his arrest. The erroneous refusal of a magistrate to grant a warrant for the arrest of a defaulting witness will not deprive him of jurisdiction to convict, and the defendant's remedy is by way of appeal only. (Per Meagher, J.) Semble, that the magistrate has a discretion to refuse to issue a warrant for a witness in proceedings under the N.S. Liquor License Act, although the witness has been duly summoned and has failed to appear. (Per Meagher, J.) R. v. Clements, 4 Can. Cr. Cas. 553.

CO-DEFENDANT A COMPETENT BUT NOT A COMPELLABLE WITNESS.

One co-defendant cannot be called as a witness by another co-defendant and compelled to give evidence, but a co-defendant may testify if he chooses to do so. The Queen v. Connors, 5 Can. Cr. Cas. 70.

[Approved in R. v. D'Aoust, 3 O.L.R. 653.]

CRIMINATING ANSWERS; PROTECTION ON SUBSEQUENT PROCEEDINGS IF OBJECTION TAKEN; CANADA EVIDENCE ACT, SEC. 5.

If a witness when called upon to testify in a criminal proceeding does not object to do so upon the ground that his answers may tend to criminate him, they are receivable against him in any criminal proceeding against him thereafter other than a prosecution for perjury in giving such evidence, and if he does object he is bound to answer, but his answers are then not receivable in evidence against him in a subsequent crim-

inal proceeding except such a charge of perjury. The King v. Clark, 5 Can. Cr. Cas. 235.

PRISONER AS A WITNESS; CHARGE OF ROBBERY; CROSS-EXAMINATION AS TO PREVIOUS CONVICTIONS FOR INDICTABLE OFFENCES; RELEVANCY.

An accused person examined as a witness on his own behalf, may be cross-examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character has been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. The King v. D'Aoust, 5 Can. Cr. Cas. 407.

[Referred to in R. v. Reid, 14 Can. Cr. Cas. 333.]

WITNESS FEES; STATUTE FIXING PER DIEM RATE; FINE FOR NON-ATTENDANCE WHERE FEE NOT PREPAID.

A witness subpœnaed to attend before justices under a provincial law which specifies a per diem witness fee but makes no provision as to the time or manner of payment, is not liable to fine for refusing to neglect to attend under the subpœna unless he had been prepaid his witness fee. The King v. Chisholm, 6 Can. Cr. Cas. 493.

WITNESS IN SAME COUNTY TOO ILL TO ATTEND; REMOVAL OF COURT AND JURY TO HIS RESIDENCE.

(1) At the trial of an indictable offence, the presiding Judge may with the consent of the counsel for the CROWN and for the prisoner respectively, adjourn the hearing to a private house within the same county for the purpose of taking there the evidence of a witness who is too ill to be moved therefrom, and may order that the Court and jury proceed there for that purpose (2) The prisoner is bound by the consent of his counsel in such a matter which does not go to the jurisdiction of the Court. The King v. Rogers, 6 Can. Cr. Cas. 419.

REFUSING TO ANSWER; OFFERING "JUST EXCUSE"; PRELIMINARY ENQUIRY.

To justify a magistrate in committing a witness under sec. 585 of the Criminal Code for refusing to answer a question put to him upon a preliminary enquiry, it must appear not only that the witness refused without just excuse to answer but that the question asked was in some way relevant to the charge. Re Ayotte, 9 Can. Cr. Cas. 133.

DISSUADING WITNESS FROM GIVING EVIDENCE; COURT OF REVISION; CHARGE; AMENDMENT; ATTEMPTING TO OBSTRUCT JUSTICE.

(1) An indictment or charge that the accused paid money to a person not to attend a Court of Reversion in connection with an election, does not disclose a "perversion or defeat of justice" under Code, sec. 154 (d) where it does not shew any ground for supposing that the non-attendance would defeat justice, and where the person receiving the money was the person whose right to vote was in question and might therefore abandon his claim. (2) The offence disclosed may properly be charged under subsec. (a) of Code, sec. 154, as an attempt to dissuade a person by a bribe from giving evidence. The King v. Lake, 11 Can. Cr. Cas. 37.

