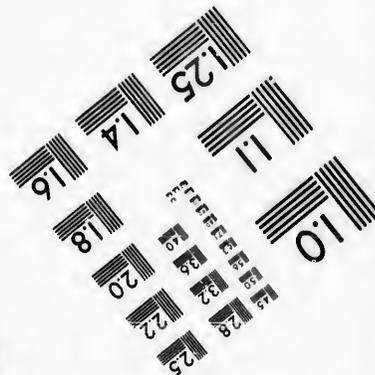
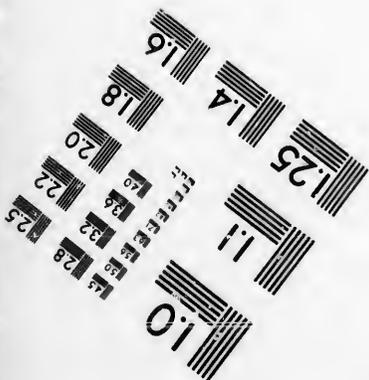
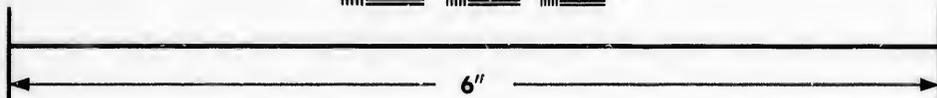
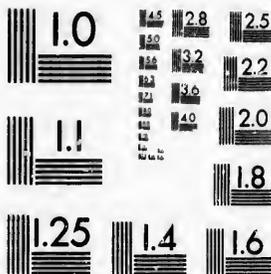


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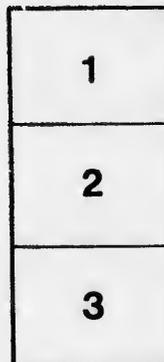
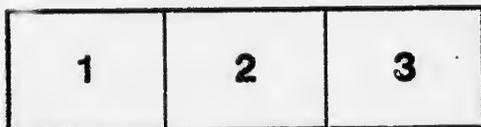
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T.R.

OBSERVATIONS

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UPON THE

DUTIES OF MAGISTRATES.

Compiled by Order

OF THE

JUSTICES IN SESSION,

NOVEMBER 6, 1844.

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# OBSERVATIONS

UPON THE

## DUTIES OF MAGISTRATES, COMPILED BY ORDER OF THE JUSTICES IN SESSION, Nov. 1844.

Magistrates have jurisdiction, in the first instance, over all offences against the Law, from the highest to the lowest classes of crime, and it is the duty of a Magistrate to take cognizance of all such offences committed within his Division.

These offences are divisible into two general classes, viz :

*Firstly*,—Those over which the Law gives the Magistrate Summary Jurisdiction, and

*Secondly*,—Those which the Law requires to be sent to a higher tribunal for final trial.

Those offences which Magistrates are authorized to try and dispose of summarily, are,

*Assaults and Batteries*,—(See 4 & 5, Vict. Chap. 27, or Keele's Prov. Just. 2nd Edition, p. 55.)

*Petty Trespasses*,—Malicious injuries done to property,—or with intent to Steal. (See 4 and 5, Vict. Chap. 26, from Section xx, to the end of the Statute, or Keele's Prov. Jus. p. 579, and succeeding pages.) Offences of this description may be disposed of before one or more Magistrates.

There are many other offences, over which the Law gives Summary Jurisdiction to one, two, or three Magistrates, viz :

Certain offences under the Township Officers Law, (see 1st Vict. Chap. xxi.)

Laws of "Master and Servant," Master and Apprentices, &c. (See Keele's Prov. Just. p. 24, and succeeding pages.)

Offences against the Revenue ; viz. selling Liquor, without Tavern Licence, &c. (Two Magistrates.)

Shopkeepers, or other persons, not having Licence selling spirits in less quantities than three gallons, (three Magistrates,) —see Keele, p. 571.

Shopkeeper, having Shop Licence, selling Liquors in less quantities than one quart, (three Magistrates,) see Keele, p. 571.

Hawkers and Pedlars—without Licence, (three Magistrates,) see Keele, p. 296.

The offences, of a higher class, over which Magistrates have no Summary Jurisdiction, but which they are required to refer to a higher tribunal for final adjudication are Felonies, viz : Treason, Murder, Arson, Rape, Forgery, Bigamy, Robbery, Larceny, &c. &c., and the more aggravated class of Misdemeanours, Assaults, &c., viz : Perjury, Riot, Assault with intent to commit any Felony, to wit, "Assault with intent to kill"

--“ Assault with intent to Maim, or to do some grievous bodily injury,”--“ Assault with intent to Ravish,”--“ Assault with intent to rob, &c. &c.,”--“ Assaults upon Public Officers, to wit, Sheriffs, Magistrates, Constables, &c., in the execution of their duty, and Assaults and Batteries of so aggravated a character, as to require a greater punishment than a Magistrate has power to inflict.” All these it is the duty of the Magistrate to send to the Court of Quarter Sessions, or the Assizes, by committing the accused for Trial, or admitting him to bail, as the case may require.

In all cases the first official step to be taken by the Magistrate, is to receive an Information upon oath, from a credible person, that an offence has been committed, and stating as near as may be the nature of the offence, the person against whom, and the time when, and the place where the said offence was perpetrated, and naming the person or persons who committed, or who are suspected to have committed such offence.

Upon receiving this Information the Magistrate should immediately issue his Warrant or Summons, to bring the accused before him. A Warrant should be issued in all cases of Felony, and Misdemeanour, or, Assault with intent to commit Felony, or other aggravated Assault and Battery.

In ordinary cases of Assault and Battery, Petty Trespass, offences against the Revenue Laws, &c., it is usual, in the first instance, to issue a Summons only—unless in cases where the Magistrates have reason to apprehend the parties will evade justice, in which case the Magistrate should issue a Warrant at once.

When the accused appears before the Bench, the accuser and his witnesses should also be present. The Information should be read to the accused, and unless he voluntarily admits the charge, the Magistrate is to swear and examine *first*, the Witnesses for the Complainant, and then those for the Prisoner, taking the whole of the evidence down in writing, as nearly as possible in the words of, and when read over to be signed by, the Witnesses. The accused or his Counsel has a right to cross-examine each Witness. After the evidence is given the accused may be asked if he wishes to make any statement of his own. If he does, that also should be reduced to writing, and be signed by the accused. Where the Prisoner wishes to make any such statement it should be intimated to him that he need say nothing that will criminate himself.

In Penal Statutes under the Revenue Laws, as on charges of Hawking and Peddling without Licence, &c., the accused should be asked to exhibit his Licence, if he does not do so, or, if he admits that he has no Licence, that also must be taken down in writing, and form part of the proceedings upon which a conviction is recorded.

The examination being over, the first question for the Magistrate to determine is, whether the charge is sustained by the evidence, and next, whether the case is one which the Law requires to be disposed of summarily, or whether it should be sent to a higher tribunal. If the former, the Magistrate will adjudge the amount of the Penalty to be imposed (under the limitations of the Statute) together with the costs, which should be recorded on the proceedings, together with the period of imprisonment to be awarded, in case of non-payment of Fine and Costs.

If the case is one which requires to be tried by a higher tribunal, the Magistrate should commit the Prisoner "until delivered by due course of Law"—or, in cases of Misdemeanor the Magistrate may admit the accused to bail, in sufficient sureties, the amount of bail to be regulated by the magnitude of the offence charged, and by the abilities of the parties.

In cases of Felony, even in Larcenies of the smallest class, one Magistrate cannot admit the Prisoner to bail. There must be two Magistrates, who may bail the Prisoner, but then, only where the evidence of guilt is doubtful; where the evidence is clear, the Magistrates are not authorized to admit the Prisoner to bail; but the parties may be referred to a Judge in Chambers, who has power to bail in any case.

When a Magistrate commits a Prisoner to Gaol or holds him to bail, to take his trial, the Magistrate must bind over all the Witnesses in recognizance to appear at the Court to give evidence; and, in all cases where persons are held to bail either as Principals or Witnesses, the Magistrates *must serve each of the persons so held in recognizance with a written or printed notice of bail*, as per Provincial Statute 7th William IV, chap. 10, sec. 8,—and Keele's Prov. Justice, page 250. Without such notice the recognizance cannot be estreated, and is therefore useless.

Magistrates have no jurisdiction over cases of slander, or abuse, however gross, offensive, or false the case may be: unless the abuse is accompanied by a threat of personal violence, or injury to property in which case, upon the Complainant making the necessary information, the accused may be arrested and bound over, with sureties, to keep the Peace and be of good behaviour, for a specified period, usually for six or twelve months.

On the subject of costs—the Magistrate is entitled to charge the legal costs in all cases punishable by Summary Jurisdiction, and on aggravated assaults, &c., which may be referred to a Superior Tribunal: but a Magistrate cannot legally charge or receive any fees in cases of Felony; but the Constables charges for arresting and conveying to Gaol, &c. of Felons, are payable by the District, on accounts certified by the Committing Magistrate, and audited by the Justices in Session.