POSTPONEMENT OF CRIMINAL TRIAL; ABSENCE OF CROWN WITNESS.

(1) On an application by the Crown to postpone a criminal trial because of the absence of Crown witnesses, the Court may accept the statement of the Crown counsel that reasonable efforts were made to procure their attendance without requiring proof upon oath. (2) On an application by the Crown to postpone a criminal trial because of the absence of Crown witnesses, the accused is not entitled to detailed information as to the efforts made to procure their attendance. McCraw v. The King, 13 Can. Cr. Cas. 337.

CORRUPTLY DISSUADING WITNESS; ATTEMPT; MENS REA.

It is an offence under Code, sec. 180 (a) to attempt to dissuade a witness by bribery or other corrupt means to give in lieu of the witness's own belief that version of the facts which the person making the corrupt offer believed to be the truth. The King v. Silverman, 14 Can. Cr. Cas. 79.

COMPETENCY; CONVICT UNDER DEATH SENTENCE.

A prisoner under sentence of death is a competent witness on a criminal trial since the abolition of attainder by sec. 1033 of the Criminal Code. The King v. Hatch, 16 Can. Cr. Cas. 196.

CRIMINAL TRIAL; PROFESSIONAL PRIVILEGE.

An attorney is only held to professional secrecy for the confidential communications that he receives from his client and not as to the proceedings that he has taken on the client's behalf. The King v. Aloff, 16 Can. Cr. Cas. 385.

WITNESSES FOR COMPLAINANT NOT HEARD ON APPLICATION FOR SUMMONS OR WARRANT, BUT PRODUCED ON PRELIMINARY ENQUIRY AND SUBSEQUENT TRIAL.

(1) Although by the amendment of 1909 to Code, sec. 655, a magistrate is directed to hear the complainant and "the evidence of his witnesses, if any," in support of the application for a summons or warrant, in respect of an indictable offence, the Crown may, upon the trial, call witnesses whose evidence was not offered on the application for the summons or warrant. (2) The

object of the amendment is to prevent the magistrate from refusing to issue process, because in his view the complainant's own unaided statement might be insufficient to make out a case, although supplementary evidence was available. The King v. James W. Johnston, 17 Can. Cr. Cas. 369.

SEPARATE CHARGES AGAINST TWO PERSONS FOR IDENTICAL OFFENCE; CROWN USING ONE AFTER COMMITTAL FOR TRIAL AS COMPELLABLE WITNESS AGAINST THE OTHER.

(1) Where two persons are charged with the same arson on separate informations laid on the same day, by the same informant and both preliminary enquiries are being heard separately before the same justice, the Crown may after the committal for trial of the first prisoner call him as a witness against the second prisoner, and he will be bound to give evidence. (2) The prisoner already committed was both a competent and compellable witness against another prisoner charged in another proceeding with the identical offence and may be committed for contempt, if he refuses to answer. Ex parte Ferguson, 17 Can. Cr. Cas. 437.

RELIGIOUS BELIEF; AFFIRMATION.

(1) A witness in a criminal case is not entitled to affirm in lieu of being sworn unless he states that he objects to the oath on conscientious scruples; a mere statement of his preference to affirm and that he considered it optional is insufficient to make legal his testimony given on affirmation, although no objection was taken until cross-examination. (2) Where a witness upon a material fact has been permitted without legal sanction to testify on affirmation instead of upon oath, the result is a mistrial and a new trial should be ordered under Cr. Code, sec. 1018. The King v. Deakin, 19 Can. Cr. Cas. 62. [See R. v. Curry, 21 Can. Cr. Cas. 273, 12 D.L.R. 13.]

CROSS-EXAMINATION OF WITNESS; CHARGE OF RAPE; SIMILAR OFFENCE AGAINST WITNESS.

(1) A statement by a female witness on a trial for rape, in response to a question of the counsel for the accused, that she would like to see the prisoner go to prison for life, will not permit the Crown prosecutor to question her as to the commission of a similar offence by the accused against the witness. (2) A cross-examination by counsel for the accused on a trial for rape as to acts of cruelty committed by the accused against the witness and the complaining witness, to which, in addition to answering the question fully, she volunteered the further reply that the accused was also guilty of a similar offence towards her, will not permit the Crown, prosecutor to question her as to the details of such assault. The King v. Paul, 19 Can. Cr. Cas. 339, 5 D.L.R. 347.

WITNESS FEES; WITNESS ATTENDING IN ANOTHER CASE.

On the dismissal of an appeal from a summary conviction on which there is a re-hearing, the practice in Saskatchewan does not require that the witness fees of a witness called on such re-hearing shall on taxation be divided because he also attended the sittings on the same day as a witness in another case. [Hamilton v. Beck, 3 Terr. L.R. 405, followed; Scott v. Dalphin, 6 W.L.R. 371, considered.] Pahkala v. Hannuksela (No. 2), 20 Can. Cr. Cas. 260, 8 D.L.R. 107.

HUSBAND AND WIFE; COMPETENCY.

In criminal cases of the class in which the wife is not competent as a witness against her husband, if she is called by the Crown and gives evidence although stating that she came to Court voluntarily and was willing to testify, the conviction cannot stand unless it clearly appears that the evidence she gave did not affect, and could not have affected, the result. [Makin v. Attorney-General of N.S.W. [1894] A.C. 57; and Allen v. The King, 44 Kan. S.C.R. 331, applied.] R. v. Allen, 22 Can. Cr. Cas. 124, 14 D.L.R. 825.

CREDIBILITY; MOTIVE.

Upon a prosecution of a physician for issuing a certificate for the purchase of intoxicating liquor for non-medical purposes contrary to the provisions of the Canada Temperance Act, the credibility of an informer will be adversely affected by any of the following circumstances, if present. (*a*) the informer being an unknown adventurer, (*b*) the informer being an employee of the prosecution at a weekly wage to build up cases, (*c*) the informer making a false statement to the physician in applying for the certificate. R. v. McAllister, 22 Can. Cr. Cas. 166, 14 D.L.R. 430.

COMPELLING ATTENDANCE; ATTORNEY-GENERAL.

The magistrate, under sec. 671 of the Criminal Code 1906, is vested with some discretion in issuing subpœnas to witnesses, because of the words of that section "if it appears to the jurors that any person is likely to give material evidence," and may refuse to issue a subpœna if the reasons advanced by the applicant do not shew that the witness sought to be examined is likely to give material evidence. A magistrate is justified in refusing to issue a subpœna for the attendance of the Attorney-General before him as a witness if it appears that the Attorney-General could not give material evidence. R. v. Baines, [1909] 1 K.B. 258, 21 Cox C.C. 756, applied] R. v. Allerton, 22 Can. Cr. Cas. 273, 17 D.L.R. 294.

CROSS-EXAMINATION OF ACCUSED; QUESTION AFFECTING CREDIBILITY.

When the accused becomes a witness on his own behalf he may be cross-examined as to whether he has been convicted of any offence, even though the conviction is altogether irrelevant to the matter in issue, the inquiry being relevant as affecting the credibility of the accused. [Ward v. Sinfield, 49 L.J.C.P. 696, and Canada Evidence Act, 1906, sec. 12, referred to.] An accused person on a murder trial giving testimony on his own behalf may be asked whether or not he made a certain statement at the inquest although the original depositions are not available in court; and he has no right to demand before answering that he be informed of what was taken down in the depositions; but if use is to be made of the latter to contradict him the original deposition should be produced. (Per Gallihar, J.A.) Where the accused giving evidence on his own behalf in a criminal trial is asked, in the course of his cross-examination as to some previous offence about some irrelevant fact, the Crown is bound by his answer and cannot tender testimony in contradiction thereof. [R. v. Muma, 17 Can. Cr. Cas. 285, 22 O.L.R. 227, approved.] R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, affirmed in 23 Can. Cr. Cas. 194, 18 D.L.R. 217.

[Referred to in R. v. De Mesquito, 24 Can. Cr. Cas. 407.]

CROSS-EXAMINATION; DIRECTION OF COURT; ASSOCIATE IN OFFENCE.