It is usual, and is deemed necessary to prevent frivolous complaints, for the Magistrate, in all cases, where he is allowed to charge fees to require the preliminary expenses to be paid by the Complainant to Wit: Three Shillings and nine-pence for the Information and Warrant or Summons, which is afterwards returned to the Complainant upon the conviction and payment of the same by the accused.

The Magistrate may also require the Constables expenses for the arrest or service to be paid in the first instance by the Complainant, to be returned, in like manner, upon conviction and payment by the accused.

In cases where the Complainant fails to sustain his charge, and the case is dismissed by the Magistrate, the Complainant must pay all costs, and in default he may under the provisions of the Petty Trespass Act, be committed by the Magistrates for any period not exceeding ten days.

The Defendant cannot be charged with costs except in cases of conviction; a Magistrate, therefore, cannot dismiss a charge and require the accused to pay the costs. It is usual, however, for the Magistrate in cases of ordinary assaults, petty Trespasses, &c., to allow the parties (after complaint has been lodged) to settle the matter between them if they desire it on payment of the costs already incurred.

In cases where articles of the Peace are exhibited against a person, requiring said person to give sureties for the Peace and good behaviour, the accused may be arrested and held to bail without any evidence being adduced in proof of the charge. In these cases the usual practice is for the Magistrate to require the Complainant to pay the Costs of the Information and Warrant, and the Defendant to pay the subsequent expenses.

Magistrates are bound to make a Return to the Office of the Clerk of the Peace of all Summary Convictions made before them once a quarter, viz: immediately before each General Quarter Sessions, in the tabular form prescribed in 4 and 5, Vict. Chap. 12, see Schedule in that Statute,—and Keele, p. 180 and 181.

It is also the duties of Magistrates to transmit to the office of the Clerk of the Peace all original Informations, Examinations, Recognizances, &c., which relate to the cases of Prisoners committed to Gaol or held to bail, to take their trial at the higher Courts.

By order of Session,

**GEORGE GURNETT,**

*Clerk Peace, Home District.*

COURT HOUSE, TORONTO, }  
Nov. 6, 1844. }

## MAGISTRATES FEES.

For every information, . . . . .	2 6
For every Warrant, . . . . .	1 3
For every (original) Summons, . . . . .	1 3
For every examination of a Witness, . . . . .	1 3
For every Conviction under a Penal Statute, when the Penalty imposed is under £5. . . . .	2 6
For every Conviction, where the Penalty is £5 and upwards, . . . . .	7 6
For every Warrant to Levy, . . . . .	2 6
For every Warrant of Commitment, . . . . .	2 6
For discharge of the Defendent, . . . . .	1 3
For every Recognizance to appear to answer to a charge, or, for Sureties of the Peace, . . . . .	2 6
For every Certificate of dismissal of a charge under the Petty Trespass Act, . . . . .	2 6
For making of every Record of Conviction, when the same is required to be returned to the Session or on Certiorari, . . . . .	10 0

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## CONSTABLES FEES.

*present allowed by the Justices in Session.*

For every arrest of a Prisoner upon Warrant, . . . . .	5 0
For serving every Summons, . . . . .	2 6
For mileage from the Magistrates Office to the place of arrest, or service, (but not for return,) } per mile, . . . . .	6
For Ditto. conveying Prisoner to Gaol, per mile, . . . . .	6
For hire of waggon (when necessary) to convey Prisoners to Gaol, for every reasonable days } travel, per day, . . . . .	15 0
For attending on Coroners Inquests, per day, . . . . .	7 6
For executing a Search Warrant, (with mileage as above,) . . . . .	5 0

There are other services for which in Special cases the Justices sometimes make allowance.

No allowance is made, except in very special cases, for support of a Prisoner, while in charge of a Constable, as he is expected to defray his own expenses for sustenance until he is committed.

No allowance is made to a Constable for an assistant, unless there is more than one Prisoner, as the Constable has the power,

if he apprehend violence or escape, to handcuff or pinion the Prisoner.

In all cases of Service of a Subpœna or Summons, the Constable must serve a *Copy* upon the party and *shew* to him the original.

In all cases of Summary Process the Constables' fees must be paid by the parties, they can only be paid by the District in cases of Felony, and (if so ordered by the Court at the time of Trial,) in other *Indictable* offences before the Quarter Sessions.

By order of Session,

GEO. GURNETT,

*Clerk Peace, Home District.*

COURT HOUSE, Toronto, }  
Nov. 6, 1844. }

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