Where, on charges of assisting a prisoner to escape and of conspiring with the prisoner for that purpose, the indictment is laid without calling before the grand jury the prisoner, who had been re-captured, the trial judge is not bound to give a direction asked by the accused that the prisoner be called as a witness for general cross-examination without making such witness a witness for the accused, nor a direction that the Crown make the prisoner its witness, if the Crown is prepared to permit counsel for the accused to interview such prisoner as to the evidence he can give and offers to facilitate his being called as a witness for the defence if desired. [R. v. Holden, 8 C. & P. 606; R. v. Stroner, 1 C. & K. 650, distinguished.] R. v. Hagel and Westlake, 23 Can. Cr. Cas. 151, 16 D.L.R. 378.

RE-CALLING WITNESS AS TO CREDIBILITY; DISCRETION.

The Judge trying a criminal case without a jury has a discretion to refuse to re-call one of the accused who had given evidence on his own behalf for the purpose of giving further evidence tendered merely to confirm the credibility of one of his own witnesses as to a circumstance brought out on the latter's cross-examination which was not relevant to any fact in issue. R. v. Prentice, 23 Can. Cr. Cas. 436, 20 D.L.R. 791.

PRIVILEGE; SOLICITOR AND CLIENT.

The authorization or direction to a solicitor to send a letter on behalf of the client is not within the privilege between solicitor and client, and the latter, called as a witness in a criminal case in which he was the complainant, cannot on that ground decline to answer a question put by counsel for the accused whether he, the witness, had not authorized his solicitor, at or about the time the accused brought civil proceedings against the complainant, to write a particular letter which the solicitor had sent to the solicitor for the accused. R. v. Prentice, 23 Can. Cr. Cas. 436, 20 D.L.R. 791.

COMPETENCY; ACCOMPLICE; PLEADING GUILTY.

Where two persons were jointly charged with theft and one pleaded guilty and the other not guilty, the former may be called as a witness against the latter although sentence had not yet been passed upon the plea of guilt; in such a matter it must be left to the discretion of the presiding Judge to decide what is the fairest and most convenient course to pursue in the particular case, and whether there should be an adjournment of the trial or an immediate sentence of the accomplice; and where he is holding the trial without a jury, it is not error for the Judge to take cognizance of the accomplice's evidence before sentencing him, although in receiving the testimony the Judge expressed a view favouring a different course had there been a jury. [Winsor v. The Queen, L.R. 1 Q.B. 390, and R. v. Payne, L.R. 1 C.C.R. 349, discussed.] R. v. McClain, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

COMPETENCY OF PERSON UNDER DEATH SENTENCE.

A person under sentence of death is competent as a witness on the trial of another for a criminal offence. [R. v. Hatch, 16 Can. Cr. Cas. 196, followed; R. v. Webb, 11 Cox C.C. 133, distinguished.] Sec. 1064 of the Criminal Code giving special directions for the safe custody of a convict sentenced to death does not interfere with the powers conferred by sec. 977 upon Courts of criminal jurisdiction to order the convict to be produced as a witness on the trial of an indictable offence. R. v. Kuzin, 24 Can. Cr. Cas. 66, 21 D.L.R. 378

TAMPERING WITH WITNESS; PROSECUTION PENDING; LIQUOR ACT.

Tampering with a witness on any prosecution under a provincial liquor license Act (R.S.O. 1914, ch. 215, sec. 78 and R.S.C. 1906, ch. 152, sec. 150), does not include tampering with a possible witness before the commencement of the prosecution.

[Ex parte White (1890), 30 N.B.R. 12, R. v. LeBlanc (1885), 8 Montreal L.N. 114, applied.] R. v. Armstrong, 26 Can. Cr. Cas. 151, 31 D.L.R. 82.

DISCREDITING OWN WITNESS; USE OF PRIOR STATEMENT.

The right, affirmed by sec. 9 of the Canada Evidence Act, R.S.C. 1906, ch. 145, of shewing that one's own witness, if found by the Court to be hostile, had made a previous statement inconsistent with his present testimony, does not enable the party calling the witness to use the latter's previous statement as evidence of the facts contained therein; the previous statement is admissible only for the purpose of impeaching the credit of the adverse witness who has denied that he had made it, and the jury should be so instructed. R. v. Duckworth, 26 Can. Cr. Cas. 314, 31 D.L.R. 570.

TAMPERING WITH WITNESSES; COMMISSIONER TAKING EVIDENCE; PROOF OF AUTHORITY.

To warrant a conviction under sec 180 of the Criminal Code, upon a charge that the accused did unlawfully attempt to dissuade certain witnesses from giving evidence before members of a Royal Commission appointed to investigate a certain charge, where the facts merely established an attempt to dissuade the witnesses from giving evidence before a special commissioner appointed by said Royal Commissioners to take such evidence, it must be shown that the Royal Commissioners were acting within the scope of their commission in appointing such special commissioner. The provision contained in Cr. Code, sec. 180, to the effect that every one is guilty of an indictable offence and liable to two years' imprisonment who dissuades or attempts to dissuade any person by threats, bribes, or other corrupt means from giving evidence "in any cause or matter, civil or criminal," contemplates that the person to be dissuaded must be one who is required to give evidence; it was not intended to apply where the dissuasion was from giving evidence before a person having no proper authority to take the same. R. v. Rosen, 27 Can. Cr. Cas. 259, 33 D.L.R. 715.

CROSS-EXAMINATION OF ACCUSED; DISCREDIT OF ACCUSED'S TESTIMONY IN REASONS FOR JUDGMENT IN CIVIL CASE; NEW TRIAL.

A defendant in a criminal case giving evidence on his own behalf may have his credibility attacked by eliciting from him in cross-examination the fact that he had been examined as a witness in a civil action to which he was a party and in which there were in controversy some of the issues raised on the criminal trial, and he may be asked what the issues were in the civil action and the result of the civil trial, but he should not be asked, against his objection, to state the views expressed by the trial Judge impugning his veracity and stated in the opinion or reasons for judgment delivered after the civil trial on an occasion when the defendant was not present, although he was able to answer because he had read the reasons for judgment in law reports; and where the fact of his testimony having been discredited in the civil action was emphasized in the charge to the jury in the criminal case, there is a "substantial wrong" forming ground for directing a new trial (Cr. Code, sec. 1019) on an appeal from the conviction. R. v. Baugh (No. 1), 27 Can. Cr. Cas. 373, 31 D.L.R. 66. See also 28 Can. Cr. Cas. 146, 33 D.L.R. 191.

PRIVILEGE AS TO SELF-CRIMINATION; INSOLVENCY; FALSE PRETENCES.

Where criminal prosecutions are pending against an insolvent on charges under Cr. Code, sec. 405A of obtaining credit by false pretences as to his financial standing, the insolvent will not be compelled, on an examination at the instance of the assignee for benefit of creditors under the Ontario Assignments and Preferences Act, to answer questions which would tend to enable the prosecutors to get convicting evidence against him. [Paxton v. Douglas, 19 Ves. 225, followed.] Re Ginsberg, 27 Can. Cr. Cas. 447, reversed in 38 D.L.R. 261, 40 O.L.R. 136.

CREDIBILITY; HOW DETERMINED.

A Judge or magistrate cannot legally refuse to give credit to testimony if the following conditions are fulfilled: (1) That the statements of the witness are not in themselves improbable or unreasonable; (2) that there is no contradiction of them; (3) that the credibility of the witness has not been attacked by evidence against his character; (4) that nothing appears in the course of his evidence or of the evidence of any other witness tending to throw discredit upon him; and (5) that there is nothing in his demeanour while in Court during the trial to suggest untruthfulness. [R. v. Minchin, 22 Can. Cr. Cas. 254, 15 D.L.R. 792, and Browne v. Dunn (1894), 6 R. 67 (H.L.), referred to.] R. v. Covert, 28 Can. Cr. Cas. 25, 34 D.L.R. 662.

REFRESHING MEMORY; CONSISTENCY OF STATEMENTS.

For the purpose of rehabilitating a witness, and shewing that he is consistent with himself, evidence may be given to shew that the witness had made the same or substantially the same statement as that given in his testimony, prior to the inconsistent statement and so to negative the theory of recent concoction of the latter. [Rex v. Benjamin (1913), 8 Cr. App. R. 146; Rex v. Coll (1889), 24 L.R. Ir. 522,

followed.] R. v. Neigel, 29 Can. Cr. Cas. 232, 39 D.L.R. 154.

DISCREDITING; GOVERNMENT INSPECTOR; WAR REVENUE ACT.

The effect of the Act, 8-9 Geo. V., Can., ch. 46, sec. 2, amending the Special War Revenue Act, 1915, is to make a government inspector who buys an unstamped bottle of perfume a competent witness although he does this to entrap the seller and to convict him of an infringement of the law. Such purpose is legalized by the amending Act and its execution does not place the inspector in the position of an accomplice so as to throw doubt on his testimony. Sifton v. Brunet, 31 Can. Cr. Cas. 1.

WORDS AND PHRASES.

"Absence" 877
"Absent" 1270
"Absent from Canada" .....
"Abusive" 79, 714
"Accuser" 499
"Acting Attorney-General" ... 142, 143, 177
"Acting within local limits" 860, 861
"Action" 625, 906, 1196
"Actual injury" 644
"Adequate remedy" 230, 231
"Administration, peace, order and good government" 294
"Against the form of the statute, etc." 361
"Against the will of" 1
"Agent" 142, 521, 685, 743
"Agent, servant or employee" 22, 743, 807, 1116
"Aliens" 24, 299
"And others" 934
"Animals" 697
"Answer" 348
"Any other noxious or offensive trade" 744
"Anything capable of being stolen" 274, 568
"Anywhere" 720
"Apparently" 490, 812
"Appeal" 41, 193, 628, 1158, 1231
"Artificial inland water" 942
"As well within liberties as without" 1026
"Assaults" 127
"Assisting" 1331
"Authenticated" 503
"Authorized by law" 1006, 1011, 1015

"Bankruptcy law" 526
"Bills and notes discounted and current" 162
"Breaking" 175
"Bucket shops" 174

"Calculated to disturb the inhabitants" 709
"Canvassing" 801
"Cattle" 697
"Causes or matters belonging to prothonotary's office" 632
"Charge in writing" 1267
"Chinaman" 26
"Clerk, agent or servant" 23, 664
"Colour of right" 942, 943
"Comment" 406
"Commissioner of police" 1230
"Committed to gaol for trial" ..150, 658, 1141
"Common bawdy house" 368, 369, 372
"Common gaming house" 291, 575
"Common jail" 659
"Concerning such subsequent offence" 846
"Concerts, other similar shows" 746
"Conclusive evidence" 158, 409, 803
"Conduct the trial" 776
"Confession" 438, 735
"Consent of the Judge" 671
"Constitution of grand jury" 599
"Constitution, maintenance and organization of provincial Courts" 302, 517
"Consumer" 722
"Copy" 335
"Corroboration by some other material evidence" 413, 489, 661
"Costs and charges" 331, 1209
"Costs of the commitment" 329
"Counselling and procuring" 172
"Count" 677, 702, 1249
"County" 858, 867
"Court" 518, 875, 1251, 1260
"Court of justice" 1020
"Court or Judge having jurisdiction in criminal cases" 74, 1100
"Court of Record" 613
"Crimes of a political character" .. 525
"Criminal charge" 312, 791
"Criminal law" 246, 296, 299, 1282
"Criminal offence" 831
"Criminal procedure" 296

"Dealer trading in similar articles" 1298
"Defence" 348
"Deposition" 1129
"Disorderly house" ... 364, 365, 370, 580, 583, 742
"Disposal" 815
"District magistrates and Judges of the sessions" 1025
"Document containing an accusation" 500
"Drugs and medicines" 308, 867
"During the trial" 683

"Employee" 1163
"Encounter" 744, 1053
"Erroneous in point of law" 1021
"Escape" 1130
"Exists" 817
"Explosive material" 34

"Faced surface" 568
"Fair and reasonable supposition of right" 1335
"False document" 564
"Family" 743, 1350
"Fee is charged directly or indirectly" 1286
"Felony" 612
"Ferry" 306
"Fight" 744, 1053
"Final and conclusive" 198, 216
"Final judgment" 54
"Forcible entry" 553

"For gain" 579
"Forgery" 564
"Fraud" 531
"Fulfilling a public duty" 308, 781
"Full answer and defence" 1266

"Gambling, wagering of betting machine" 590
"Gaming" 584
"Garage" 140
"Good cause" 325
"Grand larceny" 515, 524
"Greater speed" 744
"Grevious bodily injury" 268, 601
"Guardian or head of a family" 235

"Having" 797, 820
"Hawker" 947, 1001
"Hearing" 828
"His witnesses" 1178, 1278
"Housebreaking and theft" 647
"Hunt, take or kill" 570

"If convicted upon indictment" 129
"Illegal fishing" 551
"Impanelling" 887
"Implicating" 481
"Imprisonment" 660
"In a matter or other judicial proceedings" 318
"In any place" 720
"In custody charged with indictable offence" 627, 637
"Indecent" 662
"Indictment" 677, 680, 1260
"In force" 314
"In his own right" 655
"Injure and defraud" 123
"Inmate" 1164
"In presence of one or more persons" 663
"In so far as it is applicable" 232
"In substance or in form" 707
"Is" 817

"Judge of Supreme or County Court" 1186
"Judgment" 1361
"Judicial proceeding" .. 414, 1010, 1012, 1014, 1018
"Justice" 215, 322, 781
"Justice of the peace" 215
"Justice who tried the case" 63, 1196
"Keeping" 591, 592, 790, 792, 803, 817
"Keeping open" 1282
"Knowingly" 24, 202, 785, 992, 993
"Knowingly concerned" 1137
"Language of the defence" 884
"Larceny" 506
"Last part" 756, 908
"Last or most usual place of abode" 1163
"Law" 94
"Lawful distress or seizure" 995
"Lawful excuse" 649
"Lawfully" 1094
"Lending" 1343
"Liquor" 832, 834
"Magistrate" 366, 775, 867, 1024
"Man" 1078
"Manufacture" 720

"Material" 692
"Matter of other judicial proceedings" 53
"Matter or thing" 1031
"May" 741
"May be" 245
"Medicine" 935
"Menace" 937
"Merchant or tradesman" 308, 871
"Minute of conviction 1223
"Mode of chance" 573, 574
"Mode of procedure" 41
"Money lender" 12, 1344
"Money received on terms requiring him to account" 1304
"Money, valuable security or other property" 513
"More than 14 days before the sittings" 64, 742
"Municipal institutions" 289
"Municipality" 858, 867
"Nature of the charge" 896
"Nearest" 68
"Necessaries" 235, 651, 745, 928, 968
"Not being his wife" 349, 685
"Not giving a satisfactory account of themselves" 364
"Not later" 785
"Notice in writing" 61
"Now or hereafter in force" 307, 1285
"Noxious or offensive trade or business" 986
"Nuisance" 289
"Oath" 22
"Obscene" 992
"Occupant" 787, 806, 818, 821
"Offence" 1322
"Offences against bankruptcy law" 524, 525
"Offer goods for sale" 951
"Office or place" 583
"Officer of the Crown" 823
"Officer of the foreign state" 515
"On behalf of" 634
"Order" 867, 1114, 1223
"Order for the payment of money" .. 559
"Ordinary calling" 1287
"Or other publication" 1030
"Other matter" 290, 1280
"Other noxious or offensive trade or business" 1049
"Owner" 542

"Paid or be applied" 552
"Paid, recovered" 1002
"Parish Court Comissioner" 775
"Party aggrieved" 326
"Party applying" 96
"Pawn, pledge or exchange for the repayment of money lent" 1001
"Peace, order and good government" 72
"Pedlar" 947
"Peddling" 1001
"Penalty" 656, 843, 1002, 1169
"Permanently injured" 483, 648
"Person" 853, 1287
"Person affected" 1092
"Person aggrieved" 66, 70, 71, 222
"Person charged" 407
"Person interested" 478

"Person violating" 805, 815
"Place" 582, 583, 585, 804
"Playing, looking on" 578
"Pledge, assignment or hypothecation" 163
"Police magistrate's Court" 875
"Post letter" 1029, 1307
"Practice" 349
"Practising medicine" 933
"Premises" 804
"Prescription" 835
"Previously chaste character" 744, 907
"Prison" 394, 726
"Private dwelling house" 820
"Private prosecutor" 1051
"Privilege" 743
"Prize fight" 1051, 1052
"Proceeding" 659
"Proceeding for the trial of the offence" 305
"Proceedings arising out of a criminal charge" 44
"Proceedings for or upon a writ of habeas corpus" 56
"Procuring" 1055
"Promise of employment" 24
"Property" 912
"Property and civil rights" 295, 299
"Prosecution" 936
"Prosecutor" 52
"Prospectus, statement or account".. 546
"Provincial crimes" 315
"Publication" 1031
"Public place" 662, 745, 813, 819, 1348

"Quadruple plate" 548
"Quash conviction, order or other proceedings" 622
"Question of law" 1098, 1105

"Racing tips distributor" 165
"Receiving" 502
"Recognized as duly ordained" 170
"Relating to desertion of seamen" .. 361
"Relative to the subject-matter of the case" 408
"Report" 1202
"Required by law" 992
"Resident in the district" 871

"Sale" 819, 1001
"Seab" 744, 951
"Sell" 808, 819
"Selling, bartering or trafficking 787
"Sent" 744, 796, 1030
"Sent, shipped, brought or carried to any person" 783
"Shall be stated" 100
"Shall hear and determine the matter of appeal" 326
"Sit and try" 869
"Sittings of the Court" 62
"Solemn declaration" 1011, 1015
"Soliciting" 801
"Sold or served" 791
"Special property or interest" .. 1308, 1309
"Specially licensed vendors" 809
"Speed" 744
"Stealing" 938
"Stipendiary magistrate or two justices" 831
"Subjects" 1118
"Substantial wrong or miscarriage" 90, 979, 1009, 1097
"Substitute for the offence charged" 778
"Suffered to be in or upon the premises" 788
"Surgery" 935
"Suit entered against him" 224
"Summary conviction" 996, 1226
"Summary trial" 1245

"Temporarily domiciled" 551
"Theatrical performance" 742
"Theft" 938, 1299
"The three last preceding sections" .. 651
"Trade and commerce" 298, 299
"Trading, manufacturing or mining purposes" 1000
"Trading stamp" 1329
"Transient trader" 947, 951, 956
"Trap net" 551
"Treaty Indian" 665, 666
"Trivial offence" 98
"Try such appeal" 62
"Two Justices of the peace sitting together" 51

"Unbroken package" 792
"Under direction" 1315
"Under this section" 835
"Undertaking to tell fortunes" 565
"Undue restraint of trade" 1325
"Unlawfully" 251, 662, 663, 743
"Until delivered in the course of the law" 259

"Vagrant" 1351
"Valuable security" 542, 543, 546
"Verdict" 745

"Waiting for hire or engagement" .. 949
"Want of form" 1244
"Wantonly, cruelly, unnecessarily" ... 345
"Warehouse" 1319
"Wholesale merchant or trader" 945
"Wilful" 391, 500, 662, 663, 1365
"Wilful, false and deceptive statement" 162, 531
"With hard labour" 197
"Within such period and by such instalments" 333
"With others" 286
"Without reasonable or probable cause" 499
"Woman" 1078
"Work of necessity or mercy" .. 1281, 1289

WOUNDING.

See also Assault.

Plea of autrefois acquit on subsequent trial for unlawful wounding after acquittal on charge of shooting with intent. 7 Can. Cr. Cas. 38.

INDICTMENT FOR WOUNDING WITH INTENT BY SHOOTING; VERDICT OF "GUILTY WITHOUT MALICIOUS INTENT;" MENS REA.

(1) Upon the trial of an indictment for wounding with intent to disable, a verdict of "guilty without malicious intent" is equivalent to a verdict of acquittal, although the jury were instructed that if intent to disable were negatived they might still convict of the simple offence of wounding. (2) Such verdict is to be construed as a finding that the act of the accused which resulted in wounding the complainant was done without malice. [The King v. Slaughenwhite (No. 1), 9 Can. Cr. Cas. 53, reversed.] Slaughenwhite v. The King; The King v. Slaughenwhite (No. 2), 9 Can. Cr. Cas. 173.